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### In the shadow of the judge

*The involvement of judicial assistants in Dutch district courts*

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To gain a broader understanding of the topic of judicial assistance, particularly the involvement of judicial assistants in the judicial decision-making process, this research approaches the topic from several angles. The core of this research consists of an empirical field study in two Dutch district courts. This chapter focuses on the methodology of this empirical part of the research. Section 2.1 explains the general approach of the fieldwork and discusses some of the challenges related to this approach. Section 2.2 describes how the fieldwork in the two Dutch district courts was conducted. Section 2.3 elaborates on additional research that has been conducted to complement the data from the fieldwork. In addition to the empirical component, the research also contains a comparative component (see chapter 3) and a normative component (see chapter 4). Methodological issues related to the latter two components are discussed in the respective chapters.

### 2.1 THE QUALITATIVE MULTI-METHOD APPROACH AND ITS CHALLENGES

The involvement of judicial assistants in adjudication and its consequences is a complex matter, comprising many facets which are context dependent. Furthermore, this is a topic which is largely unexplored (see also section 1.3). To gain in-depth knowledge on the interaction between judicial assistants and judges and on the manner in which judicial assistance affects adjudication, a qualitative research approach was deemed most appropriate. In qualitative research, understanding a phenomenon is the central goal, and emphasis is placed on seeing the phenomenon through the eyes of the subjects being studied and on paying attention to the social context in which the studied topic exists (Bryman, 2012 p. 399-402). Qualitative research is usually less concerned with testing hypotheses and more concerned with the idea of explaining phenomena from the viewpoint of the research population and deriving theory from the empirical data. This also results in theory and data standing in a close relationship to one another, and the method requires that data collection and data analysis occur simultaneously to some extent (Strauss & Corbin, 1998). The research was conducted over a period of four and a half years. During the research period, data-collection, data-analysis and verification of the data have alternated (see more in section 2.1.5).

In the following section, I elaborate on the methodological issues that played a role in the research, and I explain how these issues were addressed in the research. Sections 2.2 and 2.3 provide more detailed information on the how methodological choices affected the manner in which the research was conducted.

### 2.1.1 *Multi-method approach*

In choosing a research method, I intended to avoid the pitfalls that previous researchers have encountered when conducting related research. In previous qualitative studies on law clerks at the US Supreme Court,<sup>1</sup> the researchers were limited in their methods because of issues of access (no researchers are allowed behind the scenes at the Supreme Court) and confidentiality agreements (law clerks are bound by a Code of Conduct) (Miller, 2014; Ward & Wasby, 2010). Therefore, these researchers primarily employed the methods of conducting surveys and interviews among (mainly former) law clerks. This method has been criticised for presenting a coloured image of the role and influence of law clerks (Miller, 2014; Ward & Wasby, 2010). It is also problematic that the credibility of the statements of the respondents cannot be verified (Ward & Wasby, 2010, p. 129).

I realised that it was important to not only interview judicial assistants but also judges in order to maximise the internal validity of the results. In addition, to avoid being presented with socially desirable responses (see also section 2.1.4), I realised I would have to gain access to the work settings of the judges and assistants to experience the process of judicial decision-making first hand by performing participant observations. The complexity of the decision-making process can never be fully captured in interviews (Beyens & Vanhamme, 2008, p. 353). That is why it is preferable to complement interviews by studying judges and assistants in action and, when possible, conducting interviews based on concrete cases. Hence, a multi-method approach, also referred to as methodological triangulation (Brewer & Hunter, 2006), was used to gain a comprehensive set of data regarding judicial assistance in Dutch district courts. Collecting data using a variety of methods has more validity, as the shortcomings of one method can partly be overcome by the use of other methods (Nielsen, 2010).

### 2.1.2 *Modification of the research approach and research focus during the data collection*

A typical characteristic of qualitative research is that data collection and data analysis affect one another. Such an approach is required to cover largely unexplored phenomena in their full complexities. At the same time, altering the research

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1. Most elaborated works are by Peppers (2006) and Ward and Weiden (2006), but various other attempts to gain information were made too.

approach and focus during the data collection also results in data which are less comparable, affecting the external validity of the data. In order to draw conclusions based on a relatively wide and comprehensive set of data, I strove to collect data from document analyses, participant observations and interviews which are focused on the same aspects to the largest extent possible. During the exploratory phase of the research (see more in section 2.3) I designed the topic lists and the checklists for the fieldwork. During the fieldwork, the main topics discussed with respondents did not vary. The lists were only slightly adjusted according to specific features of the dissimilar work processes of each of the court divisions. The same applies to the checklists.

Even so, new insights occasionally resulted in asking different (follow-up) questions during the interviews or the addition of different examples while discussing topics with respondents. The insights also resulted in conducting some additional interviews during the fieldwork with respondents who were not linked to any of the followed cases but did appear to have interesting additional information to share. Thus, the analysis of the first research results informed the manner of data collection later on in the research.

### 2.1.3 *External validity and verification of the research results*

The extent to which the research can be generalised is always a challenge in qualitative research. The fact that the studied sample is not selected at random makes statistical generalisability impossible. However, that does not preclude some extrapolation to other settings than those studied. The research aims to reach a level of 'analytical or theoretical generalisability', whereby the main goal is to find data to confirm a theory or conceptual model and build on it (Yin, 2013).

Several steps were taken to increase the external validity of the research. First, the research was conducted at diverse locations (two different courts and, within each court, two court divisions) to expand the contexts in which data were collected. I also intended to select a wide variety of hearings to follow and respondents to interview (see more in section 2.2.1). In addition, a considerable number of court cases were followed (137) and respondents were interviewed (83 in Dutch courts and 10 in English courts) to provide a solid base to build the theory on.

To substantiate the external validity of the results, I made several efforts to verify the results by presenting the findings of the research to judges and judicial assistants of courts other than those included in the study. This process enabled me to validate the broader scope of the research, especially with regard to Dutch district courts. The research was monitored by a steering committee consisting of three members of the judiciary (from courts other than those studied) and a professor with extensive knowledge on the Dutch court system (for the composition of the steering committee, see Appendix 5). In addition to their support in planning the research, an explicit purpose of the steering committee meetings was to ascertain

whether the members recognised the findings of the research. Whenever certain members could not identify with certain results, I made additional assessments to verify the reliability and relevance of the results in order to determine whether the findings should be included. Points on which significant differences were recognised but which were nonetheless included are explicitly mentioned as such.

Towards the end of the research, I also presented the main results of the study to judges and judicial assistants during three seminars and workshops in courts different to those researched. These meetings were very interactive and were attended by approximately 30, 40 and 70 participants in the respective courts. During these meetings, I received feedback on the results and on the comparability to those courts. These efforts strengthened my impression that most of the results of the study in the two courts could be extrapolated to other (district) court settings.

#### 2.1.4 *Respondents' behaviour related to the presence of the researcher*

The interaction of the researcher with the respondents which occurs during data collection can result in the research setup possibly influencing the outcome of the data collection. The presence of the researcher could provoke respondents to alter their behaviour. Therefore, during the observational part of the research, I intruded as little as possible in the normal course of events in order to observe the situations as they would occur under normal circumstances. I thereby largely occupied an observer-as-participant role (Gold, 1958). I tried to blend in with the situation and not act in a manner that would draw attention to my presence. The fact that I could generally understand the legal issues at hand, being a lawyer, and the fact that I was familiar with the court setting from a previous occupation as *buiten-griffier*<sup>2</sup> in a district court helped to achieve this. The process was also aided by the fact that I participated in the other events of the court division, such as shared lunch sessions and court division meetings. Especially during deliberation sessions, I interrupted as little as possible. During other phases of the process, I occasionally engaged in small talk and sometimes asked clarifying questions. When asked about my view on cases or on the research topic, I responded by stating that I preferred answering such questions at a later point. In a handful of situations, this resulted in discussing some preliminary findings of the research or my personal views with respondents when the data collection had finished, for example, at the end of an interview.

On a few occasions, judges or judicial assistants would reveal their awareness of being observed by making comments on my presence during different phases of the decision-making. This occurred mostly at the beginning of a day of hearings and deliberations. While the day continued, respondents often gave the impression of being too occupied with performing their adjudicative and assisting duties to be aware of my presence. Some officials made informal remarks or jokes that could be

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2. This is a part-time assistantship for students who are in their final years of law school.

conceived as socially inappropriate; I interpreted these as indications that they did not feel required to act differently in my presence.

During the interviews that occurred after the observations, I also asked respondents whether the decision-making process as I observed it had reflected the usual course of events. In most instances, respondents did not mention that anything out of the ordinary had occurred. On a few occasions, respondents did mention that parts of the process had gone differently. One assistant (resp. 39) mentioned that a judge had suddenly asked the assistant to present her views first during deliberations, which she almost never did normally. Two other assistants (resp. 8 and resp. 30) also expressed that the judge seemed a bit more prone to have them voice their views, even though they were rather unsure of what the outcome of the cases should be. A judge (resp. 64), on the contrary, said that he was more reserved in asking an assistant to reveal her views on a case because he did not want to pressure her in front of me. Another judge (resp. 60) looked back on the deliberations and recalled that she acted more dominant and less cooperative towards the assistant due to my presence. These comments reveal that a small bias in the data might have occurred due to the research setting. However, the effects thereof do not point in one direction; in some instances, this resulted in judges providing more room for assistants to be involved in the decision-making, while in other instances, the opposite occurred. This also links to the fact that the general views of respondents vary regarding what the appropriate collaboration with assistants entails (see sections 7.2.1 and section 8.1.1).

### 2.1.5 *Research timeline*

I began the empirical research by conducting exploratory interviews with Dutch judges and judicial assistants working in a wide range of court settings in order to acquire a general idea of the work processes in the courts and the involvement of judicial assistants therein (see section 2.3). These interviews were conducted during the period of May to December 2012. After this period, the courts and court divisions for the main study were selected, and the final topic lists for the interviews were produced. The four different parts of the fieldwork (at four court divisions divided over two courts) were conducted during the period of March 2013 to January 2014. Because of the limited time of access to the work places, there was not much opportunity to physically go back for verification of certain data at later times. However, missing information could usually be traced by emailing or calling the courts, which I did a handful of times. In the period of March to June 2014, during a research visit at University College London, some additional observations and interviews were held in England (see section 2.3). The analysis of the data from the fieldwork largely occurred afterwards, during the period of July 2014 to September 2015. During that period and while writing down the results, I presented my first findings to three Dutch district courts to verify the findings. Through-

out the research period, the aforementioned steering committee (also see Appendix 5), which was assigned as a condition of the Council for the Judiciary for being permitted to conduct research, provided me with advice and comments regarding the research. The committee met approximately every six months.

## 2.2 FOLLOWING CASES IN THE DUTCH DISTRICT COURTS

To gain an in-depth understanding of the involvement of judicial assistants in the overall judicial decision-making process, I decided to follow the decision-making in a number of court cases from the beginning to the end of the process. I followed 27 hearings, at which 137 court cases were heard. Of the followed hearings, I analysed the produced documents related to the cases (usually memos and draft judgments). I also observed all gatherings and (informal) contacts between judges and judicial assistants related to the cases (commonly the hearing, the deliberations sessions and sometimes also pre-trial meetings). In addition, I interviewed 66 judges and judicial assistants during the fieldwork, 51 of which were involved in the observed hearings. Before describing how the fieldwork was conducted, I will elaborate on the selection of the courts and how I gained access.

### 2.2.1 *Court selection and access*

#### *Selection of the courts and court divisions*

To explore all possible types of judicial assistant involvement in judicial decision-making, I employed a sampling strategy that gave me insight into a wide selection of decision-making settings. Dutch district courts are a suitable choice of study, because these are the courts that handle all cases that enter the court system in first instance. Conducting research in these courts provided me access to judges and judicial assistants that handle routine as well as complex cases in various setups.

To be able to comprehensively follow the decision-making within its natural setting, I needed sufficient time to become familiar with the organisational and social construction of the different court divisions and to give the judicial officers time to get accustomed to my presence at their work place. At the same time, I wished to observe different courts and different court divisions in order to obtain a broad set of data and to be able to observe possible differences between the courts and court divisions. For this reason, I selected two district courts: one in the *Randstad*, the western part of the Netherlands, which is the most populated part of the country, and one in a less dense part of the country. Due to the limited timeframe of the research, it was not possible to also select courts of a higher hierarchy in the judiciary. It would be interesting to conduct similar research in these courts in the future. Within the district courts, I decided to study two of the three areas of law that are present in district courts: administrative law and criminal law. The civil law division was not included in the study due to time constraints.

Criminal law is an interesting field to study because it is one of the legal arenas that has traditionally been part of the courts and is strongly rooted in the civil law tradition. The exploratory interviews and conversations with court officials made clear that, as criminal law comprises a relatively large portion of routine cases, judicial assistants are acknowledged for having quite a substantial administrative role. Criminal law assistants are known for being less strongly involved in the content of decision-making. Assistants in the administrative law division were, on the other hand, recognised for being extensively involved in the decision-making process, which may be related to the different position that administrative law occupied in the court system until recently (see section 7.3.2) and its historically strong relation to the government. Criminal and administrative law are also the extremes in employing the least (criminal law, 0.97) and the most (administrative law, 1.70) judicial assistants per judge.<sup>3</sup> Administrative and criminal law are additionally both public law divisions. The inherent inequality in the relation between the government and the accused/litigant in public law makes proper judicial protection by courts in these fields of law especially important.

#### *Access to the courts*

To be granted access to confidential court documents and settings, I had to obtain permission from the Dutch Council for the Judiciary and the Boards of Presidents of the criminal law and administrative law divisions of Dutch courts. These bodies agreed to the research after I explained the purpose and the research design and after I signed two of their statements regarding the use of data collected via document study and via interviews for research purposes. After this, I contacted the courts and later the court divisions; they also agreed to my conducting of the research. To enable me to be present during deliberation sessions, I was sworn in as a *buiten-griffier*, a special position normally reserved for law students who conduct part-time assisting duties in the court. After consultation with the Council for the Judiciary, it was decided not to reveal the locations of the studied courts, as it is not essential for the reader to be familiar with this information. This anonymity and the explicit permission appeared to make it easier for individual judges and judicial assistants to agree to participate in the study.

#### *Selection of and access to the studied hearings and to the respondents*

In the first week of my stay in a court division, I selected the cases that I planned to follow. The easiest way to do that was to select certain hearings at which cases were held and follow all the cases handled at those hearings. I followed six to

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3. Numbers are for the year 2013 and were provided by the Council for the Judiciary. These numbers only include assistants that have substantive roles in assisting judges in the judicial content of their work. Staff members who primarily assist on administrative aspects of the process are excluded. This explains why the number may differ from overviews presented by the Council for the Judiciary.



seven hearings per division (27 hearings in total) and aimed to obtain a mixture of hearings handled by single-judges (the majority, as most first instance cases are adjudicated by single-judges) and panels, also including a few preliminary hearings. Given that I wanted to observe as many different judges and judicial assistants as possible, I also selected hearings to which different judges and judicial assistants were assigned. I ensured that all hearings followed consisted of distinct chairs and judicial assistants.<sup>4</sup> Furthermore, I made sure that the sample included judges and assistants of diverse ages and experience. In addition to ensuring variety of the judges and judicial assistants, I also ensured that a diverse set of cases were studied. First, I followed some simpler cases that were handled at the hearings in a relatively short timeframe. The largest number of cases dealt with during one hearing was 21 cases during a so-called police-judge hearing at the criminal law division.<sup>5</sup> I also followed more complex cases. The hearing with the fewest number of cases assigned to it consisted of only one case, handled by an administrative law panel during a specially planned preliminary hearing to provide temporary arrangements in an administrative case (*Voorlopige Voorzieningsprocedure*). In total, I followed 137 cases. Appendix 1 shows the main information regarding the studied hearings.

The content of the cases was not a selection criterion. I followed a diverse selection of criminal cases varying from shoplifting and burglary to sexual abuse and aggregated assault. At the administrative law divisions, I only followed general administrative cases, including a broad selection of cases regarding, for example, social security law, building and planning law, dismissal of civil servants, etcetera. Immigration law cases, a separate subdivision of the administrative law division, were not included in the selection. In two of the four selected court divisions, I was able to select the hearings myself, using the courts' time tables as a starting point. In the other court division, court managers made the selection for me, based on my preferences.<sup>6</sup> In those divisions, I did alter their suggestions by exchanging a few of the suggested hearings for others in order to have a selection that was not solely made by the court managers. The managers did not object to this.

After the hearings were selected, I contacted all of the judges and judicial assistants involved to ask for their permission to observe the hearings and deliberation sessions and to analyse the related documents. I made clear that all the information gathered would be anonymised. In most instances, my research was already preannounced, and the research subjects readily consented to participating. A few respondents had some additional questions before they agreed to participate. In one of the court divisions, my request raised a discussion regarding the issue of

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4. Apart from two hearings in one court in which the morning and the afternoon sessions were assisted by different assistants.

5. The police-judge is a single-judge who hears cases which can be penalised with up to one year of imprisonment.

6. As mentioned before, aimed at reaching a broad selection of hearings and respondent types.

allowing me to be present during deliberation sessions, which is usually only open to the judges and judicial assistants who are assigned to the particular hearing. These members are limited to strict confidentiality codes. One of the judges, not part of my selection, opened a discussion with other judges regarding this issue via email, stating that he objected to my presence during the deliberations. Three of the selected judges subsequently also had their doubts. Two of these judges changed their minds after speaking to me and taking note of the conditions under which the research was conducted, such as anonymity and confidentiality regarding the specifics of the cases. One judge still had objections and was therefore excluded from the study. In another court division, the announcement of my forthcoming arrival to the division prompted one of the judges to send an email to all the judges' colleagues. In this email, the judge drew everyone's attention to the fact that, although the judge believed informal relations might cause confusion, in the view of this judge, the law is very clear in that the judgment is the sole decision of the judge. These responses to my research reveal the sensitivity of the topic and the fact that there are concerns among some judges about revealing certain court practices to the general public (on this topic, see also section 8.1.1). Both of the judges who raised concerns were interviewed as part of the additional interviews held at the courts (see section 2.2.4). Other than the one judge who rejected my presence during deliberations, all the selected judges and judicial assistants consented to being part of my research.

### 2.2.2 *Participant observations and document analyses in the followed cases*

In total, 27 hearings were followed, 14 in court A and 13 in court B; 14 criminal and 13 administrative hearings. Of these, 15 were single-judge hearings and 12 were panel-hearings of three judges (see Appendix 1). In the following section, I describe how I conducted the different parts of the fieldwork in chronological order (for information about the followed methods per hearing, see Appendix 2).

#### *Analysing the memoranda*<sup>7</sup>

I was able to analyse memos related to 23 of the observed hearings.<sup>8</sup> The memos were analysed using a checklist (see Appendix 6). Among other aspects, I checked the scope of the memo and the references to various legal sources. I specifically included points of analysis that could provide insight into whether the judicial assistant was including his or her own views on the case and whether the assistant

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7. The term *memo* is used to refer to a document prepared by judicial assistants in order for judges to prepare for the hearing. This document usually includes all relevant information about a certain court case.

8. For one hearing, only half of the memos were analysed because the other half were not handed over, even after sending reminders. In three hearings, no memos were produced because it was common procedure of the court divisions to not prepare memos for these types of hearings. See Appendix 2.

was communicating about the case with the judge via the memo. The memos were analysed in combination with of the court files (except for four instances in which this was not possible).

#### *Observing pre-trial consultations*

In the administrative law divisions, the concept of having a pre-hearing consultation between the judge(s) and the assistant was recently introduced. In eight of the followed hearings, these consultations were held. I was able to observe seven of them.<sup>9</sup> The observations during these consultations were conducted using a similar method as was used to observe the deliberation sessions (see the subsection below).

#### *Observing the hearings and adjournments*

I observed all the hearings of the followed cases. In the administrative law divisions, the hearings usually lasted half a day. In the criminal law divisions, some hearings also took half a day, but several hearings lasted the entire day (with a lunchbreak).

During the hearings, I made notes, writing down everything that I believed might be relevant for my research. I also included some information about the content of the cases, as that information was beneficial for the following interviews. In addition to these reports, I collected universal information about all hearings (see Appendix 7 for the checklist of the hearings and deliberation sessions).

I always asked the assistant if we could walk to the courtroom together. In various instances, the judge(s) would also walk with us, which created a good opportunity to observe the informal conversations between judges and judicial assistants. In other instances, I could observe how the assistant prepared him or herself for the hearing, what materials he or she would bring, etcetera.

An additional issue to consider was the position from which I would observe the hearing: would I sit behind the bench with the judge(s) and assistant, or would I sit with the audience? In three of the court divisions, I decided to sit with the audience to emphasise my independent position as a researcher and observe the hearing from an outsider's perspective. In one of the (criminal law) divisions, the management of the court division requested, in order for me to be able to join the deliberation sessions, that I attend the hearings in the capacity of a (*buiten-*)*griffier*. That meant that in this division, I observed the hearings from behind the bench. The advantage was that it enabled me to observe from up close what happened behind the bench. I could, for instance, closely observe the ways in which judges used the assistants' memos during the hearing. It also resulted in being able to attend the adjournments of these hearings.

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9. The first consultation occurred before the research at the court was started, which is why it was impossible to observe that consultation.

Regularly, the hearings were adjourned for a moment to enable the judge(s) or parties to discuss the case (also see section 5.2.5). The adjournments were observed in a manner similar to the regular deliberations. In administrative cases, an adjournment results in the parties leaving the courtroom to discuss their issues in the corridor of the court. In those instances, I remained seated in the courtroom and was able to observe the informal conversations between the judge and the assistants. In criminal cases, an adjournment meant resigning to a special room behind the courtroom. During the hearings that I observed from behind the bench, I was able to be present to observe the deliberations regarding the adjournments, as I was regarded as one of the court officers. With regard to the other criminal hearings, I was mostly not invited to observe the adjournments. Of all hearings that were adjourned, I was present during the adjournments of 5 hearings, and of one hearing, I observed half of the adjournments (see also Appendix 2).

### *Observing the deliberation sessions*

Not all hearings are followed by a deliberation session (see more in section 6.1). For that reason, no deliberation sessions could be observed for five hearings. For one of the hearings with a deliberation session, the second half of the deliberation session was postponed to a time when I was unable to observe it. In all other instances, I was present to observe the deliberations. I also observed the meetings of administrative law assistants with single-judges. These meetings are not official deliberation sessions (see 6.1.4) but do progress similarly to panel deliberations. The deliberations were usually held immediately or shortly after the hearing. In a few instances, the deliberations were held on a different day than the hearings. During most deliberation sessions, 1–4 cases were discussed.<sup>10</sup> Most sessions lasted 45–75 minutes, but a few took longer (max. 3 hours) or shorter (min. 20 minutes). Just as for the hearings, I made a report of each deliberation session, writing down how the discussion developed. I also reported some universal details for all the deliberations followed (e.g. duration, usage of the memo and order of turns in speaking; see Appendix 7 for the checklist used in the deliberation sessions).

Most deliberation sessions were held in the office of one of the judges; however, occasionally deliberations were held in the court room after the hearing was finished or in the special deliberation room behind the court room. All participants<sup>11</sup> would usually sit at one table. To emphasise my observant role, I could have decided to observe the deliberations from a distance. However, I decided to take a place at the same table as the judge(s) and assistant. After spending half a day or a day with the couple or panel, they had often become used to my presence, and purposefully taking a different position would only have emphasised that the participants were being observed. This position also provided me with a good view of

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10. Most of the hearings with a lot of cases were not followed by deliberations, and some cases did not require a full deliberation, as they were adjourned.

11. Either three judges and an assistant or one judge and an assistant.

the files and documents that were consulted by the participants during the sessions.

#### *Analysing the draft judgments and adjustments therein*

In all the followed cases, the judicial assistant wrote a draft judgment, which was adjusted by the judge(s). In police-judge cases, the judgment is merely a report of what the judge has pronounced at the hearing. I did not analyse those reports.<sup>12</sup> Regarding a few other hearings, I was also unable to analyse the judgments.<sup>13</sup> For 15 hearings, I analysed all of the written draft judgments and adjusted judgments, and for 4 other hearings, I analysed a portion of the judgments. To gain insight into the process of adjusting the draft judgments in panel cases, I also collected information regarding the order in which the judges altered the judgments.

I analysed the drafts and adjustments using a checklist (see this list in Appendix 8), paying particular attention to the quantity and type (more factual, procedural or content-related) of adjustments that were made by the judge(s). I also compared the drafts to my notes from the deliberation sessions to check whether they reflected what had been decided during deliberations. Furthermore, I studied the memos to check whether parts of them were used in creating the draft judgments.

#### 2.2.3 *Interviews with the judges and judicial assistants involved*

I approached the judicial assistants and judges involved in the hearings with the request to interview them after the observations were finished. All of the 27 judicial assistants involved were approached and consented to being interviewed, with 26 of the interviews being analysed for the research.<sup>14</sup> Of the 40 involved judges, I approached 25 to reach a similar number. All the respondents consented to being interviewed. This selection included all of the chairs of the hearings, except for one chair who was unavailable.<sup>15</sup> Several of the chairs were not observed only as chairs but also as panel members in different hearings. Two judges were observed exclusively in the role of panel member (see Appendix 3 for further details).

#### *Conducting the interviews*

The interviews always took place after the observations of the hearings were conducted, and, as much as possible, the interviews were also planned after I analysed the judgments. The interviews usually lasted about 1 to 1.15 hours. The shortest interview was 35 minutes; the two longest interviews lasted 2 hours. The semi-

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12. As these documents did not reveal any information that is relevant for understanding the involvement of judicial assistants.

13. In one administrative hearing, none of the cases required a judgment to be written. In two other instances, I was not able to get access to the (adjusted) judgments. In four cases in which judgments were written, I could only get access to part of the judgments.

14. One of the interview transcripts went missing and was therefore not included in the data analyses.

15. One judge was chair in two hearings, as the second hearing was a continuation of the first one.

structured interviews were conducted using a topic list which was mostly the same for each interview but was slightly altered for the person interviewed (judge or judicial assistant) and the court and court division the respondent was working at (for an example of a topic list, see Appendix 9). The largest part of the topic list focused on gaining further knowledge of how the judicial decision-making takes place and how judicial assistants are involved in this process. By interviewing the respondents, I could gain information not only regarding the visible aspects of the decision-making but also on aspects that would remain largely unknown through observations, such as in what manner judges make use of the memos produced by assistants in preparing for hearings. Moreover, the list also included various topics not directly related to the process, for example, regarding the professional and social relationships between judges and assistants and their role perceptions.

In the interviews, I asked respondents about the actual course of events but also about how they perceived these themselves. I asked open-ended questions and let the respondents speak as much as possible on their own account. Whenever the answers did not suffice, I asked follow-up questions. When I had noticed remarkable aspects during the observational stage, I questioned the respondents about these in the interviews. The respondents also frequently used the observed events as illustrations when explaining certain processes. The fact that I had observed the decision-making practices partly deterred respondents from presenting socially desirable answers, as they were aware that I was familiar with the course of events in the court.

#### *Recordings and transcribing the interviews*

All of the interviews were audio recorded, except for one interview in which the respondent objected to this.<sup>16</sup> Afterwards, a comprehensive transcription of the interviews was made. As I guaranteed the Council for the Judiciary, I offered to send the transcripts to all of the respondents in order for them to check whether they were accurate accounts of what had been said during the interviews. A little more than half of the interviewees were interested in receiving the transcripts. All of these respondents confirmed the accuracy of the transcripts. In some cases, the respondents corrected the orthography of names or other aspects of the transcript. In a few other cases, some of the respondents responded by elaborating on or further explaining certain elements of the transcript. I included these additional comments in my analysis of the interviews. None of the respondents suggested removing information from the transcript. Quotations from the interviews are included in the empirical chapters to illustrate the findings of the research. The quotations are translated from Dutch to English. A list with the original Dutch quotations is available and can be provided upon request.

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16. This interview was recorded on paper.

#### 2.2.4 *Additional gathering of information during the research stay*

During my research stay at the court divisions, I also gathered supplementary information concerning the functioning of the court divisions and what role judicial assistants play within the divisions.

##### *Additional interviews*

Apart from the hearing-related interviews with judges and judicial assistants, I conducted several additional interviews during the fieldwork. I usually started my stay at the court divisions by interviewing the managers of the division.<sup>17</sup> I also interviewed the general managers of the courts, who were in charge of human resources. All of these court managers (6 in total) were interviewed primarily about organisational aspects of the court divisions.

During the fieldwork, I occasionally came across other people who, for various reasons, caught my attention, for instance because they expressed striking views about the position of judicial assistants or because they appeared to occupy an important position in the court division (which was the case for several staff lawyers). Eight of these people were also interviewed. These interviews were analysed in combination with the interviews conducted with respondents involved in the hearings.

##### *Additional observations*

I was provided with a desk in an office in all the different court divisions; thus, I was also able to observe the broader work settings in which the decision-making occurred. I shared a room with an administrative law judicial assistant for one month, with a criminal law staff lawyer for another month and with a judge of the criminal law division for three weeks. This provided me with insight into what an average day of these officers consisted of. I also attended 20 total internal meetings that took place during my stay at the courts, and I made field notes during all of these meetings. Additionally, I had several informal conversations with judges, judicial assistants and other court officers. I produced field notes for all of these additional observations, which were also employed to grasp a clearer understanding of how the court divisions were operating.

#### 2.2.5 *Data analyses*

Comparing the studied courts and court divisions was not the core intention of the research. Rather, I followed hearings in different courts and court divisions to broaden my data set, which was then analysed in its entirety. Nonetheless, wher-

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17. At one of the courts, there were separate managers for judicial assistants and for judges; at the other court, judicial assistants and judges were managed by a combination of two judges. One manager was also interviewed in the capacity of being involved in one of the hearings.

ever relevant, the observed differences were also noted. Section 7.3 is devoted to the similarities and differences between the courts and court divisions.

The interviews were analysed with Atlas-ti software. An initial list of codes was derived from the topic list for the interviews, which was informed by several exploratory interviews and consisted of several hypotheses regarding factors that might affect the involvement and impact of judicial assistants (e.g. their experience, the type of cases they were working on and whether it concerned single-judge or panel decision-making). This list was complemented with extra codes that arose while reading and coding the interviews. The coding was informed by several insights from earlier research on judicial assistants (also in other jurisdictions) and from literature on (court) organisational studies and (judicial) decision-making. This sometimes resulted in going back to interviews that were already coded to recode them. The list of codes that was used is included in Appendix 10. The data collected from the memos and the draft and adjusted judgments were analysed in two Excel files, including all the aspects that were noted down in the checklists.

All the additional information that was gathered in the courts was primarily used as backup information to consult when writing about particular parts of the decision-making, for example, while writing the section on internal meetings and committees. During the analysis, I sometimes also remembered certain interesting occurrences and would search for the details in the field notes.

### 2.3 ADDITIONAL INTERVIEWS WITH RESPONDENTS OUTSIDE OF THE DUTCH DISTRICT COURTS

To be able to place the data collected in the district courts in perspective, I conducted several extra interviews with judicial officers from different courts. First, I interviewed seven Dutch (former) judges and judicial assistants prior to the fieldwork. Second, I conducted another set of 10 interviews with Dutch judicial officers after the fieldwork was conducted (see Appendix 4). Finally, I also conducted 10 interviews with judges and judicial assistants during a research stay in England.

#### 2.3.1 *Exploratory and broadening interviews in other Dutch court settings*

As little information regarding the involvement of judicial assistants in Dutch courts was available in the literature or in policy documents, I conducted eight exploratory interviews with three judicial assistants and four (former) judges working in different Dutch courts and divisions of these courts (see Appendix 4 for detailed information). I held the interviews to familiarise myself with the topic and to discover relevant aspects to study. I also used these interviews to create the topic list for the fieldwork interviews. Later in the research, I consulted the information gathered in these interviews to reflect on the similarities and differences between



the studied courts and other courts and to verify the broader scope of the results of the research (see also section 2.1.3).

An additional 10 interviews were held after the fieldwork had finished. These interviews were predominantly aimed at gaining more knowledge on the involvement and influence of judicial assistants in settings other than those studied. Due to respondents frequently mentioning that the three courts of highest appeal in administrative cases all have different organisational setups for judicial assistance and that, in those courts, the involvement of judicial assistants is regularly far-reaching, I decided to conduct additional interviews with judges and assistants in those courts (see Appendix 4). I interviewed at least one assistant and one judge per court. Further, I conducted an interview with a judge in the criminal division of the Dutch Supreme Court to gain information about judicial assistance in that court.

The respondents interviewed for the exploratory and broadening interviews were selected and approached using my informal network.<sup>18</sup> The interviews lasted a similar amount of time as the hearing-related interviews.

### 2.3.2 *Interviews and observations conducted in England and Wales*

To better understand the judicial assistance models in Dutch courts and to reflect on them, I analysed a number of judicial assistance models in other jurisdictions: the US and England and Wales (see chapter 3). Chapter 3 explains the choice for the three studied models within these jurisdictions. A substantial amount of information on the law clerk model at the highest courts in the US was available in the literature. This was less so for the Magistrates' clerk model and the Judicial Assistant model (within this model written in capital letters) in England and Wales. Several interviews were conducted, and observations were held in courts in and around London to gain additional information about these models.

I interviewed two district judges and briefly spoke to a Magistrates' clerk. I also conducted an interview with a Magistrate. In seven (collective) interviews, I spoke with three Supreme Court justices (of which, one was a former justice), two justices of the Court of Appeal, three Supreme Court Judicial Assistants and four Judicial Assistants at the Court of Appeal (of which, one was a former assistant). These interviews were explorative and sometimes lasted a short time (about half an hour) and other times much longer (about 2.5 hours). The interviews provided me mainly with factual information about the work of Judicial Assistants in the courts. They also offered some context. These data were mainly used to enhance my own understanding but also to provide an accurate description of the organisational setup in the courts, as described in the following chapter.

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18. For instance, via academic colleagues and members of the steering committee.