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A culture of testimony: The importance of 'speaking witnesses' in Dutch sexual crimes investigations and trials, 1930–1960

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Introduction

In 1949, a family returning home after a springtime outing encountered the eighteen-year-old nanny 'crying and in a totally excited state'. Worried, her employers asked her what had happened. She explained that she had been out enjoying the weather when she was sexually assaulted by a stranger. Upon hearing this, her employer drove to the local police station and brought back an officer. After a quick recounting of the story, the officer, the employer and the victim hopped in the employer's car and drove around town in an attempt to find the perpetrator. On the main road from Soest to Utrecht the girl spotted her attacker riding a bike. After a confrontation with the victim and a brief interrogation, right there on the side of the road, the suspect confessed. Police also interviewed a number of witnesses, who had encountered the distraught victim and returned her to her employers' home. More extensive questioning of the victim and the suspect followed, after which the suspect was examined by a psychiatrist, convicted and sentenced to one year in prison.[1]

While many cases of sexual violence tried between 1930 and 1960 by the court in Utrecht were more complicated, in this chapter I show that this 1949 case is typical in its dependence on testimony and concomitant neglect of physical evidence. In fact, I argue that the investigations and trials of sexual crimes in this period were marked by a 'culture of testimony,' with the evidence provided by

'speaking witnesses', including victims, occupying a central role. This claim runs counter to what has been found in other national contexts, with historians of forensic science showing that the 'testimony of people' had become increasingly de-emphasised in favour of the 'testimony of things' since the turn of the nineteenth century.[2] In some forensic cultures – including in the United States, England, France and German-speaking Europe – a number of developments coincided to create a 'crisis of confidence around witness credibility'.[3] In Germany, for example, the formal rules excluding some specific types of 'incompetent' witnesses were gradually abandoned in favour of the principle of 'free evaluation of evidence' by judges, resulting in new eligibility to testify for witnesses, including women and children, who had previously been excluded.[4] At the same time, new psychological research into human perception and memory called the reliability of witnesses into question – a finding exploited by newly professionalising defence attorneys.[5] According to historians of forensic science Ian Burney and Neil Pemberton, this crisis had two interrelated consequences. Firstly, it created an increasing realisation that those involved in criminal investigations and prosecutions needed to deepen their understanding of the fallibility of witness testimony and to 'adjust their strategies for eliciting and interpreting witness statements' to avoid being led astray. Secondly, 'commentators elevated material over human testimony, seeking out "mute witnesses" wherever possible to short-circuit the evident dangers of relying on the human alternative'.[6]

The realisation that witness testimony was central to Dutch sexual violence investigations in the early and middle part of the twentieth century is also surprising in light of research by historians of sexual violence, who have found that the testimony of victims has seemingly been perpetually distrusted. Confronted with overwhelming evidence that rape was a severely underreported crime and that women who came forward often had to go through a gruelling and invasive process, only for the case to be dismissed or for the offender to be acquitted, activists and sociologists have sought to explain these injustices since the 1970s. They have concluded that pervasive, wrongheaded attitudes about rape – 'rape myths' – are a major contributing factor.[7] Historians interested in sexual violence have established

that these same myths are pervasive in their historical material as well. The evidence for the persistence and consistency of these ideas in medico-legal literature is especially plentiful.[8]

The mismatch between the empirical findings presented in this chapter and the existing historiography points to some of the idiosyncrasies of early and mid-twentieth century Dutch forensic culture generally, and early and mid-twentieth-century Dutch sexual violence investigations and trials in particular. As shown in the next section, the content of Dutch medico-legal literature was largely in line with international literature about the reliability of victims and witnesses of (sexual) crime; it is in its examination of investigative and trial practices, then, that this chapter exposes some of these particularly Dutch characteristics. In centring forensic practices in my analysis, I have heeded the advice and followed the examples of scholars such as Stephen Robertson, Louise Jackson, Victoria Bates and Willemijn Ruberg.[9]

The chapter is based on an examination of thirty-three case files, as well as 128 verdicts of sexual violence cases tried at the Utrecht criminal court between 1930 and 1960. They include extramarital rapes (article 242 of the Dutch criminal code), sexual assaults (article 246), instances of sexual intercourse with underaged girls (articles 244 and 245), indecency [*ontucht*] with a child under the age of sixteen (247) and indecency with a minor under one's education or care (249). In the period under examination, the crimes listed under articles 242 and 246 were committed with the use of violence or under the threat of violence, while sexual acts with a minor were illegal regardless of the level of threat or violence. Dutch case files are meant to contain all documentation drawn up during the course of the investigation and are sent, in their entirety, to the trial judge(s). It is on the basis of the case file and additional testimony at trial that a verdict is reached. Unfortunately, some of the case files in my sample are incomplete, especially those tried in the 1950s. Verdicts, meanwhile, list the minimum amount of evidence necessary for a conviction.[10] The cases in this sample were randomly selected with the aim of revealing the day-to-day goings-on of sexual crimes investigations and trials. I have supplemented my analysis with an examination of the prosecutors' registers from the period 1960–1969, as well as medico-legal and police literature.

Internationally circulated ideas about the reliability of witnesses

Doubts about the reliability of women and children who reported sexual violence were consistently discussed in medico-legal textbooks in the nineteenth and twentieth centuries. Both in original Dutch works and in translations of works by international authors, the claim that allegations of sexual violence were often made up was repeated as an undisputed fact.[11] Whether for the purpose of blackmail, to protect their honour and the reputation of the men who fathered their illegitimate children, or because they were hysterical, women who accused men of rape were considered particularly likely to lie. The Dutch judge W. E. T. M. van der Does de Willebois phrased it pointedly in his 1904 handbook for investigators:

> The danger for the prosecution to be led astray is perhaps nowhere as large as precisely in these types of crimes … It occurs that a hysterical woman or girl proclaims all sorts of evil things about an entirely innocent man. To extort money from him, he is sometimes threatened with a police complaint about a crime against the morals, and if the case is investigated, the accusation is maintained against better judgement. It has also happened that a girl, who had a molar pulled by a doctor, made the entirely false claim that he, after sedating her, had sexual intercourse with her. Later it became clear that the girl was pregnant by a boy … and to protect his and her own honour and name, had resolved to place the blame of her pregnancy on the doctor. The possibility of a false accusation, then, … will often need to be taken into account.[12]

Authors like van der Does de Willebois warned that children – particularly girls – should likewise be treated with suspicion; impressionable as they were, they could easily be taught to deliver a well-rehearsed story to aid in a blackmail-scheme or revenge-plot. Besides, children were fantasists: they might simply have imagined that something inappropriate had happened.[13]

From the turn of the nineteenth century, pre-existing ideas about the reliability of victims of sexual violence were supported by German and French findings in the new field of witness psychology. The new science had found that 'women forget less, but fabricate more'. It was also argued that too much credence was

given to children's statements, that children under the age of seven were entirely unsuited to give testimony and that no one should be convicted on the basis of children's testimony alone.[14] Witness psychology, of course, went beyond doubting accusations by would-be victims of sex crimes, but called into question the reliability of witness testimony in general – based on evidence of the fallibility of human perception and memory – and offered practical solutions to avoid being misled. The findings of the new science were circulated in the Netherlands, for example when they were printed, apparently with approval, in *Het Weekblad van het Regt* (The Weekly Journal of Law) in 1905; like their German and French colleagues, then, Dutch legal practitioners encountered new calls to be careful about the use of 'speaking witnesses'.

Pemberton and Burney have argued that the loss of faith in the witness was connected to the elevation of 'the testimony of things'. In the Netherlands, too, investigators became more interested in physical evidence from the turn of the century. This is apparent from the establishment of private criminalistics laboratories – most notably by Co van Ledden Hulsebosch in 1910 – the rise of crime scene photography and fingerprinting in police departments, and the publication of police handbooks summarising the work of Hans Gross. A more complete institutionalisation of forensic science in the Netherlands would arrive in the late 1940s and early 1950s with the establishment of national institutes for criminalistics, forensic psychiatry and psychology, and forensic pathology.[15]

Even as there was an increasing interest in the 'testimony of things', however, the level of concern about witness testimony in the early to middle part of the century seems to have been limited: there was little original Dutch research on the subject, and when the newly scientifically established unreliability of witnesses was acknowledged, commentators resisted the idea that psychologists should be brought into the courtroom to address the issue.[16] In 1935, the attorney S. J. M. van Geuns noted that Dutch judges displayed good psychological insight and were able to question witnesses in such a way as to avoid suggestion and to value witness statements appropriately: 'Most of the time the judge will be able to assess the reliability for himself.'[17]

In what follows, I show that Dutch forensic practice in cases of sexual violence proceeded from a base-level of trust in the

statements of 'speaking witnesses'. Before delving into the case files and verdicts that make up my sample, however, I must contend with a challenge that plagues the historiography on rape: interpreting acquittals and dismissals.

Making sense of dismissals

An acquittal or dismissal may be an indication that the victim's accusation was not believed. Indeed, feminist activists and sociologists who raised alarm over the treatment of victims of sexual violence in the 1970s pointed to high dismissal and acquittal rates to underwrite survivors' harrowing tales of scepticism and ill-treatment by law enforcement and the judiciary. Due to limitations of the source material, it can be difficult to gain an insight into the reasoning behind dismissals and acquittals; in my sample, verdicts relating to acquittals contain no information indicating why the court found the suspect not guilty. In any event, if a case went to trial, acquittal was unlikely: there are only four such cases in my sample (3 per cent). Dutch prosecutors had discretion to decide whether any given case was to be prosecuted and brought to trial; indeed, dismissals by prosecutors were far more common than acquittals and left little documentation behind.[18] While I did not have access to information about the number of cases dismissed before trial in the period 1930–1960, I was able to study the prosecutors' registers for the 1960s, which shows that a substantial number of sexual violence cases did not make it to trial (44 per cent).[19] I have no reason to believe that the dismissal rate would have been significantly different in the preceding period.[20]

The prosecutors' registers often contain a two-word explanation of why a given case was dismissed. Though limited, this information can shed some light onto the proportion of cases in which distrust of victims may have played a role. Among the reasons given in the prosecutors' registers, two classes are most likely to involve doubts about the truth of an allegation: 19 per cent of dismissals resulted from the facts of the allegation not being a crime under Dutch law. It is clearly possible that such dismissals resulted from the prosecutor *not believing* crucial details of the allegation. Specifically, a prosecutor and other legal actors might have thought that sexual

acts had indeed occurred, but that the would-be victim had actually consented. Additionally, concerns about false accusations may have played a role in those dismissals that resulted from a lack of evidence (21 per cent).

However, a dismissal did not *necessarily* mean that the truth of an allegation was doubted. Indeed, in the types of dismissal just described, it is possible that the complainant's statement was believed in its entirety, but either simply did not fit the formal definition of a crime under Dutch law or was not supported by any other evidence. As the Dutch Code of Criminal Procedure specified that judges could not declare a suspect guilty on the basis of the statement of one witness only, there could be insufficient evidence even when police and prosecutor deemed the victim totally reliable.

Moreover, in a significant number of dismissals, the truth of the allegation was irrelevant, not doubted or assumed. Some cases were dismissed due to the youthful age of the suspect (19 per cent); in such cases the prosecutor judged that prosecution or punishment would not be in the best interest of the young suspect or, indeed, society at large. Prosecutors also had discretion to dismiss cases conditionally; they agreed to not pursue the case so long as the suspect did not reoffend and fulfilled a number of pre-agreed conditions. The majority of cases dismissed by the prosecutor in the 1960s was of this type (29 per cent). In such cases, too, it appears the victim was, at core, believed.

The dismissal of a case of sexual violence would likely have felt like an injustice to many victims. There is insufficient evidence, however, to suggest that such injustice necessarily or even typically resulted from distrust of victims, even as ideas about the unreliability of sexual crimes victims were familiar to prosecutors and other actors involved. Based on data from the prosecutors' registers of the 1960s, I have found that a portion of dismissals – 40 per cent, or some 18 per cent of the total number of cases reported to the prosecutor – *may have* resulted from the victim's allegation being called into question. The number of cases among them where distrust of the victim *actually* resulted in dismissal is unknowable. In what follows I examine casefiles and verdicts from the period 1930–1960. Given the Dutch Procedural Code's insistence on two pieces of

independent evidence, I will examine the ways that the second piece of evidence – the first being the complainant's statement – was typically furnished.

The curious absence of doctors

The first notable finding is that medical testimony played a negligible role in sexual crimes investigations. Among the 161 cases examined, I found evidence of a medical practitioner being involved in only four (2 per cent). To be sure; it is possible – even likely – that doctors were involved in other cases for which no complete case file exists. Remarkably, however, even in cases where a medical witness would have been in a position, according to medical textbooks, to provide clarity – e.g. in cases where the suspect confessed to indecency, but not to sexual intercourse – verdicts made no mention of medical testimony.

In the four cases in which there is evidence of a medical examination, the issue that ostensibly needed to be resolved was indeed whether sexual intercourse had taken place. The examinations were done by general practitioners, who may or may not have had a pre-existing relationship with local police; so-called police-doctors treated officers and their families, and were called upon to treat suspects in police custody or to weigh in on forensic medical issues. Police-doctors were not, however, required to have a specialist education, nor did they perform this role full-time. In each case the doctor's report was minimal – scribbled on a prescription note, or verbally given to police – underscoring the lack of standardisation.

Regarding the descriptions of injuries and the conclusions they drew, the doctors' writings also differed. Police-doctor W. van der Giesen, who examined a twelve-year-old victim in 1939, described the girl's injuries, but left his conclusions about whether penetration had occurred entirely unspoken. His sticky-note-sized report read simply: 'During the examination of the 12-year-old [victim], residing in Woerden, it became clear to me that the hymen was no longer intact. Other injuries were not perceptible.'[21] By contrast, the general practitioner Dr M. G. Pannekoek, who examined a twenty-year-old victim in 1937, expressed his conclusions in terms of how likely he considered it that penetration had taken place, finding it was as good as certain that the victim had had intercourse

with a man shortly before the examination. He provided no indication of how he had reached this conclusion.[22]

Beyond the limited number of cases in which a doctor was involved or the lack of standardisation of the reports, it is striking how little impact the medical findings had on the court's verdict. In three of the four cases, the court did not mention the medical reports and, in fact, in each case came to the opposite conclusion regarding penetration. Only the 1953 statement by Dr W. J. van der Hooft, director of the Amersfoort municipal health service, was mentioned in the verdict, though not in reference to the issue of whether sexual intercourse had occurred. Instead, his description of the four-year-old victim's injuries served to motivate the severity of the sentence.[23]

Trusting witnesses

Given that medical evidence played such a limited role, and criminalistics evidence, moreover, is virtually absent from my sample, it is clear that sexual violence investigations and trials revolved almost exclusively around the testimony of victims, third-party witnesses and suspects. The roles of eyewitnesses and confessions in sexual crimes cases have gone almost entirely unexplored in the history of sexual violence, presumably due to the – rather intuitive – assumption that suspects of crimes generally deny their involvement and that sexual crimes are typically committed in the absence of witnesses.

However, even taking into account that this sample is biased towards cases with strong evidence, given that they would otherwise have been dismissed by the prosecutor, the characterisation of sexual crimes as particularly shrouded in secrecy does not seem to apply to Dutch forensic culture in the period 1930–1960. Indeed, eyewitnesses were involved in many cases. In a number of instances in my sample a passer-by directly witnessed something untoward in a public space, such as a park, a bicycle parking area, or a swimming pool, but even when a witness had not directly observed the crime, their testimony could occasionally play an important role. This was true, for example, in a case of 1949, in which the suspect confessed to having sexually assaulted an eighteen-year-old man who was unconscious due to excessive drinking. As the Dutch Code of Criminal Procedure stipulated that a court could

not convict on the basis of a confession only and the victim had no memory of the assault, the circumstantial evidence provided by a witness who had seen the suspect exiting the victim's tent in the early hours of the morning was crucial for obtaining a conviction.[24]

Even when sexual crimes were committed in private residences, eyewitnesses were sometimes involved. In 1940, for example, a man, having become suspicious of his downstairs neighbour's relationship with the teenager who cleaned his home, made a hole in the floor of his apartment. Through that hole he then watched his neighbour pressing his face against the girl's 'femininity'.[25] The suspect denied everything, but was convicted on the strength of the victim's statement and that of his spying neighbour.

In cases of childhood sexual abuse, the victim's siblings were sometimes witnesses.[26] Besides, perpetrators often had more than one victim. Thus, victims could regularly confirm each other's stories. Sometimes perpetrators molested multiple kids on the same occasion, thereby making each a direct eyewitness to the violation of the other(s). In other instances, the testimony of multiple victims served to establish a pattern of behaviour. In a 1952 case the court made this logic explicit, noting that the statements of the witnesses supported each other 'in their coherence'.[27]

Thus, it is clear that the testimony of eyewitnesses could be used to provide that all-important second piece of evidence that, together with the statement of the victim, could lead to a conviction. Despite the circulation of insights from witness psychology, I have found no evidence to indicate that police officers, prosecutors or judges were worried about the reliability of eyewitness testimony, not even when the witness was a child. Never once was a psychiatrist or psychologist called on to assess a witness's or victim's credibility or reliability. In fact, if a sex crime had been witnessed by a third party, the case was as good as resolved in the eyes of the law. By extension, the statements of victims in such cases were never doubted.

Calling victims into doubt?

In cases where there were no third-party witnesses, a victim's credibility was occasionally called into question, although almost exclusively by the suspect. Thus, in 1938, a man accused of sexually

abusing his two daughters claimed: 'My children told you lies. They conspire against me; I cannot understand that one would think something like this of me. Do you think me capable?'[28]

Such unequivocal claims of false accusations, however, were rare. Some suspects instead argued that victims were somehow mistaken. Perhaps they had accidentally identified the wrong person, as a nineteen-year-old suspect suggested in 1940. Claiming his initial confession to a violent sexual assault was coerced, he was reluctant to declare the victim a liar, writing to his family: 'If the lady still positively says I am the person … I won't say that she would make a false [statement], but that she is honestly mistaken'.[29] Other suspects claimed victims had misinterpreted their actions as sexual, when they had, in fact, been innocent.[30] Indeed, the above-mentioned 1938 suspect did not persist with his claim that his children had lied. During successive interviews he landed on the argument that he had indeed touched them, but accidentally during play-fights or 'as a joke, not to be dirty'.[31] By prevaricating about his actions and by claiming he had no ill motives, the suspect avoided calling the victims unreliable. After his initial statement, he seems to have understood this to be an ineffective strategy, even as the girls' supervisory guardian – their uncle – sided with the suspect.

The largest group of suspects who called the credibility of their accusers into question did so by suggesting the victims had lied about the circumstances of the crime or exaggerated the details. In some cases, this took the form of pointing to victims' seductiveness. This strategy appears to have had some minor potential for success. My sample contains two examples of psychiatrists tasked with examining the suspects who were at least willing to entertain the possibility that the victims had precipitated the crimes.[32] Thus, in a 1952 case of incest involving an adult victim, the psychiatrist P. A. H. Baan was willing to give credence to the suspect's claims about his daughter: 'In addition, one wonders … whether the … daughter … showed sufficient resistance and whether she didn't even act in a provocative manner – perhaps unknowingly.'[33] The possibility of complicity by victims was also underwritten by police officer Lien van Nie, who served the Amsterdam vice department between 1935 and 1958 and who wrote about her experiences in a 1964 book. She stated that it sometimes happened that a boy or girl

occasioned the crime committed against them: 'While this does not excuse a suspect, it can impact the sentence.'[34]

Thus, on the one hand, there is some limited evidence that professional participants in sex crimes investigations were occasionally willing to entertain the idea that the victim had in some way acted provocatively. On the other hand, claims of complicity by victims could also be used against the suspect, as is illustrated by a 1932 molestation case involving three victims aged ten, twelve and thirteen. During a discussion about whether the suspect should be released from pre-arrest, the prosecutor pointed precisely to the suspect's claim to have been seduced by the girls in order to argue that he should await his trial in jail and should, moreover, be examined psychiatrically. The prosecutor gave the distinct impression that he considered the claim entirely preposterous.[35]

In sum, while suspects rarely argued that the allegation against them was entirely made up, many of them called their accusers' credibility into question in one way or another. The professional participants in sex crimes investigations, by contrast, were not particularly concerned about victims giving incorrect statements. Even in the rare cases in which a psychiatrist entertained the idea that the victim had been – unknowingly – complicit in some way, the facts of the allegations were not doubted. In my sample, moreover, police officers openly questioned the facts alleged by a would-be victim only when they denied having been victimised, after having been identified as a victim by someone else, or if their version of events was milder than that of another victim. Thus, when two seventeen-year-old twin girls were interviewed in 1949 about the abuse they had suffered at the hands of their father, it was the fact that one of them told a less horrifying version of the story that made the investigators doubtful. Confirming the officers' suspicion, the young woman later admitted that she felt embarrassed to provide all the sordid details and that she had altered the story to protect her father.[36] Likewise, in a 1939 case in which a man was prosecuted for sexually abusing three eleven- or twelve-year-olds, police noted that they suspected that one of the girls was not telling all she knew, because she was afraid of her parents, who were 'very rough'.[37] Van Nie wrote about such cases: 'I very often encountered stupid parents, who, as soon as they heard what had happened,

gave the children a beating. They did not understand that the child would not dare tell them if something else ever happened … Beatings and especially threats are to be resolutely condemned.'[38]

Van Nie and Klaas Groen – van Nie's colleague at the Amsterdam vice department and writer of several books about his experiences for a general audience – were explicit about the trust they placed in children's statements. Showing himself familiar with internationally circulated cautions, Groen wrote: 'There are jurists who don't like children's stories. They say that children are fantasists. But don't adult witnesses suffer from the same ailment? Added to that, they more than once lie on purpose, which I have rarely observed in children's statements.'[39] Van Nie further noted that 'the power of observation in children is generally great, often much greater than in us, adults. Children often notice *small* details, that we are wont to overlook.'[40]

Beyond underwriting a general confidence in children's statements, Groen and van Nie both expressed great confidence in their own ability to extract truthful statements from children. In Groen's words: 'What I think is important is this: the police officer must tell the children, with seriousness, that what they say can have a deciding influence on the fate of a human. If one does this, it is remarkable to experience how well children sense the import of their words.'[41] Making sure that the child knew the seriousness of their statement was a practice applied in court too; in lieu of an oath, which children under the age of sixteen could not take, young witnesses were instructed by a judge that what they were about to do was very serious. The verdict would include a note along the lines of: 'the witness understood the gravity of her statements and appeared reliable', thereby complying with article 360 of the Code of Criminal Procedure which required a judge to motivate his decision to accept evidence provided by a witness below the age of sixteen.

It is important to note that adults here provide a negative contrast to children: while children are painted as particularly reliable, in spite of the literature on the psychology of witnesses, the idea that adult victims in sexual crimes cases might be lying about their assault is maintained. Still, none of the case files or verdicts indicate that the – relatively few – adult victims in my sample were distrusted.[42]

Confessions

Despite the general trust in children's statements, police officer Groen said, 'we were very careful with [them] but we always had a beautiful corroboration in the person of the suspect himself, because almost always, the confession of the suspect was in line with what the children had declared'.[43] This is something that I have found in my sample as well; the overwhelming majority of these cases were resolved by the suspect's confession. In fact, out of the 161 cases examined, the suspect outright denied involvement in only fourteen (9 per cent), while a further twenty-six (18 per cent) only partially confessed or retracted earlier statements.

While it is hard to know exactly how police officers went about obtaining confessions, here and there we get glimpses of their tactics, which seem to have revolved around, either, playing on the suspects' feelings of guilt, or, alternatively, making him feel that the evidence against him was overwhelming. A common practice was the confrontation between victim and suspect. Ostensibly intended to enable the victim to positively identify the suspect, it clearly served to put pressure on the suspect to confess. Van Nie explained that

> when a suspect continued to deny, it was useful to place the [child] across from him and to ask the child to answer the questions that *we* asked. It repeatedly happened that a suspect's demeanour changed upon *seeing* his victim. He was ashamed, showed remorse, when he saw an innocent child in front of him, who told him what he had done to her.[44]

At times, the threat of confrontation was enough; in 1937 a police officer wrote to the investigative judge: 'Because he initially did not want to talk, I told him that I would fetch the girl. He said "don't bother" and then began talking of his own accord.'[45]

Confessions often came bit by bit; while a suspect might initially confess only to having been near or at the crime scene, or to knowing the victim, by the time the trial happened he had admitted to most, if not all, details. In a few cases, the opposite happened; after an initial full confession, the suspect proclaimed his innocence at trial. This, however, did not matter; if the suspect declined to confess at trial, after having admitted to the crime at an earlier

stage in the investigation, the verdict simply referenced as evidence a police report or report of the prosecutor or investigative judge containing a write-up of that previously made statement.[46] In one 1949 case the verdict included a note that stated: 'suspect retracted the statement made to police – which he confirmed to the investigative judge – but he gave no reasonable explanation, so that the court does not accept his retraction'.[47] I have not found evidence of concerns that suspects might be compelled to falsely confess, even in a case where a suspect retracted a confession, saying at trial that he had 'been very nervous' when he gave his initial statement confessing to a violent sexual assault.[48] Thus, the testimony of suspects, like that of other 'speaking witnesses', was understood to be reasonably unproblematic; suspects would often confess and confessions were understood to be true.

Conclusion: A culture of testimony?

From the preceding, it is clear that Dutch sexual violence cases in the period 1930–1960 revolved around testimony, despite the presence of a long-established discourse on the supposed unreliability of sex crimes victims and a familiarity with newer German and French literature on the subject of the psychology of witnesses. There is little evidence in the source material that victims' statements were especially distrusted. Neither medical evidence nor other physical evidence played a significant part in the cases that went to trial, contrary to what has been shown to be the case in other forensic cultures. Historian of medicine Victoria Bates, for example, in her practice-focused account of Victorian and Edwardian trials of sexual violence, showed that the attitudes expressed by medical experts in their academic writings also featured in their courtroom testimony. Moreover, the important role granted to such experts in trials ensured that rape myths were a major factor impacting the proceedings and outcome of rape trials in that period.[49]

While Dutch medical practitioners were notable only by their absence from sexual crimes cases, third-party witnesses had a remarkably significant role to play. Their evidence was not questioned. Instead, the weight of distrust was placed squarely on those suspects who denied having been involved. If suspects gave

multiple conflicting statements, the court took the truest statement to be whichever one was most damning. Most cases resulted in a conviction on the basis of the victim's statement and the suspect's confession.

Thus, the results in this chapter paint a different picture than previous histories, which have demonstrated that, in other forensic cultures, victims' testimony was roundly distrusted, while suspects were given the benefit of the doubt, and that medical evidence was both central to sexual crimes cases and detrimental to victims' ability to get justice. It is therefore important to examine the features of Dutch forensic culture in the early and mid-twentieth century that may have given rise to this incongruity with existing studies. Why did neither the long-established discourse on the unreliability of victims in sexual crimes cases, nor the internationally circulated findings of the psychology of witness seem to have made much of an impact on policing and trial practice in Dutch sexual crimes cases between 1930 and 1960? Wolffram has suggested that interest in the psychology of witness may have arisen in Germany and France due to changes to the legal systems in those countries. Though the Dutch legal system was also subject to much change in the period around the turn of the century, the changes were of a different nature. For example, Wolffram has pointed out that, as the German legal system shifted towards the free evaluation of evidence, it faced new witnesses that had previously been excluded.[50] In the Netherlands, by contrast, there was no change in terms of groups eligible to testify, so the evaluation of their evidence did not raise new questions.

Moreover, while the rights of the defence were expanded with the introduction of the new Code of Criminal Procedure in 1926, in practice the understanding of defence attorneys as radical advocates of their clients' interests only very slowly developed in the Netherlands.[51] This, again, provides an interesting contrast with Germany, where, as Wolffram argues, newly professionalising defence attorneys were keen to exploit the various means available to them for championing their client's cause, including presenting scientific findings calling witness testimony into doubt.

Because the Netherlands did not have a jury system, concerns about the ability of lay people to assess the reliability of witnesses were irrelevant. Meanwhile, although the age-old rape myths

and the findings of the newly established field of the psychology of witnesses were widely circulated, professional participants in investigations and trials – including police officers, prosecutors and judges – appear to have had confidence in their own and others' capacity to separate truth from untruth. Given that Dutch investigators seem to have understood victims and witnesses as reliable, or at the very least transparent, it is perhaps not surprising that there was no particular emphasis on the evidence of 'mute witnesses'.

Another issue that deserves consideration is the question of why so many suspects confessed despite having a right to remain silent. Here, too, the understanding of the role of the defence provides an important partial explanation. As mentioned, during the period under examination, Dutch defence attorneys did not yet inhabit their role of providing a one-sided defence of their client. Instead, there was a persisting sense that all the participants in the legal process, including defendants and their attorneys, had a role to play in getting the truth out in the open. This ideology encouraged confessions. More concretely, attorneys were typically not present during police interrogations – the right to have an attorney present on these occasions was finally established through a 2015 decision by the Dutch Supreme Court – and thus could not assist the suspect in a situation that, as we have seen, was crucial for evidence gathering and obtaining convictions. It is also relevant to note that, while suspects had a right to remain silent, between 1937 and 1973 police had no obligation to *inform* suspects of this right.

Thus, the specificities of the Dutch legal system go some way towards explaining why sexual violence cases tried between 1930 and 1960 revolve so strongly around witness testimony. This explanation, however, is incomplete. For one, I have not given consideration to features of the Dutch forensic culture that were external to the legal system, for example the framing of sexual crime in newspapers or evolving views on gender. Moreover, it is important to realise that medical and criminalistics evidence, in the same period, played a much larger role in other types of cases, for example homicides, where the victim was necessarily mute.[52] Thus, while the slice of the legal system that concerned itself with sexual crime in the period 1930–1960 can be described as having a culture of testimony, this term cannot in good conscience be applied to Dutch early and mid-twentieth-century forensic culture as a whole.

Notes

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1 Utrechts Archief, Utrecht (hereafter UA), 1234 Arrondissementsrechtbank Utrecht 1930–1949 (hereafter 1234 ARU), 389/416, 1868 'Processtukken', 1949 and 2041 'Vonnis', 1 November 1949.

2 Ian Burney and Neil Pemberton, *Murder and the Making of English CSI* (Baltimore: Johns Hopkins University Press, 2016), pp. 9–38; for the rising importance of trace evidence in the Netherlands, see Willemijn Ruberg and Nathanje Dijkstra, 'De forensische wetenschap in Nederland (1800–1930): een terreinverkenning', *Studium* 9:3 (2016), pp. 131–137. A parallel claim is made by scholars investigating the aftermath of mass violence events – the Holocaust, in particular – for a much later period; see Taline Garibian's contribution to this volume.

3 Heather Wolffram, 'Forensic Psychology in Historical Perspective', in Oliver Braddick (ed.), *Oxford Research Encyclopedia of Psychology* (Oxford: Oxford University Press, 2020), article published 30 January 2020, accessed 12 February 2020, https://doi.org/10.1093/acrefore/9780190236557.013.639

4 See Heather Wolffram's contribution to this volume and Heather Wolffram, *Forensic Psychology in Germany: Witnessing Crime, 1880–1939* (London: Palgrave Macmillan, 2018), pp. 46, 61; Marcus B. Carrier, 'The Value(s) of Methods: Method Selection in German Forensic Toxicology in the Second Half of the Nineteenth Century', in Ian Burney and Christopher Hamlin (eds), *Global Forensic Cultures. Making Fact and Justice in the Modern Era* (Baltimore: Johns Hopkins University Press, 2019), pp. 40–42.

5 Wolffram, *Forensic Psychology in Germany*, pp. 43–48.

6 Burney and Pemberton, *Murder and the Making of English CSI*, p. 15; see also Raluca Enescu and Leonie Benker, 'The Birth of Criminalistics and the Transition from Lay to Expert Witnesses in German Courts', *Journal on European History of Law* 9:2 (2018), pp. 59–66; Wolffram, *Forensic Psychology*, pp. 44–45; Miloš Vec, *Die Spur des Täters: Methoden der Identifikation in der Kriminalistik (1879–1933)* (Baden-Baden: Nomos, 2002), pp. 12–15.

7 The term was first defined by Martha R. Burt, 'Cultural Myths and Supports for Rape', *Journal of Personality and Social Psychology* 38:2 (1980), pp. 217–230; see also Kimberly A. Lonsway and Louise

F. Fitzgerald, 'Rape Myths: In Review', *Psychology of Women Quarterly* 18:2 (1994), pp. 133–164.

8 Joanna Bourke, *Rape: Sex, Violence, History* (Emeryville, CA: Shoemaker & Hoard, 2007); Willemijn Ruberg, 'Trauma, Body, and Mind: Forensic Medicine in Nineteenth-Century Dutch Rape Cases', *Journal of the History of Sexuality* 22:1 (2013), pp. 94, 96–98; Victoria Bates, 'Forensic Medicine and Female Victimhood in Victorian and Edwardian England', *Past and Present* 245:1 (2019), pp. 117–151; Victoria Bates, *Sexual Forensics in Victorian and Edwardian England. Age, Crime and Consent in the Courts* (London: Palgrave Macmillan, 2016); Ivan Crozier and Gethin Rees, 'Making a Space for Medical Expertise: Medical Knowledge of Sexual Assault and the Construction of Boundaries Between Forensic Medicine and the Law in late Nineteenth-Century England', *Law, Culture and the Humanities* 8:2 (2012), pp. 285–304; Louise A. Jackson, *Child Sexual Abuse in Victorian England* (New York, NY: Routledge, 2000), pp. 71–89.

9 Stephen Robertson, 'Signs, Marks and Private Parts: Doctors, Legal Discourses, and Evidence of Rape in the United States, 1823–1930', *Journal for the History of Sexuality* 8:3 (1998), pp. 345–388; Jackson warned that 'While [medico-legal texts] may be considered as representative of the views of medical specialists, it is unclear to what extent their arguments either influenced or reflected the minds of the vast rank of general practitioners'; Jackson, *Child Sexual Abuse in Victorian England*, p. 72; Willemijn Ruberg, 'Onzekere kennis. De rol van forensische geneeskunde en psychiatrie in Nederlandse verkrachtingszaken (1811–1920)', *Tijdschrift voor Sociale en Economische Geschiedenis* 9:1 (2012), pp. 87–110; Bates, *Sexual Forensics*.

10 Articles 338–344 of the *Wetboek van Strafvordering* (Code of Criminal Procedure) deal with evidence at trial.

11 For examples from the nineteenth century, see Ruberg, 'Trauma, Body, and Mind', pp. 94–97. Twentieth-century examples include A. I. Oerlemans, *Beknopte opsporingsleer* (Velp: J.A. Reeskink, 1939), p. 104; W. E. T. M. van der Does de Willebois, *De nasporing van het strafbaar feit: een leidraad voor ambtenaren en beambten van justitie en politie* (Heusden: L.J. Veermans, 1903), p. 228; H. F. Roll, *Leerboek der gerechtelijke geneeskunde, IIIde deel ('s-Gravenhage*: Algemeene Landsdrukkerij, 1912), pp. 368, 404; Henri van der Hoeven, *Psychiatrie: Een handleiding voor juristen en maatschappelijk werkers, deel III* (Rotterdam: W. L. & J. Brusse's Uitgeversmaatschappij, 1936), p. 37; G. C. Bolton, *Een rechterlijke*

dwaling? Medisch-forensische beschouwingen over eene belangrijke strafzaak (The Hague: G. Naeff, 1928), pp. 182–206. These concerns conformed with more general notions of women as duplicitous and impacted investigations other than those into sexual violence, including civil suits about disputed paternity; see Alison Adam's contribution to this volume.

12 Van der Does de Willebois, *De nasporing*, pp. 228–229. All quoted text from primary source material has been translated from Dutch by the author.

13 *Ibid*., p. 22; Bolton, *Een rechterlijke dwaling?*, p. 183. Roll, *Gerechtelijke geneeskunde*, p. 368; Van Oerlemans, *Opsporingsleer*, p. 104.

14 'Regels omtrent het getuigenbewijs en de betrouwbaarheid van getuigen', *Weekblad van het Regt* 8210 (17 May 1905), p. 4; the source of the eighteen rules reprinted here was William Stern, 'Leitsätze über die Bedeutung der Aussagepsychologie für das gerichtliche Verfahren', *Beiträge zur Psychologie der Aussage* 2:2 (1904), p. 73; For a discussion of this text, see Wolffram, *Forensic Psychology in Germany*, pp. 74–77.

15 See Ruberg and Dijkstra, 'Forensische wetenschap in Nederland'.

16 Exceptions are H. E. L. Vos, 'Bijdrage tot de psychologie van het getuigenis van schoolkinderen: analyse der uitspraken over een door hen aangehoord verhaal' (PhD thesis, University of Amsterdam, 1909) and Dirk Johannes Beck, 'Over suggestie. Een proefondervindelijke studie' (PhD thesis, University of Groningen, 1917).

17 S. J. M. Geuns, 'Het psychiatrisch psychologisch element in de strafrechtspraak' (Verslag van de bijeenkomst op 6 April 1935 te Amsterdam, Psychiatrisch-Juridisch Gezelschap), p. 5, https://resolver.kb.nl/resolve?urn=MMUBVU05:000000315:pdf

18 See Sibo van Ruller and Sjoerd Faber, *Afdoening van strafzaken in Nederland sinds 1813. Ontwikkelingen in wetgeving, beleid en praktijk* (Amsterdam: VU Uitgeverij, 1995).

19 I counted a total of 1,547 sexual violence cases listed in the Utrecht prosecutors' register in the period 1960–1969. UA, 1348 Arrondissementsrechtbank Utrecht 1950–1979 (hereafter 1348 ARU) 4682–742.

20 It is important to acknowledge that there is no data available about the number of sexual crimes that failed to reach the prosecutor's desk. Writing in the 1970s, feminist jurist and journalist Jeanne Doomen noted:

> according to the law the police is obliged to draw up a police report [*process-verbaal*] about every reported crime. In practice, this does

> not always happen, especially if they expect the prosecutor won't proceed with a prosecution anyway. In many police departments there is a kind of internal policy in which only the strongest cases are sent to the prosecutor's office. A sympathetic prosecutor, in this way, does not even get the chance to present a less strong (that is, less stereotypical) rape to a judge.

Jeanne Doomen, *Heb je soms aanleiding gegeven? Handleiding voor slachtoffers van verkrachting bij de confrontatie met politie en justitie* (Amsterdam: Feministische Uitgeverij Sara, 1978), p. 20.

21 UA, 1234 ARU 1930–1949, 457, 95 'Processtukken', 1939.
22 UA, 1234 ARU, 151, 504 'Processtukken', 1937.
23 UA, 1348 ARU, 1168, 1629 'Vonnis', 18 September 1953.
24 UA, 1234 ARU, 559, 2078 'Vonnis', 4 November 1949.
25 UA, 1234 ARU, 468, 1693 'Vonnis', 24 September 1940; the case decided in UA, 1234 ARU, 559, 2197 'Vonnis', 17 December 1949 proceeded in a similar way.
26 For example in UA, 1234 ARU, 468, 1687 'Vonnis', 24 September 1940; UA, 1234 ARU, 465, 822 'Vonnis', 14 May 1940; and UA, 1234 ARU, 176, 1261 'Processtukken', 1938.
27 UA, 1348 ARU, 1236, 279 'Verdict', 12 February 1959.
28 UA, 1234 ARU, 176, 1261 'Processtukken', 1938.
29 UA, 1234 ARU, 209, 705 'Processtukken', 1940.
30 UA, 1348 ARU, 1147, 482 'Verdict', 4 March 1952.
31 UA, 1348 ARU, 135, 1459 'Procesdossier', 1959.
32 Psychiatrists were commonly asked to draw up a report about the suspect's mental state: in at least 87 out of 162 cases in my sample.
33 UA, 1348 ARU, 130, 389 'Procesdossier', 1952.
34 Lien van Nie, *Recherche zedenpolitie: Ervaringen van een vrouwelijke rechercheur bij de kinder- en zedenpolitie* (Amsterdam: A. J. G. Strengholt, 1964), p. 134.
35 UA, 1234 ARU, 65, 284 'Processtukken', 1932.
36 UA, 1234 ARU, 384, 1459 'Processtukken', 1949.
37 UA, 1234 ARU, 195, 959 'Processtukken', 1939.
38 Van Nie, *Recherche zedenpolitie*, p. 134.
39 Klaas Groen, *Kamer 13: Hallo hier de zedenpolitie!* (The Hague: Daamen N.V., 1960), p. 117.
40 Van Nie, *Recherche zedenpolitie*, p. 131.
41 Groen, *Kamer 13*, p. 117.
42 It is, of course, remarkable that the victims in this sample are very young overall; all except three are under the age of twenty. Additionally, in the period 1960–1969 far fewer cases involving adult victims reached the prosecutor, who, moreover, appears to have been

somewhat quicker to dismiss these cases than the ones involving children. These findings may indicate that older victims were less trusted than children, that older people were less likely to become victims, that they were less likely to report the crime to police, or that evidence gathering was for some reason more problematic when the victim was an adult.

43 Groen, *Kamer 13*, p. 117.

44 Van Nie, *Recherche zedenpolitie*, p. 138.

45 UA, 1234 ARU, 149, 319, 'Processtukken', 1937.

46 This was the case, for example, in UA, 1234 ARU, 549, 1824 'Vonnis', 19 October 1948; UA, 1234 ARU, 555, 1211 'Vonnis', 28 June 1949; UA, 1234 ARU, 559, 2111 'Vonnis', 8 November 1949; UA, 1348 ARU, 1237, 452 'Verdict', 13 March 1959.

47 UA, 1234 ARU, 559, 2111 'Vonnis', 8 November 1949.

48 UA, 1234 ARU, 549, 1824 'Vonnis', 19 October 1948. This points to a problem that is addressed by Sara Serrano Martínez in her contribution to this volume; it may well be the case that some of the suspects in this sample confessed under duress. While I have no indication that corrupt practices were widespread, the court's insouciant handling of retracted confessions does at least seem to be a cause for concern.

49 Bates, 'Forensic Medicine and Female Victimhood'; other researchers have also demonstrated that in England and Scotland medical practitioners were very often involved in rape investigations; Jackson, *Child Sexual Abuse in Victorian England*, pp. 71–89.

50 Wolffram, 'Forensic Psychology in Historical Perspective'; see also Wolffram's contribution to this volume.

51 Patrick P. J. van der Meij, 'De driehoeksverhouding in het strafrechtelijk vooronderzoek: Een onverminderde zoektocht naar evenwicht in de rolverdeling tussen de rechter-commissaris, de officier van justitie en de verdediging' (PhD thesis, Leiden University, 2010), pp. 116–119, 141, 146.

52 Thus, it seems relevant that Pemberton and Burney are specifically concerned with murder cases. Burney and Pemberton, *Murder and the Making of English CSI*.