

'The limits of the justice system: Coping with Homeland security in today's society'

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INTRODUCTION

Mr. Chairman, ladies and gentlemen for me it is a special honor and a great pleasure to speak at the annual conference of the SIPR. My name is Wynsen Faber, I am a sociologist and former chief-superintendent of the Dutch police. I left the policeforce in 1993 to start a research and consultancy firm. I am still its director. Since last year I am a parttime lecturer on financial and economical crime at the Police Academy of the Netherlands.

SUMMARY

Referring to the title of this contribution, I would like to give you a brief summary of its core. The main statement of my presentation is this. By the development of modus operandi and the fact that perpetrators in todays society are increasingly working from outside the country, the effectiveness of the justice system is under pressure. Therefore we have to look for other means to influence crime and offenders, such as the use of the capabilities and possibilities of the private sector; national and international. The potential outside the criminal justice system to detect crime and to intervene in it are huge. It is still not easy for justice partners to get used to that even now privacy-problems are mostly technically solved. The crisis can perhaps help to remove the remaining psychological barriers that hinder the exploration of alternative sources voor detection and intervention of crime.

THE OUTLINE OF MY SPEECH

My contribution consists of three main parts followed by conclusions. At first we will examine the limits of the judicial system to cope with security. After that the challenge is pointed out of increasing effectiveness of the system and why that challenge is both logical and inevitable according to some characteristics of society. At the end of that second part the method of Hypothesis Directed Intervention (shortened as HDI) will be introduced that explores the possibilities of every imaginable party that can contribute to society's safety. Third I will explain why it appears to be so difficult for judicial partners to leave or enlarge the notions of the traditional justice-system and to adopt methods like HDI.

With the justice system or judicial chain I mean the process or chain from the moment a crime is reported to the police till the implementation of final punishment.

The findings of these contribution are based on seven mostly long-range studies that have taken place over a ten year period from 1999-2010.

THE LIMITS OF THE JUDICIAL CHAIN TO COPE WITH SECURITY ISSUES

The justice system has to deal with various restrictions affecting its effectiveness. I will mention only two of them respectively based on the development of insecurity in the society, and on a development in the chain itself.

The limits of influencing crime from a national point of view

You all know what the impact is of technological developments and mobility on the nature and extent of crime. Traveling, physical or virtual, is no longer restricted to a happy few. Besides people also goods and money travel easily from one corner of the world to another. In line with this, crime is largely transnational. By perpetrators from other countries who come to the Netherlands and Scotland, but also by perpetrators who remain at a safe distance far away from their targets. The principle of territoriality provides little guidance as an offender in Moscow is served by an offender in China that provides him credit card information that has been stolen from cardholders from 50 countries, with which he next does all kind of purchases. The effectiveness of national chains is under pressure. Just at a time when the need for new concepts in response to these developments appear, less money is available.

Case files lack richness of information

Another limitation is caused by the efficiency-orientation of the justice system. The average case description or crime-file in the Netherlands contains little to no information on how the suspect has organized, planned and executed the crime. Knowledge on these subjects is limited, because the report only described the crime it tries to prove. This is perfectly understandable, because to prove a single case it is unnecessary and inefficient to investigate all leads. But not completely investigating all leads does result in a loss of background information. A second and closely related problem is that when an offender has committed 30 occasions of crime, 27 of them are not investigated and only mentioned in the case-description. From the point of view of evidence and punishment, details are irrelevant, but for the sake of knowledge building, these 27 other cases could form a source of interesting and possibly ground breaking perspectives.

THE CHALLENGE

Then the challenge. On the EPIC-conference of last June Professor Martin Innes pointed out never to waste a crisis. I fully agree with him. Budget cuts may stimulate the exploration of new ways to prevent or fight crime. Two characteristics of today's society can be very useful to increase the level of safety and the effectiveness of parties that can contribute to that. Even with reduction of costs of the justice system.

At first: the way society controls itself

The nature and volume of crime in the Netherlands is the result of decennia of action and interaction for which there was less coordinated direction. Such a society apparently is controlled as she came to be: the sum of uncontrolled action and interaction that together lead to a certain level of well-being. These are often so intertwined that cause and effect are no longer distinguishable. Interventions from the criminal judicial chain merge in the daily process of interaction. Their specific contribution to 'control' cannot be traced, but their influence is disputed, like that of many others. From the notion that many problems have no single cause and that therefore no single solution exists, the success of the chain is more and more dependent on simultaneously instead of sequentially implemented measures. Most of them by others.

My assumption is that the function of justice and policing is distributed over society. In current society there is no institution or party that can singlehandedly determine the course of action, even if they pretend they can. To maintain the state of 'control', the penalizing task is no longer a concern of just the Police and public prosecution office. This task is distributed over many public and private parties with their particular inventory of penalties. In accordance with the creation of the assembly of financial-economical crime, its repulsion should also follow a more functional approach. I do not claim that the end justifies the means, but want to point out that adopting crime cases through the criminal judicial chain is only one, and often not even the most efficient or effective, approach. Society contains a wide range of hidden intervention methods that can be used to improve or maintain the quality of that society in terms of security.

Take the challenge: Hypothesis Directed Intervention

How to take the challenge in nowadays complex world? With the help of the characteristics of society the HDI method is designed. HDI stands for Hypothesis Directed Intervention and is still experimental. It aims to combat crime better at lower costs. The private sector plays a leading role in this. The methodology consists of 13 steps. Five of them relate to the detection of crime and its perpetrators and the other eight on intervention. HDI is now partly applied to phishing, internetrelated childporn en advanced fee fraud.

The application of HDI results in four groups or models of hypothesis on respectively:

- modus operandi and the relationship to the modus operandi of other offences
- roles that are necessary to carry out the modus operandi
- underlying causes of the studied form of crime and their effect, and
- measures which may link to these causes and their impact.

The development of these hypotheses is a process of out-of-the-box thinking based on case studies and meetings of professionals from both the public and the private sector. Let me mention an example of a partial hypothesis related to child por. The following makes a red flag: Single men over 30 years and living from their childhood at the same residence as one or both parents and taht have their IP address hidden.

If hypotheses are formed they will be operationalized using two questions. The first one is:

What data sources can theoretically be used to test these hypotheses? (regardless of where those resources are located), and the second one: What range of resources can be used to influence the form of crime and how can that be mobilised. After that testing and intervention takes place using these resources. But data exchange between different public and private sources is obviously not straightforward. As part of HDI is therefore a mathematical solution developed (it is named Galloper) by which hypotheses can be tested on a variety of sources without violation of privacy.

By the application of HDI the chain is less burdened and crime is also better controlled.

PSYCHOLOGICAL BARRIERS: WILL THE JUSTICE SYSTEM WASTE THE CRISIS OR TAKE THE CHALLENGE?

OK, so far the challenge, but the main question is if the cuts of budget really will pave the way for a variety of new possibilities to combat crime more effectively? I doubt and distinguish three mainly psychological blockades which are responsible for keeping members of the judicial chain to maintain their traditional ideas even when budgets or cut.

At first: The chain is the hall-mark to provide meaning

Activities that are part of a chain are given meaning because they form a part of a series of sequential processing steps. The result of onse step gives meaning to the total. That is what gives the good feeling of being significant part of a chain. Other links depend on you.

The chain dilutes responsibilities

The questions presented to the chain of enforcement, and government in general, are complex. Many undertaking leads to an evaluation by for example the press that concludes it was useless and did not supply the desired results. Separate actors feel insecure about their added value to the ever increasing complexity of reality. They feel incapable to deal with the complex problems they face. Moreover, they prefer not being held individually accountable for the provided solution, since there is a reasonable chance that they will not come out unimpaired. From thier point of view It is preferred to share responsibility with others. Sharing makes the organization and executives less vulnerable to criticism. If everyone in the chain has participated, no one is guilty.

The chain as justification of disappointing performance

In addition to the preceding cause, the chain is a useful instrument to divert the own lack of performance to others. "We from the public prosecution would love to press charges, but if the Police do not supply the right information, what can I do?" Influenced by continuous pressure for performance the alibi-producing part of the chain has increased in the Netherlands. Note that there is another side to the medal here. Failure is blamed on the chain, success attributed to the own efforts.

CONCLUSION

I have come to my conclusion. This presentation started with a brief summary. I stated that to be effective the judicial system must focus much more on the opportunities of the private sector or other public organisations. The characteristics of today's society or inviting to that approach. Today's society in all its facets is the result of many influences over time by many actors. Keeping it safe or making it even safer asks the same way as society arose. The Judicial chain should facilitate that. The limitations of the judicial system exists in their own perceptions. Perhaps that budget cuts will help to renew this, but there are some hick ups to expect. Opportunities for increasing the effectiveness of joint action against insecurity lie in cooperation between the judicial system and the outside world. In addressing activities to, and in exchanging information with, civil or public parties with more appropriate additional sanctions available to them than the chain can provide.

The side effect of these approach is at least as favorable and consists of increasing the level of professionalism of both the judicial and not-judicial partners. The crisis helps so we do not longer cling to the dogma of the feasibility of safe society by a few judicial chain partners. That this is not only wishfull thinking I have tried to illustrate with the example of the Hypothesis Directed Intervention methodology.

Ladies and gentlemen, thank you very much for your attention. Mr. Chairman, Professor Five, thank you very much for inviting me to speak at your annual conference. I see that as a form of scientific connection between peers and their shared curiosity about influencing society for the sake of increased safety and effectiveness of action against it. Even or just in this time of crisis in today's society. Thank you very much.