

# Justitiële verkenningen

jrg. 28, nr. 2, maart 2002

## Pursuing the truth

### Summaries

#### **No matter the effort; some comments on the primacy of using criminal investigative methods in arriving at the truth**

H.G. van de Bunt

The Dutch Parliament decided recently to launch a research on embezzlement in the construction industry. It often happens that during a parliamentary research various methods of arriving at the truth run parallel, carried out by different administrative agencies and the police. Usually the interests of arriving at the truth by using criminal investigation methods are more valued than these of parliamentary research. The assumption is that arriving at the truth by using penal methods is the most suitable one. According to the author this is incorrect. Based on the previous parliamentary and criminal law researches, the author argues that the criminal law reduces the social reality and that criminal law research is more focussed on the evidence than on arriving at the truth. More than that, the criminal law procedure with its procedural requirements actually offers more opportunities to contest the correctness of produced facts on formal grounds. Thus, the criminal court does not contribute to arriving at the 'real' truth which can count on public support.

#### **What is truth; a philosophical approach**

G.H. de Vries

In their evaluation of the 'post Fort inquiry', Van de Bunt, Fijnaut and Nelen suggest that differences in perception of the notion of 'truth' and of methodologies and standards of behaviour have contributed to the unsatisfactory development of the inquiry. This paper expands this observation by first exploring the classical concept of truth and its modern derivatives and by setting out the practical procedures that are suggested in philosophy of science for pursuing truth. However, in legal contexts, a pragmatic concept of truth - that conceptualises 'truth' as evaluation of proof - often seems to be more appropriate. The pragmatic concept of truth also translates into specific conditions for the behaviour of investigators and for situations suited to communicate matters of fact. Mixing-up various concepts of truth, the post Fort projectteam embodied conflicting styles of conduct, which gave rise to mutual irritation among investigators.

#### **Criminal procedure and establishing the truth**

E. Meyer

In Dutch criminal procedure the ultimate goal is to punish the guilty and, if possible, to prevent that a person who is not guilty will be punished. For that reason it is necessary to establish, as much as is possible, the real truth. There are a lot of (legal) limits in establishing the truth. In the investigation of a case the police is restricted by conditions laid down in the Code of Criminal Procedure and in the case-law of the Dutch Supreme Court. The suspect, who generally has the best knowledge of what has really happened, may not be forced to tell the truth. He has the basic right to remain silent. Sometimes other very valuable material may not be used as evidence, because of the way this material has been obtained. Though the police will indeed try to establish the real truth, there is a constant pattern of reducing that truth so that it fits into the text of an indictment.

#### **The state of committees; between politics and finding the truth**

H. Geveke

In The Netherlands thorny questions are likely to be given in hand of special committees. There are all sort of such committees, which differ in assignment, commissioner, construction, and competences.

Attached to the assignment of committees, especially in the case of an investigation of abuses, policy fiascoes or disasters, is a strong symbolic meaning: we must get to the bottom of this. Committees are therefore seen as important instruments in search for the truth. On the other hand the symbolic meaning of their assignment leaves committees often in political trouble. This exactly puts important barriers for finding the truth. In this article a number of such barriers are elaborated on: societal and political pressure, time pressure, groupthinking within the committee, and interferences with other investigations. On the basis of this elaboration some lessons are inferred.

### **Parliamentary politics and scientific research; a challenging experience**

C. Fijnaut

The author of this article has sat on several parliamentary research committees in Belgium and The Netherlands. Also he has done research for the Dutch Minister of Justice that was emphatically asked for by Parliament. In this article the author goes into the reasons why it is such a challenge to do scientific research for parliaments and parliamentary research committees. Questions posed in the article are: on which grounds could one refuse to do such research; what conditions should be met before scientific research can be done in the political arena; what problems does one encounter in editing research reports in a parliamentary context; what is the influence of these investigations on scientific research and conducted policy? The author concludes that it is worthwhile to take up the challenge of doing scientific research in a parliamentary context. In general the relevance of such research is great, it enriches ones own research experience, and both research and policy can gain from it.

### **Rope-walking; social science and organised crime**

J.M. Nelen

The article stresses the unique position of Dutch criminologists, in terms of the high accessibility to confidential information on organised crime. However, the author predicts a turning point. In particular the use of case studies is disputed. The author presents four arguments to contradict the popular notion that criminologists should restrict themselves to case studies in which the prime suspects have been convicted. In order to minimise the risks when studying ongoing criminal cases, specific arrangements should be made between social scientists and the judicial authorities. These arrangements refer to the safety and privacy of both criminal informants, suspects, and law enforcement officials and to the interference between the criminal investigation and social research. The inside story of a recent evaluation study shows that such arrangements are possible and do not affect the independence of social science, although conducting research in the area of organised crime sometimes comes close to rope-walking.

### **Researchers' playing ground**

R.J.J. Eshuis

In recent years, various large scale criminal cases have drawn the attention from the Dutch public. Several of these cases have resulted in hardly coordinated (if at all) quests for truth, involving police, journalists, the parlement as well as researchers from different backgrounds like criminology and public administration. This article focusses on the specific role of scholarly research compared to other quests for truth. In the first part the article, it is argued that different truth-seeking traditions each play an important role in revealing the truth and that truth benefits from the competing quests. None of the different traditions can claim a 'higher' truth. For instance, social scientists may have a strong point when it comes to questioning and falsifying superficial truths and underlying beliefs. However, their means to unveil facts for themselves are limited and much research depends heavily on the investigations of police and press. A specific case, in which the autor was involved, is used as an illustration of how the competing quests interact and build upon each other. The second part of the article poses the question of how scholarship benefits from the truth-seeking activities of its researchers. The answer here is that 'science' benefits from competing quests as well as 'truth' benefits. Cases like these provide an arena where theories, models and

methods can prove their strength and also show their limitations. Science needs debates that cross the traditional boundaries between disciplines and schools of research. Such debates only come to life through these competing quests. Therefore, researchers should not hesitate to claim their playing ground.