

# VERBALISERING VAN HET GETUIGENVERHOOR

Een onderzoek naar de uitvoeringsconsequenties van de voorgestelde eisen aan het proces-verbaal van getuigenverhoor in het concept-wetsvoorstel tot vaststelling van Boek 2 van het nieuwe Wetboek van Strafvordering

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Summary

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## Context of this study

The Dutch Code of Criminal Procedure is currently being modernised and in this context the legislator has drafted a proposal for Book 2 of the amended Code of Criminal Procedure. This proposal includes additional requirements for verbatim reports of witness statements. Essence of requirements is that statements should be reported as much as possible in the witness' own words and that questions as well as answers should be transcribed as completely as possible. At present, these standards are not met with in all verbatim reports investigative agencies draw up. In practice, such reports may also take the shape of a summary from a 'business-like perspective.' Other varieties may also occur, such as reformulating questions from the officer's perspective, e.g. 'you have asked me the colour of the car I saw standing on the street across my house; it was blue.' Reporters may also use a combination of styles, for example by summarising parts that are deemed less important whereas key questions and answers may be fully transcribed. The legislator thus aims at improving the quality of verbatim reports of witness interviews by setting more specific standards. The aim of this study is to establish practical consequences of the proposed changes, specifically their effect on law enforcement officers' workloads and by estimating the extra time it will take to draw up verbatim reports. This study was commissioned by the Scientific Research and Documentation Centre of the Ministry of Justice and Safety to Tilburg University, Department of Criminal Law and conducted between October 2018 and June 2019.

## Research questions

This study first assessed how investigative agencies currently report witness interviews. Second, it addressed the question how proposed legal changes should be practically interpreted and how a 'new' verbatim report should be drawn up to meet with these standards. Third, the study aimed at assessing as objectively as possible the time difference between drawing up an old style and new style verbatim report. Finally, we looked at the potential added value of combining verbatim reports with standard application of audio or audiovisual recording of such interviews.

## Methods

The current study was based on deskresearch, interviews with experts from the field of criminal investigation as well as academics and lawyers, and empirical research of verbatim reports. We studied a random selection of verbatim reports drawn up by the National Police on the one hand, and the Fiscal Intelligence and Investigation Service (FIOD) on the other. To begin with, we selected 400 verbatim reports (50 of which at the FIOD), to assess current reporting styles. Police reports first included so-called 'ZSM-cases', which mainly concern petty crime. Second, we defined a category including high impact crimes (HIC), for instance burglaries, robberies and serious violence, and environmental crimes, human trafficking and subversive crime cases. The latter refers to organized crime cases, mainly drug production and drug trafficking. A third category comprised cases dealt with by ad-hoc teams for large-scale criminal investigations (TGO's), which usually concern investigations of murder. Finally, we considered victim's reports to the police.

Next, we selected 41 verbatim reports drawn up by the police, which in their current form do not comply with proposed regulation, and rewrote these to the new standard as much as possible. The difference in number of words between the old and the new verbatim reports were then used to calculate time difference, based on estimated typewriting speeds on computer keyboards derived from the literature.

Interpretation of the practical implications of the amendment to the Code of Criminal Procedure  
The draft amendment of the Code of Criminal Procedure regarding verbatim reporting of witness interviews is still open for interpretation regarding what would at least be necessary to comply with the standards proposed. Case-law which further clarifies this issue is of course not yet available. To assess practical consequences, it is however necessary to establish practical requirements following from the new standards to the extent possible. For this purpose, we examined explanatory documents to the legislative proposal and interviewed experts. The outcome is that verbatim reports should be drawn up in question-answer format. This, however, does not imply that interviews should be literally transcribed, for the latter would be unfeasible without recording the interview. In addition, the fact that reporters should use witnesses' own words does not preclude that sentences cannot be drawn up coherently and without for instance dialect, street language or swearing. Reporters thus retain to some extent freedom to edit witnesses' answers to increase readability as long as they accurately depict the context of the questions posed in the interview as well as the answers given.

## Current styles of reporting witness interviews

Our study of 400 verbatim reports confirms that currently a range of reporting styles is used, particularly by police officers. At the FIOD, reporting style is to a large extent uniformized to the question-answer model. Witness interviews are reported as full transcriptions (2%); according to the question-answer model in which

answers may be edited (25%); a summary which is mainly drawn up in the words of the officer (1%); a summary from the perspective of the witness (16%); a summary drawn up mainly in the words of the witness (38%); a combination of styles within a single report (18%).

On average, 27% of verbatim reports currently complies with our interpretation of the legislative proposal. This percentage, drops to 17% if we include only the police, because at the FIOD, almost all verbatim reports are already up to the new standard. The main problem with the police is the fact that verbatim reports are written as summaries and not include questions and answers. In most cases, however, reporters do avoid official language, or use it in only a small part of the report, for instance to make clear to which exact paragraph in the Criminal Code the crime referred to.

An important conclusion is the fact that most verbatim reports comprise only 1-3 pages. This is explained by the fact that a large majority of witness interviews take relatively little time. On average this is 27 minutes, whereas half of the interviews require 15 minutes or less. Summary style reports mostly concern brief witness interviews. More extensive interviews will in most cases be reported in question-answer style. We could not establish whether these reports do indeed fully account everything that was discussed during the interview.

### **The proposal's practical implications**

As explained above, we selected 41 verbatim reports which were drawn up as summaries and rewrote these in question-answer style. We then compared word count of the reports. On average, the size of rewritten verbatim reports increased by 4.8%. In some cases, the size of verbatim reports decreased, mainly because simply reporting the question and its answer is sometimes more efficient than reframing it to the perspective of the police officer. If we only include verbatim reports which increase in size, average increment is 5.7%. The literature on typewriting skills sets the lowest typing speed by using a computer keyboard and mouse with immediate correction of errors, at 19-35 words per minute. The average increase in words of rewritten verbatim reports is 23. This corresponds with 0.7–1.2 minutes per report. If we exclude verbatim reports which decrease in size, average increase is 42 words and 1.2–2.2 minutes per report.

Prior to our analysis we asked interrogation specialists of the National police their estimate of implications of the new requirements. Their assessment was that it would take 50% - 100% more time to complete a verbatim report. This would add up to 14–52 minutes extra per report. When we presented our empirical results to these experts, they recognized that their estimate mainly referred to lengthier witness interviews and less to the bulk of relatively brief witness statements relevant to most police investigations. However, they did point at the fact that although the extra workload may be small for the National police, it will be unevenly distributed and impact heavily on police officers who specialize in interrogations.

Nationally, the Dutch police conducted an average number of 190,647 witness interviews in 2016 and 2017. In total, an estimated 158,237 verbatim reports (83%) would currently not meet with the standards proposed. Based on our own empirical research, it would require an extra 1.45 to 4.65 full time equivalents in personnel to enable drawing up verbatim reports according to the new standards. If we apply the most extreme – albeit unrealistic - estimate of 100% mentioned in interviews with interrogation specialists, and combine these with the lowest typing speed of 19 words per minute, proposed changes would require the National police to commit an extra 107.8 full time equivalents of personnel. This figure represents 0.2% of the total operational strength of the National police. As already mentioned, we do need to take into account that the extra workload will be distributed unevenly and measures should be taken to prevent that specific staff will be confronted with a disproportionate increase of work.

### **Recording of witness interviews: developments and points of attention**

Interviewees generally underline that the proposed legislation can be considered an important step forward regarding the quality of verbatim reports of witness interviews. However, legal scholars (including legal psychologists), have in the literature also voiced more fundamental objections against the practice in the Dutch criminal justice system of relying foremost on written verbatim reports. These objections may only be removed by audio and preferably audiovisual recording of every witness interview. Indeed, a written report will never suffice to exactly depict what has been said, with which intonation and context, et cetera. All interviewees underlined this and expressed their expectation that in the foreseeable future recording of all interviews would become standard procedure. In addition, interviewees expected that technological developments would better enable to automatically transpose spoken words into text. In the context of our study, we did not conduct a full assessment of the do's and don'ts of recording witness interviews. However, we do stress that recording would not render verbatim reports unnecessary, simply because it would be impossible for the actors in the criminal justice process to see every recorded interview. It will therefore remain necessary to set standards for verbatim reports. Finally, we underline that further research will be necessary to establish which problems recording would solve and perhaps newly create, as well as added value of recording brief witness interviews which mainly involve a number of standard questions.