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SCIENTIFIC CRIMINAL INVESTIGATION TECHNIQUES UNDER DUTCH LAW

With Special Consideration of Scientific Lie Detection and Blood Alcohol Tests

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The author is one of the Vice-Presidents of the Court of Appeals, of The Hague, Netherlands. Judge Meyjes originally prepared this paper as a report from the Netherlands to the Fifth International Congress of Comparative Law which was held in Brussels, Belgium, in August of 1958. Since its original presentation, the author has had the opportunity to revise and expand his original report, and we are privileged to be able to present it this time to our readers.—EDITOR

In Holland, as is true in other continental European countries, a person suspected of a criminal offense, may be interrogated by police officers, by the prosecutor, and by the member of the court who conducts the preliminary, pre-trial examination ("juge d'instruction"). Moreover, the accused may—and practically always will—be questioned by the court during the trial itself. The one restriction placed upon all the interrogators, however, is to the effect that no attempt should be made to obtain a statement other than in accordance with the "free will" of the person being interrogated. Also, the law provides that no one is obligated to answer questions put to him by the police, prosecutor, or the court. From 1926 to 1937, a rule existed which required that a suspect be advised by the police or prosecutor, or the above mentioned member of the court that he was under no obligation to answer their questions, but that rule was abolished in 1937. Now, therefore, no such warning need be given, either prior to trial, or at the time of trial.

The foregoing rules apply to interrogations. Although this is not stated in written law, many lawyers maintain that they should be equally observed with regard to other practices or procedures aimed at the physical or mental examination of suspected persons.

As far as physical examinations are concerned, there is a considerable amount of uncertainty. From the few articles in the Code concerning this subject it may be inferred that in principle any examination of the suspected person's body is lawful on condition that the suspicion be a grave one. The suspect is not obliged to render any assistance in this examination, but may remain entirely passive. He must not, however, offer any resistance, provided that the examination does not exceed certain limits. Strangely enough it is nowhere stated what these limits are, although everybody will admit that they exist. The only conclusion that could be drawn from this is that ethical norms must be regarded as decisive.[1] Besides, it is maintained by many that a physical examination must not infringe the physical integrity of the person examined; but this statement in itself is inexplicit and therefore hardly a criterion. Naturally, a more than superficial examination should only be carried out by a doctor.

It is remarkable that, in spite of the vague and unsatisfactory character of the present legal rules and laws, in which the privilege against self-incrimination is not clearly expressed, no case law exists on the subject, and there have been practically no complaints of abusive practices. This might justify the presumption that the police, the prosecutor and the judiciary use their powers modestly and carefully, respecting the principle of the privilege even though there is a good deal of uncertainty as to its applicability.

Photographs may be taken of and fingerprints from any person under arrest. He may also be compelled to put on certain garments, to either grow a beard, or have it shaved, to let his hair grow, or to have it cut.

Although document examination evidence is generally accepted, no person can be forced to give

[1] Cf. Jonkheer L.H.K.C. van Asch van Wijck, Tijdschrift voor Strafrecht, 1935, p. 145.

a specimen of his handwriting for comparison purposes.

No rules exist on the subject of examining the suspected person's mind with a view to collecting evidence against him on lines that cannot be regarded as interrogation, such as submitting him to association tests, deception tests, or projection tests. From this the conclusion could be drawn that the use of such methods would be unlawful.

With regard to all methods of scientific examination affecting a suspected person, the position of counsel for the defense is of the greatest importance. One of the most outstanding principles of the Dutch Code is that a suspect need never be without a counsel for his defense; that he is always entitled to choose his own counsel; and that, ex-officio, legal aid is placed at his disposal when remand in custody is ordered.[2] In case of imprisonment not bearing the character of a remand in custody, the suspect's request for legal aid, made during the prefatory stage of the prosecution, must be granted, unless the duration of the imprisonment will be so short that it will not interfere with the steps to be taken by the suspect in the interest of his defence.

If a suspected person is not under any kind of arrest, and the nature of the suspicion is sufficiently serious to make legal aid advisable, then a free counsel may be placed at his disposal if his means do not allow him to pay a counsel's fee.[3]

Judgments have been quashed for the reason that, contrary to the afore-mentioned rules, no counsel had been placed at the suspect's disposal.[4]

Counsel for the defense has the right to visit his client under arrest and to speak to him without any other persons being present. Correspondence between counsel and the prisoner is entirely free and uncontrolled. Exceptions to these rules can only be made by special order from the court when it has been proved that counsel has been abusing his rights.

Normally, counsel may be present at all interrogations and at hearings of witnesses during the preliminary examination. If an examination, or investigation by experts, has been ordered in the prefatory phase of the proceedings, the suspected person and his counsel are informed of this order and of the result, on the understanding that if it is in the interest of the examination, this information may be temporarily withheld.

With the magistrate's permission the suspect and his counsel may be present at the examination by experts. They may nominate counter-experts, and at the trial they may summon such experts as they think fit, and they have the right to inspect the documents bearing on the case.

From these rules it should be clear that whatever scientific methods are made use of in the course of the examination, the defense practically always has at its disposal the means with which to test evidence given by experts, and if need be, disprove it.

The character of the criminal trial under Dutch law, and the Dutch recognition, in principle, of the privilege against self-incrimination account sufficiently for the fact that in this country little interest is shown in lie detecting, and that most Dutch lawyers are convinced that such practices are not lawful. Practically nobody contemplates the introduction of lie detection evidence, and, apart from a few popular articles in newspapers, literature devoted to this subject is extremely scarce.[5]

There is only one criminal case on record, in which clearing up uncertainty by means of lie detection has been actually tried. As this case was an unusual one, different in many respects from the forensic use of deception tests as described in American literature, it might be worth relating.

An inexperienced, and, as became clear in the course of the proceedings, a rather unbalanced young policeman had ventured upon a plan to detect a gang of smugglers and to catch them in the act of negotiating false American dollars, all by himself and without even having consulted his superiors. Actually, he had been present at the fraudulent transaction, made a feeble attempt to arrest the smugglers, and had seized the counterfeit money. Both in preparing his intervention and in executing it, the young man's actions had been so unusual and amazing, that lack of experience, amateurism, and nervousness could hardly have accounted for his behaviour, and grave suspicions

[2] The same rule applies if, in case of appeal, the suspect has been under remand during the prosecution in the first instance.

[3] The regulation of legal aid—to be found in articles 40–44 of the Code of Criminal Procedure—has been revised and considerably improved by the Amendment acts of 1955 and 1958.

[4] Court of Appeal Amsterdam, Nov. 1, 1939, Nederlandse Jurisprudentie 1939 nr. 1008; Court of Appeal 's-Hertogenbosch, Febr. 12, 1951, Nederlandse Jurisprudentie 1952 nr. 509.

[5] S. J. Timmenga, Tijdschrift voor Strafrecht, 1951, p. 19; Dr. I. Boon, International Criminal Police Review, 1952, p. 289 and 322, and also other literature mentioned in the other notes accompanying this article.

arose that he had been collaborating with one or two of the smugglers, and that, right from the beginning, his actual intention had been to act as their accomplice and to rob the third man involved. Eventually, the policeman was prosecuted, and, after an extensive examination, he was found guilty of conspiracy and theft, and sentenced to a year and six months' imprisonment. Immediately after the trial, counsel for the defense, convinced of the innocence of his client, suggested a deception test. The court refused to re-open the case and pronounced its judgment. The prisoner having appealed against this judgment, the court of appeal consented to his submitting himself to a psychological examination, including deception tests, to be held in the laboratories of Nijmegen University. The tests were taken by means of a pathometer, by which records were obtained of the subject's psychogalvanic skin reflex.[6] Counsel for the defense and a psychiatrist being present, a considerable number of questions was repeatedly put to the subject, relating not to his actions, but to his motives. It must be pointed out that none of these questions could be regarded as new, since the subject had already been examined on all of them by the court. The operating expert based his final opinion upon the results of the tests and a general psychological examination of the subject's personality. His conclusions were somewhat disappointing to counsel for the defense, as they amounted to the subject having acted in good faith until the moment came when he seized the false notes, and reprehensible motives having played their part from then onwards, leaving the subject in a state of bewilderment, and accounting for his incomprehensible actions. His answers to questions relating to the motives of these actions were declared to be either definite responses, or answers of a doubtful nature.

A police interrogation held after the subject had been informed of the results of the tests, led to a statement in which, for the first time, he admitted a certain amount of guilt. The statement gives the impression, however, that he was more or less repeating what he had been told by the psychiatrist who supervised the examination.

Three weeks later the court of appeal considered the case. Both the trial court and the prosecuting attorney-general made it very clear that they declined all responsibility for the previous examination of the prisoner's personality and the deception tests. The psychiatrist and the psychologist who had conducted the examination gave evidence in the capacity of expert witnesses for the defense. Eventually the court adjourned the trial, and ordered a new mental examination by the foremost forensic psychiatrist of this country, Professor Baan. It was stipulated that Professor Baan should also give his opinion of the value of the statement made by the prisoner after his having been informed of the results of the deception tests. His report was that hardly any value could be attached to this statement, that he considered pathometer tests much less reliable than the operating expert did, and that it was impossible to decide whether the subject's suspicious behaviour had been due to his neurotic disposition or to a criminal incentive. The case ended in an acquittal, in June of 1951.[7]

A year later Professor Baan lectured on this case to the Union of the Judiciary of the Netherlands, on which occasion a demonstration with the lie-detector that had been used proved more or less of a failure. It might be surmised that this experiment has contributed to the unpopularity of lie detecting among the vast majority of Dutch lawyers.[8]

About the same time an endeavour was made to use the results of deception tests as counter-evidence in a civil trial. In a disputed paternity case, the court was satisfied by the sworn statement of the mother, and some circumstantial evidence, that the defendant, the alleged father, had been having sexual intercourse with her and consequently gave judgment against him. He then had himself examined by a psychiatrist and a psychologist—the same experts incidentally, who were called into the afore-mentioned criminal case. In addition to using other investigative procedures, they conducted pathometer tests. Their report, submitted to the court of appeal, expressed the opinion that the man's assurance that he never had sexual intercourse with the mother was likely to be true to such an extent

[6] Some time after having written this report I received further information from the psychologist who took the tests, Mr. Van der Zee, of Eindhoven, confirming that he applied the Summers-Kubis method developed at Fordham University, New York.

[7] No publicity has been given to this case. My thanks are due to the Attorney General of the Court of Appeal at Arnheim for having given me his permission to consult the files.

[8] *Editor's Note:* For a viewpoint to the effect that the galvanic skin reflex is an unreliable criterion of deception, whereas blood pressure and respiration changes are reliable, see Inbau and Reid, Lie Detection and Criminal Interrogation (3rd ed., 1953) 102.

that it might be regarded as beyond reasonable doubt.

In its very carefully worded judgment the Court of Appeal (The Hague, May 7, 1952, not published) ruled that, considering the lack of experience in this country with these methods, and the differing opinions of experts, the results of the tests could not be accepted as evidence, the less so since they were intended to disprove evidence already given, and because the tests had been made on one of the litigants only. (An appeal was made, by case stated, but it was of no avail).[9]

In 1956 discussions were resumed, as the Association of Dutch Lawyers had raised the question "to what extent methods of investigation in criminal cases affecting the suspect's person—either mental or physical—should be subject to limitations". Introductory reports were written by Professor Feber, member of the Supreme Court, and by the present author.[10] We both assumed that lie detection was to be regarded as one of the methods referred to.

The question was a complicated one, since there are no specific prohibitions under the present laws and regulations. However, the uncertainty on this point now appears to be of little importance, because after a discussion involving the two preliminary advisers and a dozen prominent lawyers, a great majority in the assembly expressed the opinion that methods such as the lie-detector technique should not be introduced into Dutch criminal procedure, *with or without the suspect's consent.*[11] And an even greater majority were opposed to the use of narco analysis in criminal proceedings, in spite of Professor Feber's eloquent defense of his point of view that in the future its application might be contemplated for the purpose of ascertaining the truth in exceptionally serious cases in which all other means had failed.[12]

If the question should arise as to how far the views of the Association are representative of *general* legal opinion, it may be pointed out that although the majority of the members of the Association are barristers, five University professors of criminal law support their opinion.

In addition to its opposition to narco analysis for lie detection purposes, there is a widespread feeling within the Lawyers' Association that the use of narco analysis for the purpose of determining a suspect's mental condition would also be objectionable. In this connection the following case, which occurred a few years ago, is worth mentioning. In the course of the examination concerning an unsolved murder, a young soldier on leave forwarded certain information to the authorities which was considered to be untrustworthy by the magistrate conducting the examination. The judge-advocate however, contemplating the possibility that the young man himself might have committed the murder, had him put under arrest. A mental examination by an army psychiatrist was ordered. This doctor decided to question the subject under sub-narcosis. The magistrate charged with the preliminary hearing of the murder case was invited to be present at the experiment. The magistrate himself did not at this time regard the subject as a suspect, but only as a "probably unreliable witness". The psychiatrist, after having explained the nature of the examination to the subject, administered the injection of pentothal with his full consent. The answers given in a sub-narcotic state were such that there was no doubt left that the subject had no knowledge of, and certainly did not commit the murder. He was immediately released. No publicity has been given to this case, but the judicial authorities who were informed about it unanimously disapproved of the practice.

An exceptional case, illustrative of the doubtful nature of narco analysis as a means of ascertaining objective truth, happened some years ago. During the medical treatment of a young girl who was operated on for appendicitis it was discovered that she was also pregnant, a fact for which she could give no explanation, and by which she was gravely shocked. As she was showing signs of mental disturbance, the doctors turned to narco-analysis, other means of investigating her mental condition having failed. She then revealed, or made the impression of revealing, repressed knowledge of certain occurrences which gave rise to serious suspicions that she had been violated. In the course of a series of experiments she went more and more into details, and subsequently the recollection

[9] Mr. van der Zee, psychologist at Eindhoven, and Dr. J. H. G. Bekker, Barrister-at-law, The Hague, kindly informed me about this case.

[10] Handelingen Nederlandse Juristenvereniging, 1956, I, p. 111 and p. 179. I published a few more details in Tijdschrift voor Strafrecht, 1957, p. 198.

[11] About half a year later Professor Röling, of Groningen University, expressed his view, in a lecture held at Utrecht, that the use of lie detection, provided compulsion of the suspect is strictly avoided, is not contrary to the Dutch law of criminal procedure. The same opinion had been defended by Miss Boon, Professor Feber, and myself.

[12] Tijdschrift voor Strafrecht, 1954, p. 164; Handelingen Nederlandse Juristenvereniging, 1956, I, p. 179; II, p. 140.

of what she now believed had befallen her, returned to her conscious mind. She then felt greatly relieved. Nevertheless it was eventually proved beyond all doubt that the girl had never been violated, but that she had had sexual intercourse with her full consent.[13]

As a rare instance of unlawful proceedings mention may be made of a case in which an army officer, examining a court-martial case, questioned the suspect with the help of a person calling himself a psychologist who hypnotized the suspect and in this way elicited a confession. The court-martial refused to accept this confession as evidence, and declared such practices to be unworthy of this court.

Under article 26 of the Road Traffic Act, driving a vehicle or a bicycle on a public road under the influence of drink to such an extent that the driver cannot be regarded as capable of driving properly, is a criminal offence ("délit"). In these cases blood tests are taken, and the results are accepted as evidence by the courts. Though it has never been *explicitly* ruled by the Supreme Court[14] that a blood test taken without the consent of the suspect is illicit, this question has practically no importance, because some years ago the Minister of Justice expressed his point of view as being that such a consent is required. Naturally the practice of the police is in accordance with the Minister's ruling.[15] The refusal to allow an alcohol-blood test is not accepted as evidence against a defendant.

[13] See, for a full description of this case, Dr. A Poslavsky, Over het gebruik van penthotal in de psychiatrische kliniek (1953), p. 194.

[14] But see judgment of June 5, 1951, published in Nederlandse Jurisprudentie, 1951 nr. 520.

The opinion that compulsary blood tests should be regarded as legal has been supported by Professor van Bemmelen (Leiden University): Nederlands Juristenblad, 1956, p. 504; Handelingen Nederlandse Juristenvereniging, 1956, II, p. 116, by Professor Pompe (Utrecht University), Handelingen Nederlandse Juristenvereniging, 1956, II, p. 101, and by Professor Röling (Groningen University). Their view was rejected by Professor Jonkers (Leiden University), Handelingen Nederlandse Juristenvereniging, 1956, II, p. 109.

[15] As very little attention has been paid to the question whether a more or less intoxicated person is capable of giving his consent to a measure affecting his person, it is an open question what the position would be if the person concerned had apparently been so drunk that his consent ought to have been considered invalid.

For a much more detailed explanation of the problems arising from the rule that the results of a blood test may be used as evidence, I may refer to Mr. S. J. Timmenga's treatise "Le test sanguin aux Pays-Bas", published in Revue Internationale de Droit Pénal, 1955, p. 375, and to a great extent still up to date.

There can be little doubt that these unwritten rules should be regarded as deriving from the privilege against self-incrimination.[16]

The introduction of a compulsory blood test, as now in force in France, Germany, and other countries, was rejected by a considerable majority in the Association of Dutch Lawyers.

Strict technical rules on taking blood tests have been set up by the central forensic laboratory of the Ministry of Justice. All specimens are examined there by a specialized staff, on the latest scientific lines. The director of this laboratory, Professor Froentjes, is himself a specialist in this field.

Alcometers are not used and are considered much less reliable than properly conducted blood tests. For this reason it is thought here that the reliability of blood tests greatly outweighs objections to the small infringement of physical integrity they involve.

[The following comments were made upon the author's report as originally presented at the Fifth International Congress of Comparative Law.]

By S. J. Timmenga, Barrister-at-law, Amsterdam

As Mr. Meyjes has already given a summary of the Dutch legal system in the preceding report, I will not go further into that aspect of the subject. However, apart from the regulations in force there is the problem of what rights should be granted to the defense if ever the afore-mentioned modern scientific methods of investigation were put into practice. This question, I think, must be regarded as an essential part of the subject under discussion. Mr Meyjes having thought it desirable that this aspect of the problem should be elucidated by a barrister, I will now, at his request, add a few words to his report. Naturally, this will not be confined to existing legal rules, but will be a survey of opinion, as generally held in this country.

The way in which the new methods of investigation would be used, would entirely depend upon the reasons for which they could be considered morally admissible. The same would apply to the rights of the defense.

[16] It is worthy of note that the Supreme Court (judgment of June 12, 1953, Nederlandse Jurisprudentie 1954, nr. 61) decided that in disputed paternity cases the courts may order experts to establish the blood groups of the mother, the child and the alleged father. Naturally there is no compulsion on the persons concerned to have blood samples taken, but a refusal to do so may or may not lead to their losing their case (cf. Court of Appeal 's-Hertogenbosch, Nov. 5, 1953, Nederlandse Jurisprudentie 1954, nr. 154).

This points to the privilege against self-incrimination not applying in civil procedure.

Professor Feber, to whom Mr. Meyjes has already referred, takes up a very idealistic standpoint in his preliminary report to the Association of Dutch Lawyers; his basic view being, that as society is making more and more efforts to regard criminals not as its enemies but rather as diseased persons who should receive treatment, and is taking pains to further this purpose, a person suspected of crime should put his trust in the authorities. He must not isolate himself from the authorities, but co-operate in order that the process of recovery may begin as soon as possible, and that measures may not be wasted on a person unfit to undergo them. According to this trend of thought it would be the suspect's ethical duty to speak out, and he could not make any objection to an examination with the help of lie detection, or an interrogation under narcosis.

Professor Langemeijer, Attorney-General of the Supreme Court, holds an opinion which greatly resembles that of Professor Graven (Geneva), his viewpoint being that, when the vital interests of other citizens are at stake, these must override the personal interests of a suspect or of a witness. If, in a case of kidnapping a child, there should be a possibility of extorting a statement from a suspect, or from an unwilling witness, by means of a lie-detector or narcosis, Professor Langemeijer would regard this infringement of human personality as justifiable.

Mr. Meyjes, Vice-President of the Court of Appeal at The Hague, considers that an interrogation under narcosis could never be admissible, but, in principle, he does not reject lie detection, as this, in his opinion, does not affect the suspect's psyche, and only supplies a record of phenomena which, with sufficient attention, could be observed in the course of normal questioning.

The first question arising is in what way a regulation for the use of new methods of examination could be made to fit in with the rules already in force. It is obvious that these methods—and the same applies to blood tests—cannot be reconciled with a system of criminal procedure bearing a fully accusatorial character, i.e. a system in which the suspect is a litigant with rights equal to those of the prosecution. If, in spite of this system being the legal one, the possibility of making use of the new methods should be considered necessary, then their being admitted would have to be provided for specifically and explicitly by statute. Moreover, prosecuting authorities applying the new methods should always be under the obligation to act fairly.

Under an inquisitorial system in which the suspect is merely an object of examination any method of examining would have to be considered lawful, on condition that prosecuting authorities adhered to standards set by morality and decency. Whilst examining they must behave properly and only make use of such means as can be regarded as morally justified. A system of this nature has been advocated in this country by Jonkheer van Asch van Wijck, until recently Attorney General of the Supreme Court. This may account for his thesis that blood tests are permissible.

The viewpoints of Mr. Meyjes and of Professor Pompe, Professor of Criminal Law at Utrecht University, vary between the two extremes just alluded to. They take the line that the admissibility of methods of examination rests on the precepts of morality. But they also think that these precepts should be regarded as unwritten law, forming part of the Dutch legal system, and that the courts should insist on their being observed. This would mean that, apart from a police-officer who proceeded unfairly being liable to disciplinary measures, the use of evidence obtained in an unlawful way would be prohibited. It is my impression that the Supreme Court, after primarily having inclined to the doctrine of Jonkheer van Asch van Wijck, revised its standpoint in 1951, and is now inclined to take a view congenial to those of Professor Pompe and Mr. Meyjes.

My own opinion is that the system first mentioned is that of Dutch law. I have expounded my arguments in my previous report written for the Academy's Congress in Paris in 1954 and published in *Revue Internationale de Droit Pênal* (1955, nrs. 3 and 4, p. 375).

The next question is what formalities should be observed in the course of an examination wherein use is made of the new methods.

If the system of criminal procedure is an inquisitorial one, and also if an interpretation of the law as elucidated by Professor Pompe, Mr. Meyjes, and the Supreme Court, must be regarded as correct, all stress would have to be laid on the duties of the authorities, and there would hardly be any question of the rights of the defense. This is shown by the Supreme Court's decision of 1951 commented on in my previous report. I presume, however, that, like myself, they would think it necessary to invest the defense with certain

rights, more particularly if for instance in connection with an interrogation, narcosis should be turned to, even if it were for the sole purpose of attaining the utmost degree of reliability.

Moreover, it is of the greatest importance to distinguish between an examination aiming at the discovery of the truth as to the facts in question, and an examination concerning the suspect's mentality. In the Netherlands both the examination of facts and the examination of the mental condition of the suspect (intended to establish his responsibility for his actions or to throw light on the question as to what kind of punishment would be advisable) are held before the trial. This involves the possibility that the expert charged with the examination of the suspect's mentality may find himself in an awkward position, as facts may have come to his knowledge which the suspect would not of his own will have admitted to the court. Obviously, here the expert, as a doctor, is not entitled to mention such facts in his report. Especially if the object of the examination were to establish simulation, it might be very hard for the expert to avoid influencing the court as to the suspect being guilty or not guilty. This complication implies that counsel for the defense cannot be allowed to be present at the examination, as, if he were, counsel for the prosecution would have to be admitted too.

From this it will be clear that the use of lie detection and narcoanalysis in the examination of a suspect's state of mind would meet with considerable difficulties. This is to be regretted. For in the treatment of mental disturbances narcoanalysis is a powerful therapeutic means; and it would be most unfortunate if the above-mentioned difficulties caused us to renounce this possibility of efficient treatment and social readjustment of criminals.

For this reason it would be desirable to divide the examination into two separate phases, the first being solely designed to establish the facts. The court having found the suspect guilty, the second phase of the examination would be devoted to the suspect's personality. This second phase would have a predominantly medical character, the court hearing expert evidence, and the rights of counsel for the defense—the suspect's *legal* adviser—would be of less importance than in the first phase. The right to have counter-experts heard might suffice.

The kind of criminal examination I am pleading for here would, much more so than the one actually in force, be in accordance with the law of the medical profession. A doctor is not entitled to examine a patient and to treat him without his consent. This consent is the justification of the doctor's infringement, if necessary, of his patient's personal integrity. Under the rules of criminal law, instead of the offender's consent, the infraction of the law he has been found guilty of, and through which he has lost the right of personal integrity, will justify the infringement. This would seem preferable to the loss of that right finding its justification in a mere suspicion.

A rearrangement of criminal proceedings would also be an improvement with regard to the mental examination of the suspect as is now customary, *e.g.*, the examination held in order to establish the degree in which he is responsible for his actions, in which examination we already meet with the difficulties referred to.

If we imagine, as Professor Feber does, a future legal system in which there would be practically no antithesis of the community and the individual, the problem I have been dealing with would not arise. Criminal procedure would then assimilate to medical treatment and the compulsion of the individual to undergo such treatment would then be justified by social order. The examination would be held entirely in the interest of the suspected (or sick) person himself, and the confines of the legal and the medical fields would disappear. Under such a system the rights of the defense would be of little importance. However, as long as there is a struggle between society and the individual, as there is generally admitted to be, even by Professor Feber, criminal procedure should be divided into two phases.

If the new methods are to be made use of in the first phase, proper safeguards should be established by statute.

First of all, only the most reliable method should be applied, and only the use of the most reliable instruments should be allowed. Examinations by persons not being experts should be prohibited. Both counsel for the prosecution and counsel for the defense, as well as the magistrate charged with the preliminary examination, must be present. The use of these methods should be lawful only in the case of grave suspicion of an offense to be specified by statute. Moreover the consent of the court should be required, or, in extremely urgent cases, that of the magistrate

charged with the preliminary examination, who would also have to decide on which facts under examination the test must bear. Counsel for the defense should always have the right to have a counter-test taken under the same conditions, by another expert. The court ought to be under the obligation to pay due attention to the result of the counterexamination, the insertion in the judgment of the reasons why the court is satisfied by either of the experts' reports being made compulsory.

Obviously, practices of this nature will produce considerably higher expenses than presently incurred. In a small country like the Netherlands, finding the experts who would have to carry out the examinations would amount to a problem that might prove unsolvable. How many would have the opportunity of gathering sufficient experience to cope with lie detection? A judicial interrogation under narcosis could not be held by a doctor familiar with this method for medical purposes but lacking forensic experience.

It is not surprising, therefore, that for practical reasons Mr. Meyjes came to the conclusion that for the time being introducing lie detection into the Netherlands would not be feasible; and even more so as to narco analysis.

Recapitulating my arguments, I would state once more that if an acceptable use of the new methods is desired, a division of criminal procedure would be indispensable. In the first phase it would have to be confined to the facts under examination, and in the second phase the establishment of the mentality of the suspect would have to be the issue. Moreover, each method of examination should be regulated by statute, the powers of the authorities and the rights of the suspect being substantially and minutely defined.