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SERIAL MURDER AND THE PSYCHOLOGY OF VIOLENT CRIMES

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Chapter 12

Blundering Justice

The Schiedam Park Murder

Peter J. van Koppen

Abstract

The murder of a young girl in 2000 in a park in the Dutch town Schiedam and the attempted murder of her friend resulted in a miscarriage of justice that shook Dutch society. After a description of the case, an attempt is made to analyze the factors that caused this miscarriage of justice and other dubious convictions in The Netherlands. Many factors that have been described in Anglo-Saxon legal systems that contribute to miscarriages of justice apply likewise to the Dutch legal system. Some do not, such as jury decision making and plea bargaining. Some factors are typical for an inquisitorial system as The Netherlands. Notably, the compromising nature of Dutch society that has too much trust in the work of the police and the prosecution contributed to the wrongful conviction in the Schiedam Park Murder. This is a problem because it can be argued that the quality of the police and the prosecution has decreased in recent decades. It is concluded that because of the growing role of the European Court of Human Rights that causes a mixture of accusatorial and inquisitorial elements to be introduced in the legal systems of its member states, comparative research is needed into factors that promote miscarriages of justice in different legal systems.

INTRODUCTION

On June 22, 2000, two children were in the Beatrixpark in Schiedam, a town adjacent to Rotterdam in The Netherlands. Nienke, 10 years old, and her 11-year-old friend Maikel were playing in a typical Dutch setting—a playing apparatus mimicking a dyke. After they had done this for some 20 minutes,

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they guessed it was time to go home for dinner and so asked an old gentleman the time; it was 5:15 pm. On the way to their bicycles a young man grabbed them from their necks and walked them some 90 meters to bushes. There he strangled both Maikel and Nienke. Maikel survived by acting dead; Nienke, however, was killed. The killer first tried to undress the children but was unsuccessful in doing so. He ordered the children to undress themselves and stabbed Maikel several times in the area around his neck. Finally, he strangled both children using the 100 cm long shoelaces of the army boots Maikel was wearing.

After the killer left, Maikel stepped out of the bushes, naked with the shoelace and dangling boot still around his neck. He walked to a man who was standing on the bridge near the bushes. That man stopped a passing cyclist, Kees Borsboom, who then called the police using his cell phone.

During the 2 days following the murder Maikel was interviewed twice by the police in hospital, where he stayed for a few days because of his stab wounds. In two interviews he told police what happened and gave a description of the killer: a man between 20 and 35 years, 1.80 meters tall, extremely pale, with a very spotty and unkempt face, the pustules on the attacker's face were scratched open with blood and pus coming out. As it later turned out, the statements by Maikel were extremely accurate. The offender description was right to the point of even describing the man's rather special face (1). Apart from Maikel, there were no direct eyewitnesses of the man taking two children to the bushes or seeking to murder the two.

Some weeks before the murder Kees Borsboom, the man who called the police, asked a boy in the same park whether he wanted to earn 25 guilders. Although the boy said "no," Borsboom said: "If you jerk me off, I'll give you 25 guilders." The boy ran home. After the murder the boy saw Borsboom again, went home, and collected his father. His father, a police officer, identified himself to Borsboom and asked him what he had done to his son. Borsboom said sorry immediately and told the police officer that he was in therapy for his behavior and that he would never do this again. Nevertheless, the men agreed to meet at the police station a few days later. Before that meeting, the police officer typed in Borsboom's name in the police computer and saw he was a witness in the Schiedam Park murder case. From that moment on, Borsboom was the prime suspect for the murder. He was prosecuted for the murder and convicted both by the District Court and the Court of Appeals. He was sentenced to 18 years in prison, followed by compulsory assignment to a forensic mental hospital, which in this case is effectively a life sentence. Borsboom did not fit the offender's description given by Maikel at all because he was, in fact, innocent.

ABSENCE OF MISCARRIAGES OF JUSTICE IN THE NETHERLANDS

Dutch lawyers typically think that miscarriages of justice only happen abroad, especially in the United Kingdom and the United States. Cases such as the Birmingham Six (2–5) also have a familiar ring in The Netherlands. Indeed, the number of described miscarriages of justice in Anglo-Saxon countries suggests that such incidents considerably outnumber Dutch cases (e.g., 6–33). Until the Schiedam Park murder the history of known Dutch miscarriages of justice ended somewhere around 1930. Miscarriages of justice were believed to occur in systems with juries and elected legal officials.

My colleagues and I during the early 1990s frequently contested this opinion (34,35), but we could not be sure that all the cases of wrongful convictions we found and described were certain miscarriages of justice. To stay on the safe side, we called them dubious convictions—convictions based on too little evidence. To identify a miscarriage of justice one must know for sure that someone else other than the original convict committed the crime or that the crime never occurred (or at least more sure than the fact finder in the original conviction).

As a consequence, we always had to rely on detailed analyses of the causes of miscarriages of justice in the English-speaking world to discuss Dutch cases (good examples are 6,18,19,36–38). An interesting question arose about what special features of an inquisitorial system might promote miscarriages of justice (see, for a comparison 39,40)?

The Schiedam Park Murder provided an opportunity for such detailed analysis. It is just a singular case study, but it is also one with much more opportunity for analysis than one normally gets. During the course of the trial at the Appellate Court, several professional individuals who were in some way or another involved in the case—I promised them anonymity—asked me to write a letter to the Appellate Court to explain that an innocent man might have been convicted. The problem was that all of these individuals, including me, had been involved in only a small part of the case. I asked the attorney of the accused to give me a full copy of the rather lengthy case dossier, containing some 750 documents. With the assistance of students, I undertook an analysis of the same material on which Borsboom had been convicted by the District Court and by the Appellate Court (and nothing more than that) (41). We concluded that the probability that Borsboom was innocent was higher than the probability of him being guilty. Half a year before the publication of the book—by then Borsboom's appeal to the Dutch Supreme Court had been turned down—I sent an earlier draft to the Chief Prosecutor-General, the head of all prosecutors in The Netherlands, to no avail.

During the summer of 2004, however, the real killer confessed. He had been arrested for two violent rapes in other towns and while being interviewed spontaneously admitted to the Schiedam Park murder. It soon became clear, through DNA matches and his intimate knowledge of the case, that this was indeed a true confession.

Although it took the prosecution another 5 months to free Borsboom, it caused such a big row in the country that the new Chief Prosecutor-General ordered a thorough investigation of the conduct of the police and the prosecution in this case by Appellate Court prosecutor Frits Posthumus with the aid of a police squad headed by Theo Vermeulen. This resulted in an extremely candid and, for the police and prosecution, damaging report (42). Although Posthumus in his reports sticks very much to what happened in this particular case, much can be learned about how more general factors influenced the generation of this miscarriage of justice (43,44). Indeed, this case caused such a big shock and demonstrated so much failure on the part of the police and prosecution that the Minister of Justice proposed an improvement program for the police and the prosecution of an unprecedented scale (45). Also, he set up a special investigation committee to look into all other cases that my colleagues and I, but also others, proposed as potential miscarriages of justice.

After describing some special features of the Dutch criminal legal system, I shall explain the mishandling of evidence in the Schiedam Park Murder and proceed to discuss the factors that may have caused or contributed to this miscarriage of justice.

DUTCH LEGAL SYSTEM

Lay participation in decision making in criminal cases is unknown in the Dutch legal system. All cases in The Netherlands are tried by professional judges, with minor cases by judges sitting alone; the more major cases are heard by a bench court consisting of three judges. Plea bargaining is also unknown: All cases are tried in full. District court decisions can be appealed to the Appellate Court—without leave to appeal—where the case is tried *de novo* (for descriptions in English on Dutch criminal procedure see 46–49).

Dutch criminal procedure is dominated by written records. All officials involved—the police, the prosecution, the judge-commissioner (*rechter-commissaris*, or judge of instruction), the courts, and the defense—produce written records and documents that become part of the official case dossier. Dossiers include all important sources of evidence and information. In court, interactions between judges, prosecutor, accused, and counsel focus on evaluating the documents in the dossier.

In general, the parties make little use of their right to summon witnesses or experts at a trial (49). Instead, experts write reports, and witness statements come to the courts in written form. Witness statements are written down by police officers; this document is formally a sworn statement taken by the police officers of what they saw and heard the witness do and say. The same applies to the suspect's statements. The police reports are almost never a full literal record of what the witness or suspect said; instead, it is a summary, usually with much police lingo and often full of grammatical and spelling errors. The witness statements are almost always written down as a monologue of the witness, in which the questions are either left out or are represented as something the witness said. "You show me a picture of a male individual on which I can see on the reverse the identification number. . . . On this picture I recognize the man who sold me the stolen vehicle."

This is a practice that originates from the French occupation of The Netherlands and nicely fits into the Dutch habit of doing things as efficiently as possible. In cases with clear-cut evidence this gives the attorneys, the prosecution, and the courts a lot less to read. In less clear-cut cases, however, it may become important what questions have been asked exactly and how the witness replied. It may make a big difference whether the police officer asked: "What brand was the getaway car?" and the witness answered: "I am sure it was a Volkswagen Rabbit." or that the exchange went as follows: "Was the getaway car a Volkswagen Rabbit?" "Yes." Both result in the sentence in the report: "I saw the getaway car was a Volkswagen Rabbit."

In more recent years the police sometimes tape important witness and suspect statements. Exceptions are interviews of children, usually in sexual abuse cases. These are always recorded on videotape in a special child-friendly studio to minimize the need for a second or third interview of the child.

In the Schiedam Park murder, the interviews with suspect Borsboom were not recorded until *after* the weekend he made his confessions. All interviews of the young victim Maikel were recorded, the first two in the hospital on audiotape and the rest in a child-friendly interview studio. None of the other statements of witnesses were recorded on tape.

The role of the prosecutor in Dutch criminal procedure is important. In Dutch legal doctrine, the prosecutor is a magistrate. For that reason, he is named *officer van Justitie* (officer of justice). He serves several roles in the proceedings. First, the prosecutor is formally responsible for the investigation by the police. Second, a prosecutor should bring a case to court only if he himself is convinced that the accused is indeed guilty. Therefore, it is not uncommon in The Netherlands that the prosecutor demands an acquittal at trial. That happens at the District Court level for a practical reason. The summons to

court are served by the prosecution administration well before the prosecutor starts preparing the case. If he then concludes that there is, unlike the opinion of the police, too little evidence for a conviction, the case cannot be redrawn any more and an acquittal must be demanded. At the appellate level, a demand for an acquittal by the prosecution reflects a difference of opinion between the lower level prosecutor, who appealed the District Court's verdict, and the prosecutor, who handles the case at the Appellate Court.

The prosecutor is also responsible for the completeness of the dossier. This function, which in practice is served by the police, is central to Dutch criminal procedure. If a prosecutor says in court that the dossier is complete, it is considered complete without further ado (50).

Not everything the police gather goes into the dossier. The Code of Criminal Procedure specifies that the dossier has to encompass all "relevant" documents. What is considered relevant appears to differ from prosecutor to prosecutor. Sometimes relevant is interpreted as "just all incriminating evidence." In the Schiedam Park murder, for instance, it became clear from some loose remarks contained in the dossier that there had been an unknown number of other suspects. Why these men came under suspicion at one point in time, what investigations had been conducted on them, whether they had been in custody, and why they were not considered a suspect any more remained completely hidden from the court and the defense. In a weak evidence case such as the one against Borsboom, this information, of course, can be highly relevant. Maybe there were more serious suspects among them.

Dutch judges enjoy wide discretionary powers in choosing the type and severity of punishment (51). The penal code specifies minimum terms for punishments in general (e.g., 1-day imprisonment) and specific maximum terms for each offense in the penal code. Bench courts confer in chambers about the guilt and the sentence in one session. Dissenting opinions are forbidden, and the secret of the chamber is very strict. That is the reason there has been no public review of the conduct of the Rotterdam District Court and The Hague Appellate Court who convicted Borsboom on such slim evidence. There have been internal reviews, but the presidents of these two courts only publicly described how these reviews were done, not what the results were (52,53).

CONVICTION IN THE SCHIEDAM PARK MURDER

Borsboom was convicted by the Rotterdam District Court and the The Hague Appellate Court on virtually the same evidence. Please note that Dutch courts have to report the evidence on which they base their decisions in a

written decision. The strongest evidence against Borsboom consisted of the confession he made to the police.

In fact, Borsboom was innocent, and the courts could have known it. In his first statements, Maikel gave an offender description that was very different from how Borsboom looked. Moreover, Maikel described in detail the expression of the face of the killer while he was strangling him. So, we may assume that Maikel had a good look at the killer. Right after he came out of the bushes he saw Borsboom while he was phoning the police alarm number. In his statements, Maikel also described this man. At no point in time did he ever say that the man phoning was the same man as the killer.

The time frame of that afternoon prevented Borsboom from committing the murder. He was employed by a firm in a nearby industrial park. There the working day ended when the packages had been loaded into the trucks. That day two trucks arrived to collect packages. The tachographs of the trucks indicate that one left at 5:18 p.m. and the other at 5:21 p.m. For a strong biker it takes 11 minutes to ride from the industrial park to the park where the children were attacked. So, Borsboom could have arrived there at 5:29 p.m. at the earliest. By then, however, two men who were walking their dogs were standing next to an adult bicycle near the bushes where the children were attacked, right on the route the killer walked with them. We only know this not because the two men told the police but also because a third witness described these two men to the police and was very sure about the time he saw them there: He punched a time-clock when leaving his work and rode straight home, where he arrived at 5:35 p.m. Soon after that, the men with the two dogs passed the bushes where the killer was attacking Maikel and Nienke. Maikel by then was pretending to be dead but looked out of the bushes with his head turned away from Nienke and the killer. Later he described the black and white dog of one of the men he saw passing. In short, Borsboom just did not have the time to commit the murder.

There was no technical evidence presented at trial that pointed to Borsboom. DNA was found under the nails and on the rubber boot of Nienke that belonged to someone other than Nienke or Maikel, an unknown male person. Note that the children had been playing with water for some 20 minutes; and because Nienke was biting her nails, she must have had clean fingernails. Thus, this DNA must have been collected after the children played in the park. Nevertheless, the expert of the Nederlands Forensisch Instituut (NFI; The Dutch Forensic Laboratory) told the court at trial that this DNA might very well come from a boy at school. It did not, as will become clear soon.

During a weekend in September Borsboom made confessions. His interrogations were not recorded, nor was his attorney present, although the attorney

asked for that and the prosecutor refused. Borsboom later contended that the interrogations were made under extreme duress. Of course, the opposite was reported by the two interrogating police officers. At the time, there were indications that Borsboom may have been right. The report by the police officers of the first confession allegedly made on a Saturday night was written only some weeks later. That is very strange behavior for police officers, because in such a major case the first thing a police squad chief asks for after a confession is the police report, preferably also with the signature of the suspect. On Sunday morning Borsboom was interviewed again but now withdrew his confession. There was no report made of that interview, the police officers admitted later. That afternoon, Borsboom confessed again. From Monday morning onward Borsboom has maintained his innocence.

His confessions should have been suspect at that time. Not because Borsboom said they were false—a lot of suspects say so afterward—but because he told a story the details of which so differed from that of Maikel's account that the police should never have trusted his confessions. Instead, they did not trust Maikel. The police hired educationalist Ruud Bullens to give guidance with the interviewing of Maikel and to serve the interests of Maikel during the interviews. Almost from the beginning, they did not trust Maikel very much, even long before Borsboom had been arrested. The major reason for that seems to be that as Maikel's intelligence appeared high they considered him a very odd boy. Maikel had displayed behavior that was considered odd as well: He did not yell at any time during the attack, even though a lot of people were passing the bushes. More important, Bullens told the police that Maikel had "a big secret," without specifying what that secret was and without explaining how he knew. The police suspected that he killed Nienke, stabbed and strangled himself, and then made the knife disappear. The knife has never been found.

After the arrest of Borsboom, the police tried to explain away the big differences between the confessions and the statements by Maikel by strongly interviewing Maikel. The child did not give an inch, so the explaining away had to be done otherwise. It was done, again, using the statements of Bullens and a psychologist who reviewed the tapes of Maikel's interviews. Following their expert reports it was concluded that the perception of Maikel has been so blurred by the high emotional tone of the situation that his statements could not be trusted. Therefore, the police, prosecution, and courts did not trust the offender description given by Maikel and all the parts of his statements that contradicted the confession.

All of this allowed the prosecution to build a case not based on the guilt of Borsboom but on making him look suspicious enough. He still was a

pedophile, wasn't he? The impossible time line was masked by an analysis by the prosecution that turned vague on essential points. Because the courts did not appear to read the *dossier*¹ – and as society often has the habit of trusting the prosecution, Borsboom was convicted.

WHAT REALLY HAPPENED IN THE SCHIEDAM PARK MURDER

We had to wait for the real killer to confess and the Posthumus investigation to be published before it became clear that errors had been made and that prosecutors and experts had not accurately assisted the court. The most important diversion of the truth was in fact revealed by the television program *Netwerk* on public television on September 5, 2005. The NFI not only discovered strange male DNA under Nienke's nails and on her boots, it found strange DNA on her bare stomach, her bare shoulder, and, most telling, on the ends of the shoelaces used to strangle Nienke.² These were not complete DNA profiles, but the same peaks returned in each of the samples. The experts at the NFI did not agree on what this meant and called in the prosecutors to discuss the matter. The prosecution instructed the NFI experts to leave these profiles outside their report. They acted accordingly. The prosecutor at the Appellate Court even inaccurately represented the situation to the court, saying: "DNA analyses of the shoelace used to kill Nienke did not give any result" [my translation]. Furthermore, the NFI expert told the court that the DNA that was reported—on Nienke's boot and her fingernails—could have come from a boy at school.

The way the prosecution handled the DNA evidence is an example of the compromised nature of the whole investigation and prosecution in this case. The Posthumus report (42), published hastily after the *Netwerk* broadcast on the case, reported a long line of errors that cannot be effectively summarized here. Almost every conceivable error was made. I give only a few examples. The clock of the police incident room was not running on time so there is great confusion about what happened at what time at the crime scene, what police officers arrived at the scene of the crime in what sequence, etc. Three technical forensic detectives were active at the scene, but just one of them was

¹ We know that at least the District Court did not read the *dossier* because in the written decision they had a vital and not to be missed point wrong: They were talking about the shoelaces of Nienke as the strangulation means, rather than the shoelaces of Maikel. Whoever had only superficial knowledge of the dossier must have known this difference. Nienke was wearing rubber boots, without laces.

² The shoelace used to strangle Maikel had been too tainted with blood from Maikel to allow any useful analysis.

experienced. They employed a video team that never had taken pictures of a crime scene. Far too few photographs were made, usually from the wrong angle and with too much flash light. As a result, much of the crime scene was not photographed or filmed. This was enhanced because the pictures taken from a helicopter got lost.

The police cordon around the crime scene was much too narrow; too many people were roaming around. The police feared that it might start to rain, so they should have set up a tent. Instead, the search was done in great haste. Nienke's body was put in the body bag within the hour, without sampling it. This caused all kinds of traces to mix on her body.

It was not recorded where most things collected at the crime scene were found. If numbered identification shields were used, they had not been disinfected, creating the possibility of contamination. The search went on during the night, without enough light. No search dog was employed in the park.

Several objects got lost, among them the two bicycles of Nienke and Maikel. They had been driven over by a police officer to make room for the ambulance. There was no search for tire tracks, no record of the work of the forensic detectives and unclear drawings were made. Also, there was often an unclear or unknown chain of custody of the objects collected. Most importantly, Maikel's body was not sampled for traces.

The rest of the police investigation continued in the same vein as the work of the forensic detectives. For example, the offender description by Maikel was so special that only a few days after the murder the police released it to the press. A female police officer immediately recognized a friend of her brother from the description (44). She knew he had a history of sexual violence. She delivered this information, including the man's criminal record and a picture of him to the chief of the police squad. Two other tips came in with the same information about the same man—the man who later turned out to be the real killer. By that time, however, the police team was of the opinion that Maikel might be the perpetrator. It took some months before the police started to address these and other tips, but dropped this immediately after Borsboom made his confessions. A professional police team could have solved the case within the week.

THE GENERATION OF MISCARRIAGES OF JUSTICE

Miscarriages of justice are committed by the fact finder, be it judge or jury. The wrong person can be convicted only after the prosecution prosecutes the wrong man. Similarly, the prosecution prosecutes the wrong man only after the

police come up with the wrong suspect. Although the judge may be responsible in the end, all miscarriages of justice start at the police investigation level.

Gross (36) has described the typical high profile cases that are, he contends, prone to producing miscarriages of justice. These are cases where the pressure on the police and prosecution is high. That pressure may come from the media and the general public but not necessarily. A case such as the Schiedam Park murder is the type of horrible case where police officers do not need outside pressure to be heavily involved in the case. Such cases aided by large police squads, more money, and more time than the average case may amount to more cases being solved. These factors often however, also serve as a handicap to the police: If the victim died, there is no victim statement that can be highly valuable. Often these cases must be solved using indirect evidence, witnesses who were not actual eyewitnesses, and forensic evidence. Such evidence lacks the advantage that actual eyewitnesses give the police, as such witnesses can tell the full story of what happened, often even with the name of the offender (54). This is the difference between *obvious cases* [called self-solvers by Innes, (55, pp. 198 ff.)] and *search cases*. Obvious cases are cases in which, for instance, someone is caught in the act, cases in which the perpetrator turns himself in, and cases in which the offender is arrested near the crime scene. In obvious cases, the evidence simply falls into the police's lap. In obvious cases there is a story, a suspect, and evidence that the story is true. Mostly it does not take much trouble to turn this initial situation into the desired situation—into a believable story that is proved by evidence. In contrast, on the other end of the continuum of case complexity are so-called *search cases* [called whodunits by Innes (55, pp. 198 ff.)] that do not come to the police in the form of a story about what has happened. That story has to be built up through investigation. These cases occur when there is no contact between the offender and the victim or when the victim cannot give a statement, for instance because the victim is missing or has been killed. In search cases the police are faced with only some consequences of the event. From these consequences they have to reason backward about the events that might have caused them. When investigated, these cases are characterized by a broad search for information that can possibly be connected to the crime.

Most of the time, eyewitnesses give a complete story of, for instance, a robbery or an assault. In those cases, the testimony of the witness provides evidence for all aspects of the story. Correspondence between two independent stories offers an even stronger indication of its truth. Unlike witness evidence, physical evidence can never prove an entire story. At most, physical evidence can support or weaken certain aspects of a story. In general, crimes produce few identifiable traces (see also 56). Moreover, it is seldom possible to reconstruct

one specific event solely on the basis of its physical consequences because in principle, physical evidence can be created by many different events. If, for instance, fingerprints of the suspect are found at the scene of the crime, it proves only that he was there sometime in the past, not that he committed the crime. This means that witness testimonies can, in principle, yield far more unique and far more complete support for the story under investigation than the physical evidence found at the crime scene. Complex search cases are typically dominated by the latter type of evidence. The Schiedam Park murder is an extreme example of this type of case. There was only one witness, Maikel (who was not trusted by the police), some indirect witnesses, and no useful forensic traces.

These cases have an additional characteristic. Usually a police squad turns up a large amount of information—an unknown mixture of irrelevant, partly relevant, and relevant information. This information soon creates an overload through which only highly skilled police detectives can find their way. The information overload can cause police detectives to miss important information or misjudge it. If some viable suspect is identified, the advantage is attained that all that information can be put aside and one can focus on what is considered relevant for proving that the suspect is indeed guilty. Then the investigation changes from an offense-driven investigation into a suspect-driven investigation (35, Chapter 5). The distinction between offense-driven and suspect-driven searches is related to the starting point of the investigation. In an offense-driven search the starting point is the crime and the facts related to the crime. The identity of the suspect then is inferred from the facts. In a suspect-driven search someone becomes a suspect, sometimes for no clear reason at all or at least no reason that is explained by the known facts of the crime. Only then is an attempt made to find evidence that links this particular suspect to the crime. Thus, the search is limited right from the start. The relevance of the distinction between offense-driven and suspect-driven investigations lies in the diagnostic value of the resulting evidence. For an offense-driven search, the narrative is the product of an inferential process based on information. For a suspect-driven search, the narrative is the starting point, and the information is its product. During an offense-driven search one collects so much information that the search logically excludes all possible alternative suspects. With a suspect-driven search, one needs only enough information to make the suspect look bad.

A suspect-driven investigation often involves long and frequent interrogations of the suspect, especially if he refuses to confess readily (57,58). That alone raises the probability that the suspect will make a false confession (59–61). The Schiedam Park murder is a good example of a suspect-driven investigation. As soon as Borsboom was identified as a suspect through a “happy” coincidence,

the investigation was nothing but suspect-driven. Everything else the police were undertaking at that time, such as following through on tips, was dropped immediately after his confession.

DUTCH FORM OF JUSTICE

The factors involved in generating miscarriages of justice discussed above are common to many jurisdictions. The Schiedam Park murder, however, demonstrated that some may be typical for inquisitorial systems or at least for an inquisitorial system similar to that in The Netherlands. For this discussion, I must delve a little deeper into the Dutch legal culture.

Especially during the first half of the 20th century, Dutch society was strongly divided in so-called *zuilen* (pillars), parts of society that are divided according to religious and political denominations (62). The most important pillars in which Dutch society was divided were Catholics, Protestants, Socialists, and Humanists [an extensive discussion is given by Kossmann (63, pp. 567–574)]. None of the pillars constituted a political majority at any point in time. Although these pillars were in some sense incompatible, the country had to be run and thus political and social coalitions between these pillars were always necessary. Thus, to ensure a stable society, the government system was built on negotiation and compromise among the denominations, rather than antagonism among the pillars. This compromising nature—nowadays called the Polder Model—permeated every part of Dutch society, including the legal system (64). The most telling characteristics of the Dutch criminal justice system is the role of the prosecutor and the dominance of the documents in the dossier that I described above. However, there are more typical Dutch inquisitorial characteristics.

Dutch criminal trials are anything but a battle common in accusatory systems. Not so long ago, the Dutch trial was a polite conversation between gentlemen who, although each departing from his own point of view, together were searching for the truth. Involvement of the accused was more formal than practical. The search for truth instead of equality of arms dominated criminal cases. Equality of arms or anything accusatory would ruin the compromising nature of the criminal trial. In recent years this picture has changed somewhat. Especially in high profile cases—usually major drug cases—both the prosecution and the defense attorneys take a harder stance. This kind of behavior is called, by the way, an American form of trial. These changes occurred, although the basic setup of Dutch trials did not change very much.

There are a number of causes for this change. Courts put less trust in the police than they used to. This is the product of the Van Traa parliamentary

investigation on police behavior at the beginning of the 1990s (65), which uncovered illegal or semi-illegal police behavior when investigating major drug cases. The same distrust of the police can be seen in the Dutch prosecution arena. For that reason, the prosecution nowadays is much more actively involved in the police investigation in large cases, also as a consequence of the Van Traa Report. Extensive cooperation with the police however, makes the prosecutor less a magistrate in these cases and more a crime fighter. Added to these changes are defense attorneys. During the last decade a specialized criminal bar has developed. These specialized attorneys more often than in the past follow their client's strategy, rather than pursuing their own, their *domus litis*.

The manner of operation of prosecutors also changed because their organization changed. Until some 10 years ago, being magistrates, the Dutch prosecution was an organization that formally fell under the Minister of Justice but in fact was a loose group of more or less independent professionals. Because the Van Traa Report also demonstrated misconduct of prosecutors, tighter organization was demanded. During the mid-1990s the Dutch prosecution was transformed into a strictly hierarchically organized civil service type of organization. The chief prosecutor in each district became much more important, and a College of Prosecutors-General was formed that runs the prosecution service with directives and rules from the government seat, The Hague. In such an organization it is much more important to follow the rules than it is to follow one's own professional judgment, especially in complicated cases where that professional judgment is appropriate.

Police detectives also became less professional. That development in the police was steered by developments in society but also by the police themselves. Until the report *Politie in Verandering* by the Projectgroep Organisatiestructuren (Taskforce Organization Structures) (66) Dutch police formed a technocratic organization strongly directed to perform a government task. The report caused, at least within the police, a fundamental change in the traditional manner of thinking about police work and tasks.

During the first decades after World War II the Dutch police could stick to their classic manner of behavior: dutiful enforcement of law conformity. The rapid successions of social changes during and after the 1960s however, necessitated organizational and structural changes in the police. With the traditional police approach, the exercise of authority was justified by legal rules that in turn were seen as the highest norms supporting government behavior and thus also police behavior. The formal goals of police activity were maintaining the law and related to that, maintaining public order. More socially oriented assistance was of lesser importance than maintaining law and order. The dominant

police attitudes were detached and reactive. Preventive work by the police was limited to mere public presence.

The absolute and oversimplified application of legal norms before the 1970s left little room for social developments. Police behavior showed a painful lack of flexibility and thus was seen as serving to maintain the social status quo. This really had to change when rapid changes in society took place during the mid-1960s. For the government in general, the society went from a stable, well divided society (compare 62,63) to an unstable, heterogeneous one that showed uncertainty in many respects. As with many parts of the Dutch government, the police had not anticipated these changes. Instead, the police reacted with an abundance of sanctions and an even stricter application of law and order. Soon however, it was realized that this large scale force demonstrated only that the police were defeated and were not "up to" present day society any more. The course was therefore changed, first only by introducing better technical means and methods.

Social problems started to receive police attention but were still mainly assessed from the point of view of public order. Police assistance became a task for furthering welfare and maintaining law and order was the means. However, assistance took place in a detached and impersonal fashion, based on a technical instrumental concept of police work. Because social elements of police work were missing in this manner, special police squads were created for social police tasks.

In the report *Politie in Verandering* (66), an attempt was made to change this sorry state of affairs. The report argued that the police should contribute to society in the form of social control, not just to protect but also to create conditions for social development aimed at realizing essential values in the Dutch democracy. The gap between the police and the citizenry had to be closed. Under the motto "know and be known," authority needed to be based less on the law and more on personal relations. The police had to be integrated into society but not to an extent that it would prevent intervention when needed. Policing would then be not just fighting the symptoms but removing the causes.

This new form of policing required the police to decentralize into small districts in which the police would assume all necessary policing tasks. Police officers were going to work in teams with strong internal coherence. Responsibility was to be decentralized to each team. The number of hierarchical levels needed to be brought down, and all police officers were going to participate in development of policy. One important and sorry consequence developed: each police officer was expected to be able to do everything, from writing parking tickets to solving complicated murder cases. Combined with inadequate police salaries, this caused detective squads to be filled with lowly trained, not too

bright, underpaid police officers. A marker is that specialized murder squads disappeared everywhere, and specialized vice and youth squads remained in only some police forces.

So, through two venues both the police and the prosecution became increasingly less professional. At the same time courts maintained their trust within the inquisitorial framework that the prosecution delivered sound and complete dossiers without bias against the accused. However, by the beginning of the 1990s it was clear, at least to some, that this was no longer true (35, 67). Cases such as the Schiedam Park murder are the consequences of these developments. An additional example is the following. Dutch defense attorneys almost never engage in their own investigation of the case. They depend on what the police uncover. They can ask the prosecutor to have the police do additional investigations or ask the investigating judge (*rechter-commissaris*) to give an order to that effect. In the Schiedam Park murder case the defense attorney proposed long lists of additional inquiries and long lists of important documents that were missing from the dossier. Almost all of these requests were turned down and again at trial at the District Court and the Court of Appeals. The trust built in the past in police and prosecution apparently still holds.

The same form of trust is given to experts in the Dutch criminal legal system. The cross-examination or grilling of expert witnesses in the United States (for some fine examples see 68) is unknown in The Netherlands. Experts usually deliver a written report that goes into the dossier, are almost never asked about their background, and are never asked difficult questions about their report (69). This is strikingly different from the manner in which experts are treated in the United States. As a result, the statements made by educationalist Ruud Bullens and the psychologist went uncontested in the Schiedam Park murder trial (for a discussion of this problem see 70,71).

CONCLUSION

In light of the points discussed above, it is hoped that the reader has gained an appreciation of the prevailing environment of a Dutch trial. Foreign colleagues who attend Dutch trials always remark on the rather informal and cordial behavior of all the participants. It still is gentlemanly—although nowadays most professional participants are women³.

³ For instance, in 2000 a little more than 50% of the District Court judges and prosecutors in The Netherlands were female (72).

Courtroom behavior—the bedside manner of Dutch judges (73)—blurs what is really going on in a Dutch trial. The dossier is central to everything that happens there. The prosecutor is responsible for the integrity of the dossier and its completeness. If the prosecutor and his or her work cannot be trusted, the whole inquisitorial systems collapses. The major miscarriage of justice in the Schiedam Park murder case is an illustration of this. Through the prosecutor, the defense and the court can check the police investigation and check the scenario presented at trial by the prosecutor. This vital role in an inquisitorial system does not allow for any unprofessional behavior.

Indeed, the Minister of Justice oversaw an extensive program to improve the police and the prosecution, so lessons have been learned from the Schiedam Park murder case. At the same time, all police officers who worked on the case, all forensic detectives and all prosecutors still hold their position. Nobody it appears has been fired or transferred.⁴

Based on the changes in the police and prosecution over the last decades, it could be hypothesized that the number of miscarriages of justice has grown in The Netherlands. Indeed, some 20 cases could be identified as likely miscarriages of justice. For our project at Maastricht University on Reasonable Doubt Cases (*Project Gerede Twijfel*), some 175 convicts appealed. We have no data from earlier times however, so there is no way we can make a meaningful comparison.

The Schiedam Park murder case demonstrates that the inquisitorial system can increase the incidence of justice miscarried—but does it increase it more than an accusatory system? We do not know. We lack some of the factors that promote miscarriages of justice, such as a jury, plea bargaining, and capital cases (75–77) but seem to have others that do. A thoughtful comparison between different legal systems however is important, not just for speculation but also because of the work of the European Court of Human Rights in Strasbourg. That court has rapidly growing influence in the countries of the Council of Europe (not to be confused with the European Union—the Council has 45 member states, the Union 25). This is a court with judges coming from different

⁴ Note that the prosecutors at both the District Court and the Court of Appeals presented inaccurate information to the Court. Also, two detectives coerced Kees Borsboom into false confessions and, according to the Posthumus report (42), manufactured fraudulent documents. What happened to the officers in the Schiedam Park murder is in sharp contrast to a comparable case in Wales. In the case of the murder of Lynette White, three suspects, who became known as the Cardiff Three, were innocently convicted (74). A special team squad under the heading of the Independent Police Complaint Commission is looking into unlawful behavior of the police and the prosecution in that case.

legal systems. Their judgments mean that elements from differing systems are entered into the legal systems of all member states. This blending of legal systems warrants a thorough analysis of what may result in best practice.

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