

Goal, theme and scope of the colloquium

1. Introduction

When I first began research on criminal evidence, I found that a lot of material was available, in Dutch as well as in other languages. I also found out that most of the Dutch legal scholars in the field of criminal law and criminal procedure were not very interested in matters of evidence. The sole exception was the – Dutch – discussion about the importance of constitutional law in the United States, where the exclusionary rule restricted the admission in evidence of the products of illegal searches and seizures and of confessions without Miranda warnings.

Even today Dutch legal scholars are not very interested in matters of evidence, although the number of people who are interested is increasing. I have the strong impression that this is also the case in the other continental European countries. In the seventeen years in which I have been researching evidence, however, I found that practitioners are certainly interested in matters of evidence. This may explain why the Anglo-American legal world gives so much more attention to matters of evidence than we do on the European continent. In the Anglo-American system, and especially in America, lawyers

are very active in preparing and presenting evidence in the courtroom. The adversarial system motivates the lawyers on both sides to be aware of the rules and stakes in evidentiary matters. The parties often introduce novel scientific techniques to analyze evidence. Great emphasis (more at least than in the Netherlands) is put on a critical examination of experts in the courtroom and an overall critical approach to expert evidence in criminal cases. I do not say that our courts do not use most of the scientific methods and techniques used in the United States (and to some extent also in England). Dutch courts use those methods often enough, but their presence is less visible. Expert evidence is typically taken here in the form of reports. In addition experts here are still considered to be objective and neutral rather than partisans. Courts here in the Netherlands generally accept the expert's opinion – the expert is mainly seen as an aide to the court.

2. Comparative law, expertise, Europe

In the next seven days, meaning five days of conference and two days off, we will focus on the intersection of comparative law (mainly criminal procedure and evidence) and the position of forensic expertise in different legal cultures. In the presentations and workshops during the next days we will give our attention to a number of themes. For example, we will discuss theories of evidence, touching on internal legal or logical analysis of what evidence is; we will take a peak at theories on evidence deriving from other disciplines, such as philosophy and psychology. We will listen to speeches presented by legal scholars, about law in the books and law in action. We will learn what they think about and how they work together with experts. We will also learn from experts, how they see themselves and how they see judicial procedures.

Whilst coming from different legal cultures, we will probably see different aspects and

¹ Opening Speech by the Chairman of the Department of Criminal Sciences, Leyden University and Initiator of the Amsterdam Conference (August 12, 1992).

new problems, just because comparative law often provides us with reflections on our own system and activities.

There is still another dimension relevant to our meeting. At this very moment we are in the famous city of Amsterdam. Amsterdam does not house the Dutch government, but is still the capital of the Netherlands. The Netherlands has always depended on international relations and advocated international exchange. In the last decades, Europe is growing more unified. While politicians and sometimes whole nations (as in the Danish Referendum of June 1992) discuss the question of the extent to which political, economic, judicial and political unity should take place, one thing is certain: time will not be set back to the pre-EC era. This simply means that together with more factual integration in Europe, we have to look more closely at each other, to know 'how the neighbours are doing it'.

If we take 1992 as a starting point in the political and international era, we should also be aware of the importance of scientific work and its implications for all kinds of decision-making. Courts are not alone in their use of experts and expertise. Responsible decision-makers always try to inform themselves as best they can, often by using specialists where they seem needful. From this perspective, the use of expertise in criminal proceedings is not exceptional. Although we do not know the exact number or percentage of Dutch cases in which some form of expertise plays a role (including drugs testing in all drugs cases), we know that the number is relatively high. There is, as far as I have learned, no difference between Anglo-American procedure and Dutch procedure. Where there is a significant difference, particularly between America and the Netherlands, is in the number of experts testifying in court. In this country most experts called for help, deliver reports (that are included into the files of the case) rather than testify in the courtroom.

As I said before, in this country we rarely

regard experts as typical partisans. The Americans do. The Americans even confront this partisanship in a more explicit way than the British seem to do. In America there is also much more discussion about the use of experts (and especially scientific techniques) than there is in England. That is the reason that in this colloquium, focusing on forensic expertise and the law of evidence in Europe, we have included some Americans in the programme. They will tell us about their ideas and experience with experts.

Although the list of speakers includes a number of foreign speakers, we have decided to restrict ourselves for the moment to Dutch forensic experts. Typically, forensic experts work on an international level to a much larger degree than most legal scholars and lawyers do. The legal profession is still mainly confined by national borders; forensic expertise is not.

3. The programme

We have a tough programme: today we will talk about the law of evidence in different national systems. We will also talk about comparative law and, in that respect focus on the differences between civil law and common law legal cultures. Tomorrow we will highlight a part of the law of evidence in different national systems and have a closer look at the legal position of experts and expertise within the law of evidence. We will also start discussing the important body of theory and legal doctrine in the Anglo-American literature on evidence. And at the end of the day tomorrow we will start looking at another side of our subject: instead of discussing the legal position of the expert, we will examine the work of the expert himself. This will be accomplished by focusing at first on the use of statistics in expertise and in evidence, especially expert evidence. Friday we plan to discuss expertise more closely from three perspectives: forensic experts, legal scholars, and sociologists will each talk about experts. Later, on

Monday, we will discuss more deeply (and in smaller groups) the problems raised in conference. In the final sessions on Tuesday, we will try to draw some conclusions and to discuss whether it would be interesting and useful to arrange some more institutional form of contact and exchange of information. It may be that problems of evidence are not sufficiently interesting to warrant the maintenance of international contacts in this field. My hope is, however, that the different subjects and views discussed during the next days will bring us to a somewhat different conclusion: that it would be indeed worthwhile to give more systematic attention to these subjects and views.

4. The personnel

The colloquium programme has been prepared by Manita Kooy of the Royal Academy, Nienke Kwak of Leyden University and myself. The technical and logistical aspects of the conference are also known by a number of Leyden students.