THE EXAMINATION IN COURT ACCORDING TO CRIMINAL PROCEDURE 2001 (STRAFVORDERING 2001), PARTLY AS A REFLECTION ON TRIAL BY JURY

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I. INTRODUCTION

In the first collection of the large research project Criminal Procedure 2001 (Strafvordering 2001), following an introduction in which the characteristics of the roles of the participants in Dutch criminal proceedings are described, the starting points are already formulated which should be met by qualitatively adequate and consistent and clearly regulated criminal proceedings.² It should not come as a surprise that the examination in court is given such a prominent place in the research report. This is, after all, the public part of the trial, where (in principle) all participants can put forward their points of view, interests and arguments before the authority called upon to decide on the various decisions to be taken. This does not only concern the so-called preliminary questions and main questions, laid down in Sections 348 and 350 CCP, but also numerous interim decisions, for example on the summoning of (further) witnesses and experts or the ex-officio decision of the court to summon the absent suspect, if necessary with a warrant to secure his or her presence. Further, it can also concern consultations between the Judge and the parties on the direction of the case, the so-called pre-trial review (to be dealt with further below), in other words: the (time) schedule of the hearing. It is pre-eminently this public stage in which criminal law acquires a ‘face’, and the dramatic and adversarial nature of the trial as a battle becomes visible to both the participants themselves and the public. The social importance of this can hardly be underestimated. This is not affected by the fact that

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the preliminary investigation is often ‘decisive’ and in the Dutch system, the file seems to take a more central place than the input of the parties and the judge him or herself at the hearing. Compared to a top-rate jury trial according to the North American model, the Dutch trial can simply be called dull. This in itself is not a disqualification from the viewpoint of an objective and sincere pursuit of the truth. What one should realise, however, is that in comparing the – naturally – sharply accentuated American ‘TV reality’ with the Dutch day-to-day reality is that many American jury trials can also be very dull and not satisfy the ideal image of an O.J. Simpson trial. The interesting thing in this comparison, although it can be put in perspective, is that in essence a difference cannot be denied, entailing that in an American jury trial, much more is left to the parties than in a Dutch trial. In this context, it is striking that precisely now, one of the starting points of Criminal Procedure 2001 is that more should be left to the initiative of the parties to the trial. What I should like to undertake here is to give an impetus to the evaluation of the merits of the Dutch trial as evaluated by the Criminal Procedure 2001 research project and the results of this project itself in relation to this important part of the trial, mirrored by the jury trial including other models in which lay participation plays a part.

2. THE JURY AS A MIRROR

It requires some explanation, of course, why precisely trial by jury or – more broadly speaking – trials with lay participation are brought up in an evaluating discussion of the results of Criminal Procedure 2001. The researchers concerned did not, after all, want to introduce it under any circumstances, and one wonders if the theme lay participation is meaningful in this context. I am nevertheless of the opinion that this is the case. The circumstance alone that the Netherlands is an exception, certainly in Europe (together with Luxembourg) to the rule that laymen play a part in criminal procedure in one way or another makes one curious about the

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3 See also the contribution by Van der Landen to this collection.