

## Terrorism and information sharing between the intelligence and law enforcement communities in the US and the Netherlands: emergency criminal law?

Prof. dr. John A.E. Vervaele, Professor of Economic and Financial Criminal Law, Director of the G.J. Wiarda Institute and Vice-Dean.

### Abstract

Intelligence sharing between intelligence and police services with a view to preventing and combating terrorism is high on the political agenda in Brussels and The Hague. The Netherlands is one of the few countries in the EU where this topic is subject of political scrutiny. It also led to controversial case law. Recently, Justice Minister Donner has used an expedited procedure to submit a legislative proposal concerning shielded witnesses. This Bill raises many questions, that concern, *amongst others*, the discretion of intelligence services to determine which information will be provided for use in criminal proceedings and the relationship between this discretionary power and the connected legal duty of secrecy on the one hand and the rights of the defence to test and question that information on the other. Furthermore, questions raise regarding the evidentiary quality of this information.

The proposed rules also influence the legitimacy of criminal law and the position of the criminal courts. What effect does the paradigm of security-orientated thinking have on the historical connection between criminal law and the rule of law? This issue is also addressed in this article.

### Theses

1. The use of intelligence in criminal proceedings touches upon the foundations of a fair trial and can therefore not be reduced to a detail of criminal prosecution.
2. The courts should be able to exercise full judicial control over both the legality and the reliability of intelligence. A presumption of legality or reliability is unacceptable.
3. The anti-terrorism legislation currently in force in the US offers more legal protection than the Donner Bill.

### Keywords

criminal procedure, fair trial, rule of law, terrorism, intelligence, evidence

[full text](#)   [back](#)

ISSN 1871-515X