

## Summaries

*Justitiële verkenningen* (Judicial explorations) is published nine times a year by the Research and Documentation Centre of the Dutch Ministry of Justice in co-operation with Boom Juridische uitgevers. Each issue focuses on a central theme related to judicial policy. The section *Summaries* contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (vol. 30, nr. 1, 2004) is *Forensic evidence*.

### Role of expertise in legal practice

*J.F. Nijboer*

In this article the author focuses on the 'scientification' of society and the influence of technical and scientific developments on different fields of the law. Closely linked to these phenomena is the role (forensic) experts play. The author deals with the increasing importance and implications of (forensic) expert research in investigation, prosecution and sentencing in penal law cases. He also draws parallels between other judicial contexts than that of penal law only. Attention is given to the interdisciplinary and interprofessional communication in the administration of justice and to the inherent clashes between disciplines and between participants in legal proceedings, the 'battle of experts' included. The author stresses the importance of clearly written expert reports and of a thorough check of expertise when regular forensic experts are appointed.

### The forensic alphabet

*A.P.A. Broeders*

Following the general trend towards specialisation in science and technology, the forensic sciences have shown a high degree of diversification in recent years. Most full-service laboratories are now offering a wide range of forensic expertise, with niche activities being supplied by university departments, specialist laboratories or research institutes. Over fifty of the more common forensic disciplines are briefly discussed, ranging from time-honoured subjects like forensic medicine and dactyloscopy to such novel fields as forensic nursing and forensic imaging.

### Verification based on DNA profiles and -data bases

*P. de Knijff*

This article explains the importance of DNA profiles and DNA databases for forensic casework. It stresses the use of both terms in the correct context simply because there are many different types of DNA profiles and DNA databases. Due to increasing technical complexity the role of the forensic DNA expert witness becomes more and more important. Moreover, one cannot expect from judges and lawyers to fully understand DNA evidence and all its caveats. This process could ultimately lead to a 'gap of knowledge' between the scientist and non-scientists that cannot be crossed. One consequence of this could be that the scientist is misunderstood and crucial evidence not taken into consideration. This situation can only be prevented when criminal law students receive at least a minimum training in this respect.

### The role of forensic psychology in penal law cases

*C. de Ruiter*

According to Dutch criminal law, the court can request mental health professionals to report on a suspect in cases of serious sexual and violent offences. In general, the professional is asked three questions: was the suspect suffering from mental disorder at the time of the offence, is there a link between the two which limits the culpability of the suspect, how great is the risk of a repeat offence. Contrary to Anglo-Saxon jurisdictions, there exists no formal academic education in forensic psychology or psychiatry in the Netherlands. As a consequence, the quality of reports to the court varies considerably and different mental health professionals may arrive at different conclusions regarding criminal responsibility and recidivism risk. Fundamental differences between psychology and law, such as differences in epistemology and methodology are explained in relation to an illustrative case. The author argues for the establishment of an accredited Master level program in forensic psychology (and psychiatry) in The Netherlands, which acknowledges the complexity and the specialty of the forensic mental health professional's task in criminal case reporting.

### Memory detection reveals guilty knowledge

*H.L.G.J. Merckelbach and E.H. Meijer*

This article critically evaluates lie detection procedures as they are currently used in several European countries. In passing, relevant legislation is briefly discussed. The most common lie-detection technique is the control-questions approach. Yet, a risk associated with this approach concerns false positive outcomes, which even under best practice conditions circle around 10%. In contrast, the guilty-knowledge version of lie detection has the advantage that the chance of false positives can be brought far below the 1%. Some experts have argued that for practical reasons, only a small number of criminal cases can be subjected to guilty-knowledge tests. The Japanese example demonstrates that this not a valid argument and that large-scale guilty-knowledge testing is possible provided that it takes place during the early phase of criminal investigation. Meanwhile, there is no such thing as 'guilty knowledge'. Therefore, a better name for this approach would be 'memory detection'.

### Article 6 of the European Convention and the right to counter-expertise

*J. Hielkema*

In this article, the author describes and analyses the right of defendants to ask for an expert's assistance, especially the assistance of a counter-expert. The attention is mainly focused on article 6 of the European Convention on human rights and fundamental freedoms. Two decisions of the European Court on Human Rights are important in this respect, i.e. the casus of Bönisch and Brandstetter, both against Austria in which the court applies the principle of a fair trial to answer the question whether the defendant has the right to counter-expertise. When deciding whether a defendant has a right to counter-expertise, the court takes the following factors into consideration. First, the role that the court-appointed expert has played in a particular case. If, objectively seen, doubts can be cast upon the impartiality of the expert, the defendant may have a right to counter-expertise. This is what is known as the 'partiality-criterion'. There is reason for such doubt when the expert is responsible for the prosecution of the defendant because of his research and report in the case. Second, the defendant has to take an active position. He should

indicate why the contribution of his own expert is of importance for the outcome of the case, and he should review the report of the 'official' expert. Finally, the author describes the effects of these court decisions on the Dutch criminal procedure.

#### **The Supreme Court on forensic evidence**

##### *A. de Jong-van Ormondt*

In this article the author describes and analyses eight Supreme Court decisions in which rules are formulated on how a judge, who has to assess the facts of a certain case, will have to deal with the evidence presented to him or her by experts. In certain cases the judge is obliged to deal critically with evidence concerning the expert, the used unreliable method or testimonies that are based on unreliable method(s). The most important Supreme Court decision in this respect is the so called Schoenmakers-arret in which the Supreme Court formulated four criteria a judge should take into account before using the expert evidence. Using these criteria the judge should be able to assess whether the expert is capable, reliable and sufficiently educated to watch all the pitfalls and to do research. As a result of these Supreme Court decrees judges find themselves obliged to be more critical towards the experts and the evidence presented by them in expert reports.