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The Lawyer in the Dutch Interrogation Room: Influence on Police and Suspect

WILLEM-JAN VERHOEVEN[1,*] and LONNEKE STEVENS[2]

[1]*Erasmus University Rotterdam, the Netherlands*
[2]*VU University Amsterdam, the Netherlands*

Abstract

In many European countries, providing a suspect in custody with legal aid before the first police interrogation is a heavily debated issue. In this paper, we report on an exploratory study on the use of coercion by the police and the use of the right to silence by suspects in 70 Dutch homicide cases and their relation to prior consultation and presence of a lawyer. Analysis of the data indicates that there is a relation between the presence of a lawyer in the interrogation room and the way in which police interrogators use coercion. To gain insight into whether the police use coercion and how this is achieved, we looked at the extent to which the interrogators make use of certain interrogation techniques and how the interrogation techniques are used to exert coercion. We found that legal advice from a lawyer before and during the interrogation corresponds with suspects more often using their right to silence. It also appears that the police are inclined to use 'hard coercion' when confronted with a silent suspect. The research thus raises the question as to whether the presence of a lawyer is an adequate way to prevent false confessions. Copyright © 2012 John Wiley & Sons, Ltd.

Key words: interrogation techniques; right to silence; legal aid; presence of a lawyer; prior consultation

INTRODUCTION

In 2008, the European Court of Human Rights ruled (in the so-called Salduz case) that Article 6 of the European Convention of Human Rights 'will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation'.[1] Because of the Court's ruling, various European countries have been struggling with changing their procedures regarding arrest and interrogation. For example, Belgium, France, and the Netherlands did not have provisions that granted the suspect consultation with

*Correspondence to: Willem-Jan Verhoeven, Erasmus University Rotterdam, PO Box 1738, 3000 DR, Rotterdam, the Netherlands.
E-mail: verhoeven@law.eur.nl
[1]ECtHR 27 November 2008, appl. no. 36391/02, *Salduz v Turkey*, par. 52.

his[2] lawyer prior to the first police interrogation nor was the suspect allowed to have his lawyer present during the interrogation (Fijnaut, 1998, 2001). The Court's ruling thus potentially has a great impact on early police investigation, and the tendency is to interpret the right to assistance in a limited way. The Netherlands, for example, initially only recognised a right to prior consultation.[3] Currently, the legislature is developing a restricted right to assistance during interrogation.

The justification of the right to assistance lies in two very fundamental aspects of the right to a fair trial. The Court considers the lawyer to be an import safeguard of the suspect's privilege against self-incrimination (his right to remain silent). His assistance is also meant to protect against (abusive) coercion by the police. Those principles or justifications both serve a fair trial and the prevention of miscarriages of justice. In this paper, it is these justifications that we address from an empirical point of view. The legal point of view holds that the lawyer protects the suspect's right to silence and keeps the police from using coercion. We consider these two assumptions, and our question therefore is twofold: (1) To what extent is assistance of a lawyer prior and during the first police interrogations related to police coercion? and (2) To what extent is assistance of a lawyer prior and during the first police interrogations related to suspects' use of the right to silence? We were able to research these questions because of an experiment commissioned by the Dutch Ministry of Justice in the aftermath of the so-called 'Schiedam Park Murder' in which a man was wrongly convicted partly because he falsely confessed. During two years (2008–2010), suspects of murder/manslaughter cases in the regions of Amsterdam and Rotterdam were allowed to consult a lawyer prior to police interrogation and to have a lawyer present during the interrogation. The experiment aimed to gain insight into the possible consequences for police interrogations and its participants of prior consultation and presence of a lawyer during interrogation. The goal of the evaluation study was to give a detailed description of the actual practice of this temporary programme as well as its possible outcomes. The report on the experiment was published in 2010 (Stevens & Verhoeven, 2010). This paper is based on data that were gathered in the experiment.

With regard to the relation between lawyers and a suspect's silence, research has been carried out in the UK in the context of Police and Criminal Evidence Act (PACE). Results, however, are rather inconclusive and the studies and their methods very diverse (Brown, 1997). More coherent research is available on police interrogation practices. The mainly American and English studies have been of help for ours. We therefore first discuss the literature with regard to police interrogation techniques in the Literature of police interrogation section. In this section, we also discuss the Dutch 'Questioning Manual' and compare what the Dutch police are taught with the knowledge of the mentioned empirical research. From the Research Design section to the Analyses section, we explain the design, the samples, the measures, and the methods used to analyse the research questions. Special attention is given to our operationalisation of coercion because this is new in Dutch research. We then present our descriptive results in The Dutch Interrogation Practice section in which we relate our empirical findings on interrogation tactics to what investigators are being taught. In Presence of a Lawyer and Prior Consultation in Relation to Police and Suspect Behaviour section, we discuss the analyses that provide a preliminary answer to our research questions. We conclude by discussing the relevance of our empirical findings for the development of criminal proceedings in European countries in the light of the European Court's ruling.

[2]Because of readability, we refer to suspects, police, or lawyers as 'him'.
[3]See the Supreme Court decision of 30 June 2009, Dutch Law Reports 2009, 349.

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LITERATURE ON POLICE INTERROGATION

Within criminal investigation, the suspect himself is a valuable source of information. The questioning of the suspect by the police is therefore an important part of this investigation. Suspects, however, do not always communicate easily. The police therefore use various techniques to get a suspect to talk (Bull & Soukara, 2010; Pearse & Gudjonsson, 1999; Soukara, Bull, Vrij, Turner, & Cherryman, 2009). Some of these techniques are referred to as coercion, which is usually associated with unlawful questioning or with intensive pressure to trick a suspect into confession (Skolnick & Leo, 1992). We deliberately define coercion more broadly. To our mind, all influencing techniques can be placed on a continuum of coercion. Within the context of questioning, a suspect will always be put under some pressure, or in other words, be subject to some kind of coercion. This coercion can be very intense and unpleasant, but it can also be subtle and soft. Starting from this broad definition, the question we address here is which kind of coercion or influence may involve a risk that the suspect will falsely confess. Because the aim of criminal procedures is that the truth is found, questioning should encourage the suspect to give reliable information (e.g. Moston & Fisher, 2007). We are not concerned with coercion that is considered to be unlawful. Although the kind of coercion that leads to unreliable statements can be unlawful as well—think of torture—lawfulness and reliability need to be clearly distinguished. A confession can be lawful but still false; a confession can be truthful but unlawful nevertheless.

The reasons for false confessions are manifold. The use of coercion, however, is an important factor (Gudjonsson, 2003). Risky techniques are usually distinguished into three categories (Gudjonsson, 2003; Kassin, 2008; Kassin, Drizin, Grisso, Leo, & Redlich, 2010; Kassin & Gudjonsson, 2004; Ofshe & Leo, 1997). First is the way in which questions are formulated: open, closed, or leading. Second is maximisation (confrontation with non-existing evidence, exaggerating evidence, threatening with consequences of being silent, and intimidation), and third is minimisation and manipulation (the minimising of the crime and its consequences, appeal to conscience, and reassuring). The information on these techniques mainly comes from English and American researches. A typical example of tricking suspects into a confession is the American Reid technique (Inbau, Reid, Buckley, & Jayne, 2004). The kind of questioning that is associated with risky coercive techniques such as the Reid technique is usually labelled as 'interrogation'. This as opposed to another type of questioning that is called 'interviewing'. Interviewing is supposed to involve less coercion and open questions and does not so much focus on attaining a confession but rather on finding the truth (e.g. Dixon, 2010; Hartwig, Granhag, & Vrij, 2005). Although we do not have much empirical information on Dutch questioning practice (Beune, 2009; Vrij, 2010), we do know that what Dutch police are taught resembles to a large extent the ethical interviewing technique as proposed by Williamson (1993, 1994). The standard technique, the 'Standaard Verhoorstrategie (SVS)' or 'Standard Questioning Strategy' (described in the 'Questioning Manual' by van Amelsvoort, Rispens, & Grolman, 2010), uses available information to encircle the suspect with tactical evidence. The suspect is asked open questions to gather as much information as possible. The suspect is then confronted with answers that do not match the available information. Important to this technique is a good relationship with the suspect on the basis of the idea that a suspect communicates (confesses) more easily in an open environment (Holmberg & Christianson, 2002; Moston & Engelberg, 1993; Williamson, 1993). Manipulation—the Manual mentions nagging, tricks, deceit, threats, and making promises (van Amelsvoort *et al*., 2010)—is disapproved of (and unlawful as well: Gerritsen, 2000), and in that sense,

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the SVS differs from the Reid method. However, the SVS, just like the Reid method, starts from the idea that the guilt of the suspect can and should be assessed beforehand. Like the Reid method, the SVS amounts to a tactic by which the suspect is influenced to talk (Stevens & Verhoeven, 2011; Vrij, 2010). The SVS thus seems to have characteristics of questioning in the sense of 'interrogation' as well as characteristics of questioning in the meaning of 'interviewing'. Because our focus in this paper is on coercion, an aspect of questioning more prominent in interrogation, we will further only use the latter term.

RESEARCH DESIGN

The data used in this paper were gathered in a two-year study[4] evaluating the 'experiment with presence of lawyer during first police interrogation'.[5] During this experiment, suspects in homicide cases in the police regions 'Amsterdam–Amstelland' and 'Rotterdam–Rijnmond' temporarily gained the right to consult a lawyer prior to the first interrogation, and the lawyer was allowed in the interrogation room. The police regions 'Haaglanden' and 'Midden en West Brabant', where there were no changes in legal aid for suspects in homicide cases, were used as control regions. With the use of such a (quasi) experimental design, the effects of prior consultation and presence of a lawyer can be determined by comparing differences in coercion and use of right to silence between pre-test and post-test observations in the experimental and control regions (Bennet, 1996; Campbell & Stanley, 1966; Cook & Campbell, 1979; Farrington, Gottfredson, Sherman, & Welsh, 2002).

We aimed to use this experimental design to evaluate the effects of the changes in legal aid. However, during the course of the experiment, we ran into difficulties undermining the experimental design. In the end, there were not enough observations for the pre-test, the assignment of police regions into experimental and control group resulted in too few observations in the control regions,[6] the intervention was not administered during all interrogations in the experimental regions, and finally the Salduz jurisprudence changed the legal reality during the course of the experiment. These limitations made it difficult to determine the effects of prior consultation and presence of a lawyer through comparing differences in coercion and use of right to silence between pre-test and post-test observations in the experimental and control regions. We ended up using a correlational design in which we estimated the relation of prior consultation and presence of a lawyer with measures of coercion and the right to silence, controlling for additional characteristics of the interrogation, suspect, and case. As a result, we cannot imply causality of the relations we analyse, and conclusions about the influence of prior consultation and presence of a lawyer should be made cautiously.

Thus, the strength of this study lies not in evaluating the effects of the changes in legal aid but in the combination of qualitative and quantitative methods.[7] We observed the interrogations from the control room and additionally interviewed the interrogators and lawyers who participated in the observed interrogations. This resulted in rich data about the dynamics of interrogations and how they change when suspects are given legal aid during the first phases

[4]This study was funded by the Research and Documentation Centre of the Dutch Ministry of Justice (WODC).
[5]It is important to note that we explicitly differentiate between the evaluation study and the practical experiment with the temporary programme. In the remainder of this paper, we refer to the evaluation study as 'this study' and to the practical experiment as 'the experiment'.
[6]Most homicide cases occur in Amsterdam–Amstelland and Rotterdam–Rijnmond (Smit & Nieuwbeerta, 2007).
[7]Using multiple methods to study one research problem is called triangulation, and it is suggested that researchers can get a clearer picture of the social reality by studying it from different perspectives (Brewer & Hunter, 1989; Sechrest & Sidani, 1995).

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of criminal investigation. This is valuable given that Campbell and Russo (1999) state that 'qualitative knowing' about social settings can be essential for understanding patterns in quantitative data. So, by using the different data sources, we were able to provide a deeper interpretation of the results we found: 'the world behind the numbers'. In this respect, we focus not primarily on determining the effects of prior consultation and presence of a lawyer but we also aim to explain why certain effects should or should not be expected (Pawson, 2006; Pawson & Tilley, 1997).

SAMPLES

Interrogations

As described earlier, interrogations were observed from the control room. This was carried out qualitatively by making a chronological report of what happened during the interrogation. Additionally, we also used a structured observation schema—specifically designed for this study—for coding interrogation techniques and characteristics of interrogations, suspects, and cases in a quantitative manner. In total, we observed 168 interrogations of 94 suspects in 70 homicide cases of which 69 in 'Amsterdam–Amstelland', 80 in 'Rotterdam–Rijnmond', 13 in 'Haaglanden', and six in 'Midden en West Brabant'. We were not able to determine how many interrogations in homicide cases occurred in total during the course of the experiment, which means that the population is not known. We do know that we missed interrogations because of organisational reasons. We also know that in several cases, we were not informed by the police that interrogations were planned. The extent to which this has led to selection bias is hard to assess.

Respondents

People who were actually confronted with the changes in legal aid were interviewed to get information on how they experienced the changes and what their impressions were of the influence of the lawyer on the interrogations during the first phases of the criminal investigation. In total, we interviewed 28 criminal investigators and 12 lawyers during the different phases of the study. At the start of the study (before the changes in legal aid were implemented), we interviewed eight criminal investigators and five lawyers. These interviews served to gain a general picture of how the people involved thought about the changes in legal aid and what their expectation were concerning the influence of the lawyer. During the second phase of the study (after the changes were implemented), we interviewed 13 interrogators, seven leaders of investigation teams, and seven lawyers. These respondents were selected on the basis of occurrences and special circumstances during the observed interrogations. For example, lawyers were asked for the reasons why they interrupted the interrogation or why they did not.[8] Interrogators and team leaders were asked for the reasons why they chose to react to the interruption by the lawyer the way they did. For the interviews, we used a list of themes, and transcripts were computed of all interviews.

[8]It is important to note that the rules of the experiment explicitly stated that lawyers were not allowed to interrupt the interrogation unless the interrogators used excessive coercion.

DOI: 10.1002/jip

Table 1. Ranking interrogation techniques according to the extent they were used ($n = 168$)

		Not (%)	Very little (%)	Little (%)	Somewhat (%)	Much (%)	Very much (%)
P3	Building trust	28.6	18.5	22.0	18.5	10.1	2.4
P4	Confrontation with (circumstantial) evidence	48.2	12.5	12.5	15.5	8.3	3.0
P9	Moral appeal	50.6	13.1	12.5	11.9	6.0	6.0
P5	Confrontation with statements of witnesses or other suspects	55.4	8.9	14.9	8.9	7.7	4.2
P7	Leading questioning	56.0	15.5	11.3	8.3	6.0	3.0
P15	Stress consequences of non-cooperation (right to silence)	62.5	11.9	7.1	13.1	4.2	1.2
P10	Show empathy	62.5	14.9	8.9	7.7	4.8	1.2
P12	Challenge inconsistencies in suspect's statement	67.3	13.7	8.9	4.8	3.6	1.8
P14	Show impatience, frustration, or anger	71.4	10.7	4.8	7.1	4.2	1.8
P6	Present hypothetical scenarios	77.4	10.7	7.7	3.6	0.6	0.0
P13	Interrupt suspect's statement	81.5	7.1	5.4	4.8	1.2	0.0
P11	Give moral justifications	92.9	3.6	1.8	1.8	0.0	0.0
P8	Make promises	95.8	3.0	0.6	0.6	0.0	0.0
P16	Physical intimidation	95.8	3.0	0.6	0.6	0.0	0.0

MEASURES

Four dimensions of coercion: sympathising, confrontation, manipulation, and intimidation

Coercion is an abstract socio-psychological concept consisting of multiple dimensions that cannot be measured straightforwardly (Pearse & Gudjonsson, 1999). The dimensions of coercion are retrieved from an explanatory factor analysis (EFA) of interrogation techniques. The goal is to determine whether the interrogation techniques (measured variables) can be reduced to one or multiple factors (Kline, 1999), here 'dimensions of coercion'. We selected 14 techniques that are commonly used during the interrogation of suspects in severe criminal cases (Baldwin, 1993; Leo, 1996; Kassin *et al*., 2007; King & Snook, 2009). Table 1 presents the 14 interrogation techniques ordered according to the extent in which they were used in the 168 interrogations. A striking result is that most of the selected 14 interrogation techniques are never used. Only 'building trust (71.4%)', 'confrontation with (circumstantial) evidence (51.8%)', and 'moral appeal (49.4%)' are used in about half or more of the 168 interrogations. All other techniques are used in less than half of the 168 interrogations. Furthermore, when techniques are being used in only few interrogations, they are being used intensively.

The results from the EFA are presented in Table 2. Because the measured variables are skewed and ordinal, we chose to determine the model fit on the basis of the weighted least squares estimation using Mplus (Muthén & Muthén, 1998–2007). From the root mean square error of approximation (0.077) follows that a distinction between four factors results in the highest model fit.[9] Values ranging from 0.05 and 0.08 are viewed as acceptable model fit (Browne &

[9]Table 1 shows that three techniques were hardly ever used: 'give moral justifications', 'make promises', and 'physical intimidation' are therefore left out of the EFA.

DOI: 10.1002/jip

Table 2. Results of exploratory factor analysis of interrogation techniques and descriptive statistics of measures of coercion ($n = 168$)

	Promax rotated factor loadings			
	Sympathising	Confrontation	Manipulation	Intimidation
Building trust (P3)	**0.846**	0.012	−0.088	0.066
Show empathy (P10)	**0.705**	0.122	0.066	0.065
Confrontation with (circumstantial) evidence (P4)	−0.198	**0.384**	0.107	0.266
Challenge inconsistencies in suspect's statement (P12)	0.111	**0.618**	0.308	−0.179
Interrupt suspect's statement (P13)	0.064	**0.881**	−0.034	−0.104
Show impatience, frustration, or anger (P14)	−0.025	**0.570**	−0.026	0.333
Confrontation with statements of witnesses or other suspects (P5)	−0.004	0.133	**0.614**	0.052
Present hypothetical scenarios (P6)	−0.056	0.019	**0.735**	−0.035
Leading questioning (P7)	−0.048	−0.075	**0.422**	0.254
Moral appeal (P9)	0.149	−0.211	0.221	**0.800**
Stress consequences of non-cooperation (right to silence) (P15)	−0.024	0.075	−0.150	**0.737**
	Reliability analysis			
Cronbach's alpha	0.67	0.65	0.54	0.58

Root mean square error of approximation (RMSEA) is 0.077.

Cudeck, 1992). Looking at the factor loadings, 'building trust' and 'show empathy' together form the dimension *sympathising*. We used a factor loading of 0.350 as the threshold.[10] The second dimension of coercion *intimidation* is measured by 'moral appeal' and 'stress consequences of non-cooperation (right to silence)'. *Manipulation* is the third dimension, which is measured by 'confrontation with statements of witnesses or other suspects',[11] 'present hypothetical scenarios', and 'leading questioning'. Finally, 'confrontation with (circumstantial) evidence', 'challenge inconsistencies in suspects statement', 'interrupt suspect's statement', and 'show impatience, frustration, or anger' form the fourth dimension *confrontation*.

It is important to note that these results should be interpreted as tentative and exploratory. The analyses of the internal reliability of the scales show Cronbach's alphas varying between 0.67 for *sympathising* and 0.54 for *manipulation*. These are low given that, as a rule of thumb, alphas between 0.70 and 0.80 are usually advised. However, because of the small number of techniques for each dimension and the diversity of techniques, a lower threshold can be used (Kline, 1999).

[10]The choice of this threshold is arbitrary. For advisory rules of thumb, we refer to Stevens (2002).

[11]It seems counterintuitive that 'confrontation with (circumstantial) evidence' and 'confrontation with statements of witnesses or other suspects' are not part of the same dimension of coercion, after all both have a confrontational component. The distinction is being made based on the assumed difference in the extent to which evidence or statements can be manipulated or taken out of context. Although (circumstantial) evidence can be taken out of context to a certain degree as well as being manipulated, we believe that statements of witnesses or other suspects can be manipulated more easily.

DOI: 10.1002/jip

Furthermore, the quality of the EFA depends on a well-founded selection of measured variables, the number of measured variable for each factor, the size of the sample, and the choice of method (Fabrigar, Wegener, MacCallum, & Strahan, 1999). The EFA in this study is based on 14 interrogation techniques. Given the four dimensions of coercion that were found, the number of measured variable for each factor is low.[12] Additionally, the sample of 168 interrogations is small for an EFA.[13] To some extent, we can overcome these problems because the weighted least squares estimation procedure for determining the model fit we used is also advised in case of a low ratio between measured variables and obtained factors and a relatively small sample size.[14] The descriptive statistics of the dimensions of coercion and further interpretation will be discussed in the results section.

Inter-observer reliability and observer bias

The validity of the previously described measures of coercion depends to a great extent on the reliability of the human observer. The reliability of observational data depends on the degree to which observations can be generalised from a given set of ratings to ratings other observers might make. The data for this study were collected by several observers who most probably had different ways of observing, interpreting, and rating the interrogations. In most cases, the extent to which these ratings diverge can be estimated using inter-observer reliability analysis (Hartmann, 1977). In order to be able to do so, the interrogations should have been rated by the various combinations of observer couples. In that case, the inter-observer differences could be assessed by comparing the ratings of the same interrogations between observers. This was not possible given the time-consuming methods of collecting the data in case of this study. However, we did attempt to reduce inter-observer differences in several ways.

From the start of observing the interrogations, the interpretation and rating of interrogation techniques were discussed on a regular basis with all observers. In this way, we were able to identify and reduce differences in interpretation and rating at an early stage. In addition, observers related the coding of the interrogation techniques with the applicable extracts in the qualitative reports.[15] Finally, all observation reports and schemas were checked by one researcher to assess whether the ratings of the interrogation techniques depicted the actual picture of the goings-on during the interrogation derived from the qualitative report. In case there were obvious differences between the quantitative ratings and the qualitative report, the researcher discussed these with the observer in question, and the ratings were adjusted when needed. In the end, all ratings and reports have been discussed by two researchers, which can be viewed as an alternative to an inter-observer reliability analysis. With the process described earlier, we used several characteristics to reduce differences between observers comparable with other studies (Baldwin, 1993; Pearse & Gudjonsson, 1999).

Observer bias is another possible threat to the reliability of the data (Leo, 1996). The interrogators, lawyers, and suspects were informed that an observer was present in the

[12]Methodologists advise a minimum of three to four measured variables for each factor (Velicer & Fava, 1998).
[13]Under ideal circumstances (at least three measured variables for each factor and a mean of the communalities of at least 0.70), a sample size of 100 is sufficient. In case these conditions are less favourable, a sample size of 200 or even 800 could be desirable (Fabrigar *et al*., 1999).
[14]See the Mplus discussion forum: http://www.statmodel.com/discussion/messages/8/3865.html?1248795141 (accessed on 9 April 2010).
[15]See Box 1 for an example. The P's in bold indicate the observer's interpretation that an interrogation technique is being used.

DOI: 10.1002/jip

control room, which may have influenced their behaviour. It is not inconceivable, for example, that interrogators used less (hard) coercion or that suspects asked more questions about the interrogation process. It is difficult to assess to what extent the presence of the observers influenced the behaviour of the participants. On the basis of our experience, we believe that the presence of observers did not result in a substantial bias. The observers experienced little suspicion towards them and most criminal investigators were not reluctant to openly share the necessary background information on the cases. Besides, results show that more problematic techniques (such as leading questioning and stress consequences of non-cooperation) were used; and in interviews, interrogators mentioned that, whilst interrogating, they were mainly focused on the case, not on the presence of an observer.

Characteristics of interrogations

The changes in legal aid concern consultation prior to the first interrogation and the presence of a lawyer during the interrogation. Table 3 shows that in 75% of the 168 interrogations, suspects consulted with their legal advisor prior to the interrogation. Furthermore, in 70% of the interrogations, the lawyer was present in the interrogation room. Additional analyses showed that some suspects received no legal aid, some

Table 3. Descriptive statistics for dependent and independent variables in the multilevel regression analyses (valid *n*: 164 interrogations, 92 suspects, and 69 cases)

	n	Min	Max	Mean	SD
Interrogation					
Sympathising ($k=2$)	168	0.00	5.00	1.26	1.17
Confrontation ($k=4$)	168	0.00	4.00	0.76	0.87
Manipulation ($k=3$)	168	0.00	4.00	0.86	0.94
Intimidation ($k=2$)	168	0.00	5.00	1.08	1.23
Prior consultation	168	0.00	1.00	0.75	—
Lawyer present	168	0.00	1.00	0.70	—
Use right to silence	168	0.00	1.00	0.35	—
First interrogation	168	0.00	1.00	0.48	—
Second interrogation	168	0.00	1.00	0.36	—
Subsequent interrogations	168	0.00	1.00	0.16	—
Duration of interrogation[a]	166	0.12	10.72	2.32	1.70
Timing[b]	168	14.00	589.00	324.28	159.99
Suspect					
Age	93	16.00	76.00	33.92	12.80
Native	94	0.00	1.00	0.32	—
Case					
Domestic crime	70	0.00	1.00	0.36	—
Organised crime	70	0.00	1.00	0.36	—
Other crimes	70	0.00	1.00	0.28	—
Police region					
Amsterdam–Amstelland	70	0.00	1.00	0.43	—
Rotterdam–Rijnmond	70	0.00	1.00	0.41	—
Haaglanden en Brabant (M/W)	70	0.00	1.00	0.16	—

SD, standard deviation.
[a]Duration of the interrogation was measured in hours corrected for the total amount of intermissions.
[b]Number of days passed since start of the experiment multiplied with 100.

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received full legal aid in terms of prior consultation and presence of their legal advisor, some only consulted with their legal advisor prior to the interrogation, and some only had their legal advisor present in the interrogation room.[16] Given the extent to which the presence of the lawyer has been debated, it is remarkable that no lawyer was present in 30% of the interrogations. The interviews revealed that this was mostly due to organisational difficulties. Lawyers have to be available and need time to travel to the police stations. Although they had two hours, for some, it was simply not possible to make it in time.

To assess the extent to which changes in suspects' behaviour are related to legal aid, we looked at the legal positions suspects can choose from. On the basis of our observations, we distinguished four legal positions: (1) use the right to silence; (2) make statements on personal matters; (3) make statements on the offence; and (4) confess. For our explanatory analyses, we operationalised suspect's legal position as a dichotomous variable indicating interrogations in which the suspect used the right to silence '1' and interrogations in which the suspect makes a statement or confesses '0'. Table 3 shows that suspects use the right to silence in 35% of the interrogations. This is remarkable because other research shows that most suspects (varying from 44% up to 67% between countries) claim to have committed the offence about which they are interrogated (Gudjonsson & Pearse, 2011).[17] Possible explanations for our low confession rates are that only the interrogation during the first three days were observed—and suspects could still confess during a later stage of the criminal investigation—and only homicide cases were analysed. Furthermore, Moston, Stephenson, and Williamson showed a positive relation between the strength of evidence and confessions (1992). It is possible that because we have information only about the first stage of investigation that suspects were not able to assess the amount and strength of evidence against them at that time and therefore more often used their right to silence.

To take general differences between interrogations into account, we used three other characteristics as control variables, namely sequence of interrogations, duration of the interrogation, and timing of the interrogation. Three dummy variables were used to operationalise the sequence of interrogations. Table 3 shows that 48% concerns first interrogations, 36% concerns second interrogations, and 16% concerns subsequent interrogations.[18] Duration of the interrogation is an important control because lengthy interrogations can be seen as a form of coercion; and the longer the interrogation, the more chance of using coercion (Drizin & Leo, 2004; Kassin & Blair, 2005). Duration was measured in hours corrected for the total amount of intermissions. Table 3 shows an average length of two and a half hours. The shortest interrogation lasted only 12 minutes, whereas the longest interrogation took more than 10 hours (note that this is corrected for intermissions). Finally, we controlled for the timing of the interrogation. It could be argued that participants had to get used to the changes and the presence of the observers and therefore behaved differently in the beginning and returned to their 'normal' behaviour during the course of the experiment. We operationalised this by calculating the number of days passed since the start of the experiment at the day the interrogation took place.

[16]Using these categories for further analyses was not possible given the small number of observations in each category.
[17]Dutch figures display that on average, 80% of the suspects confess fully. With regard to violent crimes, 40% fully confesses, and 29% confesses partially (Jacobs, 2004).
[18]Because in six cases suspects were interrogated on more than three occasions, we coded the third and later interrogations as one category 'subsequent interrogations'.

DOI: 10.1002/jip

Demographics of suspects

Suspects' age and ethnicity are also used as control variables. Table 3 shows that the youngest suspect was 16 years, the oldest 76 years, and, on average, suspects were about 34 years of age. Suspects' ethnicity was operationalised as a dichotomous variable indicating a native suspect '1' versus other ethnicities '0'. Table 3 shows that 32% of the 94 suspects are native.

Characteristics of criminal cases

Finally, we also took into account characteristics of the cases. First, we distinguished between the context of the homicide cases by categorising them as 'domestic crime', 'organised crime', and 'other crimes'. An example of domestic crime is a row between family members getting out of hand. Assassinations and drugs transactions gone wrong are examples of organised crime. Fights during a night out that end fatally are examples of other crimes. The 70 cases are almost equally divided over the categories. The second characteristic is the police region in which the homicide was investigated. Table 3 shows that most cases were investigated in the two experimental regions: 43% in 'Amsterdam–Amstelland' and 41% in 'Rotterdam–Rijnmond'. Sixteen per cent of the cases were investigated in 'Haaglanden' and 'Midden en West Brabant' combined.

ANALYSES

Multilevel regression analysis

Multilevel regression analyses were used to estimate the extent to which prior consultation and presence of a lawyer relate to coercion and the use of the right to silence. This way, we were able to control for additional characteristics of the interrogations, suspects, and cases.[19] Multilevel models were required because the characteristics are measured on different levels of analysis (as can be seen in Table 3) resulting in data with a 'hierarchical' or 'nested' structure (Hox, 2002; Raudenbush & Bryk, 2002; Snijders & Bosker, 1999). Three levels of analysis were distinguished: interrogations (Level 1) are nested within suspects (Level 2) who are nested within criminal cases (Level 3).

We used the most straightforward variant of multilevel regression analysis: the 'random' intercept model with fixed effects. This model is best suited for the purpose of our analyses because relations of variables on the group level are tested and because the sample size of the groups on Levels 2 and 3 is small (Snijders & Bosker, 1999). The random intercept takes into account the variation in average coercion between the groups (here, suspects and criminal cases). In other words, it is possible that interrogators, on average, use more coercion for one suspect than for the other. However, the regression coefficients between dependent and independent variables are treated to be constant within the groups ('fixed'). This way, we assume, for example, that the relation between duration of the interrogation and coercion is the same for each suspect. Using four separate linear multilevel regression models, we analyse the relation between the dimensions of coercion and presence of a lawyer. Two logistic

[19]Obviously, characteristics of interrogators may also be responsible for differences in coercion and even for differences in the use of the right to silence between interrogations. We decided not to extend the models with characteristics of interrogators, which would result in fewer observations (due to missing values) and a more complex nested structure to be analysed (cross-classified data structures). Additional tentative analyses did show that in this sample, no significant relations were found of age, gender, years of service for the force, and years of experience as a criminal investigator with the dependent variables.

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multilevel models are used to analyse the relation between the use of the right to silence and prior consultation on the one hand and presence of a lawyer on the other.[20]

There are some limitations that have to be taken into account concerning the multilevel regression analyses. First, the group sizes at both Levels 2 and 3 are small. On average, there are 1.78 interrogations per suspect (164 interrogations divided by 92 suspects) and 1.33 suspects per case (92 suspects divided by 69 cases), both with a minimum of 1 and a maximum of 5. As a result, the variance components for Levels 2 and 3 will be overestimated. The random effects are less probably to be significant, which could lead to wrongful conclusions that there are no differences in dependent variables between suspects or cases. For this reason, we do not report the random effects in Tables 4 and 5. However, it is known that using ordinary least squares (OLS) or logistic regression analysis on hierarchical data may result in wrongful conclusions because effects analysed at the individual level are unjustly attributed to the group level. All multilevel analyses were also analysed via OLS and logistic regression analyses. The results were comparable with the exception that the standard errors of some Level 2 and Level 3 variables seemed to be overestimated, leading to significant coefficients in the OLS and logistic regression analyses contrary to the multilevel analyses. On the basis of these findings and the findings from other studies that fixed effects and standard errors can be estimated using multilevel models in case of small group sizes (Clarke, 2008), we preferred the multilevel regression analyses over the OLS and logistic regression analyses.

Qualitative analysis

The observation reports and the interview transcripts were analysed via a commonly used qualitative framework. Going from the research questions, we searched for outstanding themes and patterns in the data following the usual analytical phases: (1) compiling; (2) disassembling; (3) reassembling; (4) interpreting; and (5) concluding (Yin, 2011). The data were compiled into a formal database and then disassembled, which involved a formal coding procedure breaking down the text in relevant smaller segments also called initial coding (Charmaz, 2006).[21] Reassembling the data can be described as grouping the initial summaries in a more general or explanatory way, which involved pattern coding (Miles & Huberman, 1994). The interpretation of the themes and patterns ultimately resulted in a concluding statement on the experiences and opinions of the parties involved in relation to the results on the added value of prior consultation and the presence of a lawyer.

THE DUTCH INTERROGATION PRACTICE

Interrogation techniques

To get some insight into the Dutch practice of interrogation and how it might change when the lawyer is present, we will first describe our empirical findings and relate them to what interrogators are being taught. In Table 1, we can conclude that the empirical findings partly correspond with what is prescribed in the Questioning Manual (see the second section). 'Building trust', 'confrontation with (circumstantial) evidence', and 'confrontation with statements of witnesses or other suspects' are most often used. In addition, interrogators less often stress the consequences of non-cooperation. Still, this interrogation technique is relatively often used. Two risky techniques (i.e. 'make promises' and 'physical intimidation')

[20]All multilevel models were estimated using MLwiN 2.19 (Rasbash, Charlton, Browne, Healy, & Cameron, 2009).
[21]This was done using ATLAS.ti Scientific Software Development GmbH.

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were almost never used. Additionally, suspects' statements were interrupted in relatively few interrogations, which is also in line with our expectations.

However, the empirical findings also contradict our assumptions about the extent to which interrogation techniques are used. Against expectations, 'show empathy' and 'challenge inconsistencies in suspect's statement' are not part of the most frequently used techniques (Soukara *et al*., 2009; Bull & Soukara, 2010). Two techniques, 'moral appeal' and 'leading questioning', that would not be expected within the ethical interviewing the SVS supports are relatively often used. Additionally, 'show impatience, frustration, or anger' and 'present hypothetical scenarios'—two risky techniques—are used in a quarter of the interrogations.

Coercion

The EFA discussed in the measures section showed that the 14 interrogation techniques can be clustered into four dimensions of coercion. From the descriptive statistics presented in Table 3 follows that, on average, *sympathising* is used most often. This dimension of coercion can be described as building rapport and trust between interrogators and suspects and making the suspects feel at ease. In this way, interrogators attempt to create an open and positive atmosphere in which suspects are invited to give truthful information on the criminal offence (e.g. Holmberg & Christianson, 2002; Milne & Bull, 1999; Williamson, 1993). Examples we encountered are small talk about driving a fork-lift oneself during adolescence or comforting the suspect that crying is nothing to be ashamed of (for a more elaborated list of descriptions, we refer to Appendix A). At first glance, this does not seem to be a form of coercion, but it is used in a way to purposely influence suspects' willingness to give a statement. In this sense, *sympathising* could be interpreted as 'soft' coercion or 'minimization' (Kassin *et al*., 2010).

On average, *intimidation* is also relatively often used. The essence of this dimension is 'to increase anxiety and despair associated with denial relative to confession' (Kassin *et al*., 2010: 6). With the intention to retrieve a confession, the interrogator attempts to change a suspect's attitude by stressing or maximising the aspects of the offence and the emotions involved with confessing (Eagle & Chaiken, 1993; Kassin & McNall, 1991).[22] Family, spouses, and children are used during this process, as is the case when an interrogator stresses the consequences of the apprehension for suspect's family: 'Your wife didn't sleep for one moment! You don't give it a moment's thought!' or 'Who will read to the child now?'. Other examples are related to the use of the right to silence: 'It is strange that you won't give a statement, not even about your place of birth! I believe you need to keep your credibility. You are losing it this way.' and 'Experience teaches that it is not to your advantage when you keep quiet. The judge has no time to talk to you. You can tell it now so the judge can read it.'

On average, the dimension *manipulation* is relatively less used. This dimension can be described as tricking a suspect into a 'voluntary' confession. It should be noted that the cases we labelled as *manipulation* are different from the trickery and deceit used by American interrogators (Feld, 2006; Kassin *et al*., 2007; Meyer & Reppucci, 2007). We found that suspects were presented with hypothetical situations in an attempt to elicit a statement such as an interrogator presenting the suspect with the scenario that he did not mean to kill the victim with the screw driver but only meant to stop him with it.

Finally, *confrontation* is the least used dimension of coercion. In essence, this dimension of coercion closely resembles the encircling tactics of the SVS advocated in the Manual. Suspects are confronted or encircled with tactical evidence such as fingerprints, trails of blood, or witness statements. In light of the SVS, which advises encircling the suspect with evidence, the result

[22]This is considered to be the theoretical foundation of the so-called Reid technique (Memon, Vrij, & Bull, 2003).

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that *confrontation* is the least used of the four dimensions of coercion is a remarkable finding. This might suggest that the criminal cases in which we observed the interrogations had little tactical evidence to encircle suspects with. Another explanation might be that interrogators find it difficult to use this technique or just do not choose to use it (Dando & Bull, 2011).

PRESENCE OF A LAWYER AND PRIOR CONSULTATION IN RELATION TO POLICE AND SUSPECT BEHAVIOUR

Influence on police

Coercion in relation to presence of a lawyer

Is the presence of a lawyer related to the way in which the police use coercion during an interrogation and if so, to what extent? The results from the multilevel regression analyses reported in Table 4 provide a preliminary answer to this question. In the section on the research design, we described the importance of controlling for additional characteristics. The deviances show that adding the control variables significantly increases the model fit for each analysis (at 5% for *manipulation* and at 1% for *sympathising*, *confrontation*, and *intimidation*) and is therefore the preferred model. The results only show a significant relation between *intimidation* and the presence of a lawyer. When a lawyer is present during the interrogation, suspects are less intimidated by interrogators than when the lawyer is not present. Although we controlled for characteristics of the interrogation, the suspect and the case, these analyses do not allow statements on the causality of the relation. However, the picture we have from observing the interrogations and information from the interviews do suggest a causal link. The general conclusion from the interviews with criminal investigators is that they do not expect any changes in interrogation tactics because of the presence of a lawyer. The actual practice seems to be rather more subtle. At least in the beginning of the experiment, interrogators acted differently.

> 'No, they are more careful, not scared, but you just notice they are more tense. Once more, this has also to do with the cameras but absolutely with the lawyer being there as well. During a later stage, when suspects are in custody and there is no lawyer present, only cameras running, they act differently.' (*Team leader*)

and

> 'Some report a bit of stage fright and after that they don't even notice him sitting there.' *(Team leader)*

However, lawyers seem to be certain that their presence will affect the behaviour of the interrogators.

> 'And I think it is just very reasonable to think that interrogators are taking it just somewhat slower when you are present. I just think that is reasonable to assume. Occasionally clients tell me this as well, like if you are not there, things are a bit more intense.' (*Lawyer*)

These differences in expectations about the effect of the presence of a lawyer between criminal investigators and lawyers are not surprising. Still, they do suggest that the presence of a lawyer changes interrogations tactics, at least in the beginning.

No significant relations were found between *sympathising*, *confrontation*, *and manipulation*, and the presence of a lawyer. This does not mean that interrogators do not use these forms of coercion, as can be seen from the positive and significant constants in Table 4. Interrogators use these forms of coercion whether or not the lawyer being present.

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Table 4. Multilevel linear regression analysis of modes of coercion on characteristics of interrogations, suspects, and cases and police departments

	Sympathising		Confrontation		Manipulation		Intimidation	
Fixed effects	Coefficient	SE	Coefficient	SE	Coefficient	SE	Coefficient	SE
Constant	1.373*	0.335	1.280*	0.253	0.920*	0.280	1.662*	0.326
Interrogation								
Lawyer present	0.071	0.242	−0.074	0.184	−0.237	0.203	−0.829*	0.243
Use of right to silence	−0.033	0.200	−0.022	0.153	−0.055	0.171	1.098*	0.208
First interrogation	-Ref-		-Ref-		-Ref-		-Ref-	
Second interrogation	0.082	0.153	0.104	0.120	0.103	0.147	0.036	0.189
Subsequent interrogations	−0.188	0.231	0.377#	0.180	0.294	0.217	0.031	0.272
Duration of interrogation[ab]	0.259*	0.054	0.113*	0.041	0.140*	0.048	0.183*	0.059
Timing[ac]	0.067	0.066	0.106#	0.050	−0.094†	0.056	−0.025	0.062
Suspect								
Age[a]	−0.001	0.009	−0.003	0.007	−0.001	0.008	0.000	0.009
Native	−0.389†	0.231	−0.160	0.174	0.255	0.188	−0.289	0.212
Case								
Domestic crime	-Ref-		-Ref-		-Ref-		-Ref-	
Organised crime	−0.297	0.281	−0.295	0.213	0.190	0.234	−0.195	0.259
Other crimes	−0.133	0.290	−0.544#	0.218	−0.357	0.237	−0.494†	0.271
Police region								
Amsterdam–Amstelland	-Ref-		-Ref-		-Ref-		-Ref-	
Rotterdam–Rijnmond	0.240	0.231	−0.437#	0.176	0.088	0.196	0.070	0.212
Haaglanden en Brabant (M/W)	0.542	0.396	0.141	0.300	−0.578†	0.330	−0.964#	0.383
Deviance (IGLS): −2*loglikelihood								
Model with only lawyer present	496.043		400.177		438.048		524.251	
Model with all variables	456.549		368.932		415.848		483.569	

Number of interrogations is 164, number of suspects is 92, and number of cases is 69. Coefficients are unstandardised regression coefficients. Residual iterated generalized least squares estimation (RIGLS) procedure was used.

[a]Centered around the grand mean.

[b]Duration of the interrogation was measured in hours corrected for the total amount of intermissions.

[c]Number of days passed since start of the experiment multiplied with 100.

†$p < 0.10$; #$p < 0.05$; *$p < 0.01$ (two-tailed).

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Overall, the results on the relation between coercion and the presence of a lawyer show some resemblance with the results from England and Wales (Brown, 1997). During the first years after PACE, several persuasive interrogation techniques were used less frequently compared with pre-PACE, and recent studies show that the most problematic techniques (according to several psychologists) almost never occur. This corresponds to our finding that Dutch criminal investigators on the one hand were less intimidating when lawyers were present. However, we found that they had to get used to the new situation and quickly went about as usual.

Exercising the right to silence

When it comes to the use of coercion, not only the relation with the lawyer being present during the interrogation is of interest but also the relation with the use of the right to silence. After all, the primary goal of using coercion is to persuade a silent suspect into making a statement (e.g. Gudjonsson, 2003; Inbau *et al*., 2004; Williamson, Milne, & Savage, 2009). And the goal of the Dutch experiment was to evaluate whether the presence of a lawyer relates to the police's use of excessive coercion during this process. At least theoretically, the use of coercion, the use of the right to silence, and the presence of a lawyer seem to be related. Table 4 shows that there is a positive and significant relation between *intimidation* and exercising the right to silence. This suggests that interrogators use intimidation tactics in an attempt to persuade a silent suspect to talk. An illustration of how interrogators operate is presented in Box 1.

BOX 1: EXAMPLE OF INTIMIDATION DURING INTERROGATION

Interrogator 1:	'Now we know who the victim is. (Interrogator writes down the name of the victim and shows it to the suspect). Can you read who this is?'
Suspect:	'I won't say anything.'
Interrogator 1:	'What should we tell his mother? She has a lot of questions. But you won't answer them **[P9]**. Can you imagine how frustrating that is?'
Suspect:	(Smiles).
Interrogator 1:	'How would the family react when they hear you are laughing?' **[P9]**
Interrogator 1:	'Can you say his name?'
Suspect:	'I won't say anything.'
Interrogator 1:	'[Name of suspect]. Put yourself in the position of the family of [Name victim]. The autopsy on [Name victim] is today. We have to tell his mother that he will be cut open today. We can only say that the person who knows more about this: Laughs, bites his nails, wobbles his legs, and furthermore makes use of his right to silence. **[P9]** Would you like to say something? Express regrets? This will work in your advantage in court. **[P15]** But I don't see it and I don't hear it.'
Interrogator 1:	'[Name witness] told us that you are successful in theatre. That won't work with the line: "I won't say anything". The victim will never speak again. And why? Why did this happen? We won't rule out the fact that you might have spoken with other people. Do you want them to decide over you? You don't want that. Tomorrow you will be brought before the prosecutor. Does it make sense to interrogate you before that?'
Interrogator 2:	'A mother has the right to know what happened to her child. Can you imagine how it feels to outlive your own child? The relation between mother and child is the strongest there is.' **[P9]**

This finding is not in line with what interrogators are taught. Instead of intimidation tactics, interrogators are advised to confront and encircle suspects with available evidence in an attempt

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to make them realise that being silent is futile (van Amelsvoort *et al*., 2010). Interestingly enough, as we discussed earlier, the presence of a lawyer seems to keep the use of intimidating tactics in check.

Influence on suspect: use of right to silence in relation to prior consultation and presence of a lawyer

Earlier, we discussed that in 35% of the interrogations, suspects remained silent. This poses the question about the extent in which lawyers influence suspect's choice to exercise the right to silence. We analysed this relation in a quantitative manner, controlling for characteristics of interrogations, suspects, and cases. The results of these analyses are reported in Table 5. The Wald tests for fixed effects show that adding the control variables to the models significantly (at 5%) increases the model fit compared with the models with only prior consultation or lawyer being present. The complete models are therefore the preferred ones to assess the association of prior consultation and lawyer being present during the interrogation. Model 1 shows a significant and positive relation between the use of the right to silence and prior consultation. Model 2 shows a significant and positive relation between the use of the right to silence and the presence of a lawyer. This means that the chances of a suspect using his right to silence are larger during interrogations with prior consultation and during interrogations with a lawyer being present compared with interrogations without prior consultation and without the presence of a lawyer.[23] Furthermore, the effect sizes also suggest that the relation between the use of the right to silence and prior consultation is stronger than the relation between the use of the right to silence and the presence of a lawyer.

The relation between prior consultation and presence of a lawyer and suspects' behaviour needs some nuance. There are several causes in a variety of possible combinations that make a suspect give a statement or confess. The presented models control for some of these causes. However, an English study shows that the strength of a case (available evidence) may be an important factor when it comes to statements and confessions (Brown, 1997). Although we were not able to control for detailed case-related characteristics, information from our observations and interviews seems to suggest that there is a relation between the use of the right to silence and prior consultation and presence of a lawyer. This can be derived from the fact that some suspects had a note from their legal advisor with them during the interrogation with the word 'silence' written on it. It is also suggested by the following interrogation fragment:

Interrogator:	'For both of us it is no surprise who it is, isn't it? I mean, these are police pictures, so there is also a name related to them.'
Suspect:	(No response).
Interrogator:	'Spoken with your counsellor this morning, didn't you? Why so cross all of a sudden while yesterday we could have a normal conversation? For sure, you will have your reasons.'

[23]It is important to note that Model 1 compares interrogations with prior consultation with interrogations without prior consultation, not taking into account whether the lawyer was present. Model 2 compares interrogations with a lawyer with interrogations without a lawyer, not taking into account prior consultation. There are actually four different categories: both prior consultation and the presence of a lawyer, only prior consultation, only the presence of a lawyer, and neither. Unfortunately, we have too few interrogations to compare these categories. As a result, the effects may be underestimated. However, because of the small number of cases in the categories only prior consultation, only the presence of a lawyer, and neither, we believe that this bias will be small.

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Table 5. Multilevel logistic regression analysis of the use of the right to silence on characteristics of interrogations, suspects, and cases and police departments

	Model 1: prior consultation		Model 2: lawyer present	
Fixed effects	Coefficient	SE	Coefficient	SE
Constant	−5.071*	1.296	−4.543*	1.266
Interrogation				
Prior consultation	2.202*	0.847	—	—
Lawyer present	—	—	1.683#	0.847
Sympathising[a]	−0.170	0.272	−0.169	0.258
Confrontation[a]	−0.455	0.461	−0.672	0.448
Manipulation[a]	−0.386	0.371	−0.475	0.356
Intimidation[a]	1.031*	0.286	1.224*	0.294
First interrogation	-Ref-		-Ref-	
Second interrogation	1.086†	0.588	0.775	0.553
Subsequent interrogations	1.062	0.751	0.878	0.729
Duration of interrogation[ab]	−0.861*	0.249	−0.885*	0.238
Timing[ac]	−.039	0.196	−0.056	0.194
Suspect				
Age[a]	−0.052†	0.028	−0.042	0.027
Native	−0.372	0.635	−0.339	0.629
Case				
Domestic crime	-Ref-		-Ref-	
Organised crime	1.266	0.849	1.390	0.864
Other crimes	0.924	0.881	1.052	0.887
Police region				
Amsterdam–Amstelland	-Ref-		-Ref-	
Rotterdam–Rijnmond	1.126†	0.666	0.976	0.640
Haaglanden en Brabant (M/W)	1.846	1.184	2.849#	1.429
Wald test fixed effects				
Joint χ^2 test ($df = 14$)	26.480		28.022	

Number of interrogations is 164, number of suspects is 92, and number of cases is 69. Coefficients are unstandardised regression coefficients. Residual iterated generalized least squares estimation (RIGLS) procedure was used.

[a]Centered around the grand mean.

[b]Duration of the interrogation was measured in hours corrected for the total amount of intermissions.

[c]Number of days passed since start of the experiment multiplied with 100.

†$p < 0.10$; #$p < 0.05$; *$p < 0.01$ (two-tailed).

Investigators also point out this relation:

> 'Yes, the lawyer just says I cannot help if you talk and the client just listens, even to the most ordinary questions. The last one didn't even say his name, just right to silence. When you show him a picture of himself he replies with right to silence.' (*Team leader*)

Additionally, lawyers indicate that there is a relation between the advice given by lawyers and the use of the right to silence by suspects, as can be seen in this quote:

> 'Our advice is: exercise your right to silence, and by that we also mean do not answer general questions. If you say at what time you go to work, it may seem harmless, but it can be important to the police.' (*Lawyer*)

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CONCLUSION

Before the Salduz judgement of the European Court of Human Rights, various European countries did not recognise the right to legal assistance prior to or during the first police interrogation. Consequently, the judgement has had an impact on national procedures regarding arrest and interrogation. In this paper, we examine the justification given by the Court. The assumption is that legal assistance serves to safeguard the suspect's right to remain silent and that it protects the suspect from (abusive) coercion by the police. We therefore formulated the following questions: (1) To what extent is assistance of a lawyer prior and during the first police interrogations related to police coercion? and (2) To what extent is assistance of a lawyer prior and during the first police interrogations related to suspects' use of the right to silence? To answer these questions, we analysed data gathered in the Dutch 'experiment with presence of lawyer during first police interrogation'.

We were able to show relations between prior consultation and presence of a lawyer and coercion and the right to use silence and provide a deeper interpretation of these results. However, the causality of these relations cannot be assessed, and our conclusions about the effect of the changes in legal aid must therefore remain tentative. Having stated this, we do think the results form at least the beginning of an answer to the question whether the lawyer influences the behaviour of suspect and police in the context of the interrogation. Generally, it seems that the Dutch police refrain from using hard interrogation tactics in murder/manslaughter cases. Four dimensions of coercion were found—*sympathising*, *intimidation*, *confrontation*, and *manipulation*—but they were not much used. Nevertheless, intimidation tactics that can be categorised as risky maximisation are used relatively often compared with confrontation and manipulation tactics. Furthermore, no significant relations were found between police use of sympathising, confrontation, and manipulation tactics and lawyers being present. The presence of a lawyer, however, does correspond with less use of intimidation tactics by the police. The answer to our first question therefore is that the police may use a risky interrogation tactic less often when a lawyer is present at the interrogation. This means that there seems to be empirical support for the opinion of the European Court with regard to coercion in relation to miscarriages of justice. The presence of a lawyer might prevent the use of the kind of coercion that might lead to false confessions.

The judgement of the European Court also mentions the role of the lawyer in relation to the right to silence of the suspect (Question 2). Our data show that assistance of a lawyer during interrogations corresponds with silent suspects. We found the same with regard to the advice given by the lawyer prior to interrogations. The effect sizes also suggest that the relation between the use of the right to silence and prior consultation is stronger than the relation between the use of the right to silence and the presence of a lawyer. In addition to the relationships between the lawyer and the police, and the lawyer and the suspect, we found a relation between the suspect and the police. The use of intimidating coercion seems to correspond with the silence of the suspect. In our interpretation, this could mean that the police try to overcome the suspect's silence by intimidation. Taking into account all relations, one could argue the following. When suspects are advised by their lawyer prior to police interrogations, they seem to be more probably to remain silent during interrogations. When confronted with suspects unwilling to speak, police interrogators seem to be more likely to use intimidation tactics. The presence of a lawyer during the interrogation might shield suspects from such coercion. In sum, both elements of assistance appear to be related, and it seems advisable that the right to assistance of a lawyer at the early stage of police interrogations is a right that encompasses the assistance prior to interrogation as well as the assistance during interrogation.

DOI: 10.1002/jip

It is important to stress that it is difficult to generalise our results given the fact that only homicide cases in four Dutch police regions were analysed. Generalising to other police regions in the Netherlands, other criminal cases, or other criminal justice systems should be done cautiously. Still, we did find that the interaction during interrogations between criminal investigators, suspects, and lawyers does change when prior consultation and presence of a lawyer are introduced. We believe that this is a relevant finding in the context of extending legal aid in the early stage of criminal investigation. Although these changes are dependent on the criminal justice system and the conditions of the interrogation, our findings could be relevant for countries facing similar changes by the ruling of the European Court as the Netherlands does.

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APPENDIX: CODING FRAMEWORK FOR INTERROGATION TECHNIQUES

Interrogation techniques	Description
Building trust (P3)	Interrogators attempt to keep a genial atmosphere by making jokes and find topics about which suspects perhaps speak more easily. Examples are 'We try to keep it light.' Interrogators also ask whether suspects were able to sleep or smoke. Or, 'Yes, I know. It is not that I have a holier-than-thou attitude.' An interrogator who used to drive a forklift: 'Tearing around a bit.' And, 'I just want to talk to you a bit. Just, starting a little talk.'
Confrontation with (circumstantial) evidence (P4)	This may concern showing photographs, playing or reading fragments from telephone taps or MSN conversations, and discussing blood trails on clothes or walls.
Confrontation with statements of	Interrogators refer to witness statements or statements made by other suspects. For example, 'They say the weapon is yours.' 'People say you did it.' 'You get it that people are pointing at you considerably. Your buddies are

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DOI: 10.1002/jip

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Interrogation techniques	Description
witnesses or other suspects (P5)	grassing on you, aren't they?!' 'Others say that you are involved somehow. We don't conjure it out of mid-air.' 'Your own girlfriend, even your own girlfriend saw the pictures and said it was you.' 'You do get it by now that we spoke with a lot of people who stated all sorts of things.'
Present hypothetical scenarios (P6)	Interrogators present possible ways of how things might have happened, hoping suspects go into it. Examples are 'Suppose it's because you wanted something from the house or talk to someone then we get information about when it possibly happened.' 'Interrogator supposes that he doesn't want to say that the suspect wanted to kill the victim with the screwdriver but that he perhaps only wanted to stop him with it.' 'I don't know if the blood is from the victim, but if so, it's going to be hard.' 'If you are involved I would remain silent indeed, not if you are innocent.'
Leading questioning (P7)	The remarks and questions posed by the interrogator give the impression that the suspect is involved or knows something. Examples are 'Are you afraid to tell it because it is incriminating?' 'You don't like someone. Then it's nice that the problem is solved now, isn't it?' 'Now the girl is dead so problem solved.' 'If you have nothing to do with it, why use your right to silence? You can't give wrong answers, can you?' 'Would the victim be seeing a stranger at midnight?' 'Because of everything, all you have been through, you want to hurt someone too.'
Make promises (P8)	'If you give good information and specifically about who is responsible for what, than we can do something with it.' 'Then something will happen, if your information is true.'
Moral appeal (P9)	Interrogators trifle with suspect's feelings of guilt and his conscience. In most cases, they refer to suspect's parents, spouse, children, or friends. Examples are 'It concerns others as well. You are making it very easy for yourself now. Your mother, your girlfriend, your child. How will it affect them?' 'If you are close to your mother, your mother wouldn't say all these things if her son didn't do anything.' 'Your wife didn't sleep for one moment. You don't give that a moment's thought.' 'Who will read to the child now?'
Show sympathy (P10)	Interrogators trifle with suspects emotions. For example, 'This is only human. We like to see this. You don't have to be ashamed. It is all very "heavy". You can be sad.' 'It's difficult for you, isn't it? You are only making it harder on yourself.'
Give moral justifications (P11)	'I think that it is a mugging gone wrong. This wasn't supposed to happen.'
Challenge inconsistencies in suspect's statement (P12)	This concerns suspects being inconsistent during the interrogation. Interrogators use this in an attempt to corner suspects. Examples are 'First you say you are drunk and that you don't know it anymore because of that. And now you say that you know for sure that you were with [name victim].' 'So, there hasn't been a bed in that room ever? Why do you say it differently every time?' 'You are inconsistent. You want the offender being caught, but you won't cooperate.' 'Ah! So they

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DOI: 10.1002/jip

(Continued)

Interrogation techniques	Description
	did tell you!' 'You have been lying from the beginning. You are not open and you are dishonest. It is about time you start telling the truth.' 'All the time, you adjust your story! What should I believe?'
Interrupt suspect's statement (P13)	Sometimes interrogator and suspect interrupt each other. Furthermore, interrogators don't let suspects finish by interrupting them in several ways: 'Wait, this is important.' 'Yes okay, so nothing special.' 'Clear. We are going to put your story on paper now.' '[. . .], we know all about those financial problems now. I don't think that is the most important part.'
Show impatience, frustration, and anger (P14)	Interrogators raise their voices as well. Examples are I am not dealing with a small child, am I?!' 'At least, you can say why not?!' 'Around 7 pm the interrogator yells out again. . .' '. . .shouts that she and the suspect are not retarded. . .' 'You are here for murder! You are disrespectful and detached! Unbelievable!' Interrogators also show their frustration by sighing repeatedly.
Stress consequences of non-cooperation (P15)	Interrogators often refer to what the judge will think. For instance, 'What will the judge say about this?' 'It is strange that you won't state where you are from, isn't it? Not even where you were born. I think you need to keep your credibility. In this way you will lose it.' 'Experience shows that silence does not work in your favor.' 'The judge doesn't have time to talk to you. You can tell it here so the judge can read it.' 'Because you are silent you don't put any effort into proving your innocence and you don't cooperate in finding the truth.' 'Do you realize that you don't prove your innocence by keeping silent? That you frustrate finding the truth?' 'As a consequence of that I will advise to prolong your stay here.' 'A judge can also watch this footage. What will he think of it?' 'The examining judge also isn't retarded. He will also wonder why you haven't said anything until then.'
Physical intimidation (P16)	This concerns specifically physical movements towards the suspect. Examples are 'The interrogator gets up, takes the photo album, moves towards the suspect, and stands beside him. He opens the album on a page with a picture of the suspect. He raises his voice and points at the picture using a lot of gestures.' 'When the interrogator reconstructs the situation he attempts to persuade the suspect to tell more about what happened. Meanwhile the interrogator walks up and down the interrogation room.'

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