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### In the shadow of the judge

*The involvement of judicial assistants in Dutch district courts*

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## APPENDIX 1 – KEY INFORMATION REGARDING THE OBSERVED HEARINGS

Hearing date	Court	Division	Type of hearing (Single/Panel)	No. of cases	Interviewed respond- ents no. (Judge/Judicial Assistant (JA))
14-3-2013	Court 1	Criminal law	Panel	4	7(Judge),8(JA)
19-3-2013	Court 1	Criminal law	Single-judge	4	7(Judge),14(JA)
25-3-2013	Court 1	Criminal law	Panel (pre-trial cus- tody hearing)	16	3(Judge), 84(Judge), 10(Judge), 5(JA)
26-3-2013	Court 1	Criminal law	Single-judge	4	12(Judge), 9(JA)
3-4-2013	Court 1	Criminal law	Panel	3	84(Judge), 10(Judge), 15(JA)
5-4-2013	Court 1	Criminal law	Panel (special cases)	10	1(Judge), 6(JA)
11-4-2013	Court 1	Criminal law	Panel	4	16(Judge), 4(JA)
16-5-2013	Court 1	Admin law	Single-judge	4	32(Judge)
22-5-2013	Court 1	Admin law	Single-judge	3	17(Judge), 27(JA)
27-5-2013	Court 1	Admin law	Single-judge	3	21(Judge), 30(JA)
31-5-2013	Court 1	Admin law	Single-judge (tem- porary arrange- ments)	4	18(Judge), 26(JA)
4-6-2013	Court 1	Admin law	Single-judge	3	22(Judge), 25(JA)
7-6-2013	Court 1	Admin law	Single-judge	4	24(Judge), 23(JA)
12-6-2013	Court 1	Admin law	Panel	1	28(Judge), 33(JA)
23-9-2013	Court 2	Admin law	Single-judge	4	62(Judge), 63(JA)
25-9-2013	Court 2	Admin law	Panel	3	65(Judge), 53(JA)
3-10-2013	Court 2	Admin law	Single-judge	3	64(Judge), 49(JA)
8-10-2013	Court 2	Admin law	Single-judge	4	59(Judge), 51(JA)
11-10-2013	Court 2	Admin law	Single-judge	3	52(Judge), 56(JA)
14-10-2013	Court 2	Admin law	Single-judge (tem- porary arrange- ments)	1	60(Judge), 57(JA)
20-11-2013	Court 2	Criminal law	Single-judge	15	47(Judge), 43(JA)

Hearing date	Court	Division	Type of hearing (Single/Panel)	No. of cases	Interviewed respondents no. (Judge/Judicial Assistant (JA))
27-11-2013	Court 2	Criminal law	Panel (special cases)	4	41(Judge), 45(Judge), 46(JA)
28-11-2013	Court 2	Criminal law	Panel	5	40(Judge), 39(JA), 48(JA)
29-11-2013	Court 2	Criminal law	Single-judge	21	42(Judge), 44(JA)
5-12-2013	Court 2	Criminal law	Panel	3	42(Judge), 45(Judge), 39(JA), 48(JA)
13-12-2013	Court 2	Criminal law	Panel	3	47(Judge), 41(Judge), 36(JA), 37(JA)
7-1-2013	Court 2	Criminal law	Panel (adjourned case of hearing 13-12-2013)	1	47(Judge), 41(Judge), 37(JA)
<b>Total</b>					
<b>N=27</b>	<b>Court 1: N=14</b>	<b>Criminal law: N=14</b>	<b>Panel hearings: N=15</b>	<b>N=137</b>	<b>Judges: N=40</b>
	<b>Court 2: N=13</b>	<b>Admin law: N=13</b>	<b>Single-judge hearings: N=12</b>		<b>Judicial Assistants: N=28</b>

## APPENDIX 2 – CONDUCTED RESEARCH ACTIVITIES PER HEARING

Hearing date	Analysed memos	Checked court files	Observed deliberations	Observed adjournment deliberations	Observed pre-hearing consultations	Analysed (draft-) judgments
14-3-2013	Yes	Yes	Yes	No	not applicable	Yes
19-3-2013	not applicable*	No	not applicable**	not applicable	not applicable	not applicable**
25-3-2013	Half of the cases	Yes	Yes	not applicable	not applicable	not applicable****
26-3-2013	not applicable*	No	not applicable**	No	not applicable	not applicable**
3-4-2013	Yes	Yes	Yes	Partly	not applicable	Yes
5-4-2013	Yes	Yes	Yes	No	not applicable	Yes
11-4-2013	Yes	Yes	Yes	No	not applicable	Yes
16-5-2013	Yes	Yes (except for 1)	Yes	not applicable	No	Half of the cases
22-5-2013	Yes	Yes (except for 1)	Yes	not applicable	Yes	Yes
27-5-2013	Yes	Yes	Yes	not applicable	Yes	Yes
31-5-2013	Yes	Half of the cases	Yes	not applicable	Yes	Yes
4-6-2013	Yes	Yes	Yes	not applicable	Yes	Yes
7-6-2013	Yes	Yes (except for 1)	Yes	not applicable	Yes	No
12-6-2013	Yes	Yes	Yes	not applicable	Yes	Yes
23-9-2013	Yes (except for 1)	Yes	not applicable***	not applicable	not applicable	not applicable***
25-9-2013	Yes	Yes	Yes	not applicable	not applicable	Yes
3-10-2013	Yes	Yes	Yes	not applicable	not applicable	1 of 3
8-10-2013	Yes	Yes	Yes	not applicable	not applicable	Yes
11-10-2013	Yes	Yes	Yes	not applicable	not applicable	Yes
14-10-2013	Yes	No	Yes	not applicable	not applicable	No

Hearing date	Analysed memos	Checked court files	Observed deliberations	Observed adjournment deliberations	Observed pre-hearing consultations	Analysed (draft-) judgments
20-11-2013	Yes	No	not applicable**	not applicable	not applicable	not applicable**
27-11-2013	not applicable*	Yes	Yes	Yes	not applicable	Yes
28-11-2013	Yes	Yes	Yes	Yes	not applicable	Half of the cases
29-11-2013	Yes	No	not applicable**	not applicable	not applicable	not applicable**
5-12-2013	Yes	Yes	Yes	Yes	not applicable	Half of the cases
13-12-2013	Yes	Half of the cases	2 out of three cases	Yes	not applicable	Yes
7-1-2013	is memo of hearing	Are files of hearing	Yes	Yes	not applicable	Yes
	13-12-2013	13-12-2013				

**N=27**

\* For these single-judge criminal hearings (police judge hearings) in court 1 and criminal special case hearing (27-11-2013) in court 2 it is customary that no memos are prepared.

\*\* For these single-judge criminal hearings (police judge hearings) no deliberations are held. The judgments are merely reports of the oral judgment pronounced in court and were therefore not analysed.

\*\*\* At this hearing all cases were settled or an oral judgment was pronounced. Therefore no deliberations took place and no judgments were available to be analysed.

\*\*\*\* This being a pre-trial custody hearing results in no proper judgments being written and, hence, these were not analysed.

## APPENDIX 3 – INTERVIEWED RESPONDENTS DURING THE FIELDWORK (ANONYMISED)

<b>Respondent no.</b>	<b>Position</b>	<b>Interview date</b>	<b>Interview time</b>	<b>Type of interview</b>	<b>Attended hearing of interviewee</b>
<b>Court 1 Criminal law division</b>					
14	Head judicial support	19-3-2013	10.00-11.15	special	not applicable
11	Team manager	31-3-2013	14.10-15.20	special	not applicable
7	Judge	19-4-2013	10.00-11.10	involved in a hearing	14-3-2013
3	Judge	12-4-2013	12.30-14.00	involved in two hearings	19-03-2013/25-03-2013
84	Judge	26-4-2013	15.00-16.15	involved in two hearings	25-03-2013/03-04-2013
12	Judge	15-4-2013	13.00-14.00	involved in a hearing	26-3-2013
16	Judge	22-4-2013	13.30-15.00	involved in a hearing	11-4-2013
1	Judge	16-4-2013		involved in a hearing	5-4-2013
10	Judge	3-5-2013	12.10-13.20	involved in two hearings	25-03-2013/03-04-2013
8	Judicial assistant	28-4-2013	15.00-16.20	involved in a hearing	14-3-2013
2	Judicial assistant	15-3-2013	10.00-11.10	involved in a hearing	19-3-2013
9	Judicial assistant	23-4-2013	09.30-10.35	involved in a hearing	26-3-2013
15	Judicial assistant	17-4-2013	10.30-11.40	involved in a hearing	3-4-2013
4	Judicial assistant	24-4-2013	09.30-10.35	involved in a hearing	11-4-2013

<b>Respondent no.</b>	<b>Position</b>	<b>Interview date</b>	<b>Interview time</b>	<b>Type of interview</b>	<b>Attended hearing of interviewee</b>
6	Judicial assistant	19-3-2013	15.00-16.00	involved in a hearing	5-4-2013
13	Staff lawyer	22-4-2013	15.30-16.45	special	not applicable
5	Junior judicial assistant	25-3-2013	10.00-10.45	involved in a hearing	25-3-2013
<b>Court 1 Admin law division</b>					
20	Head judicial support	23-5-2013	09.00-11.00	special	not applicable
32	Judge	20-6-2013	16.30-17.40	involved in a hearing	16-5-2013
17	Judge	19-6-2013	10.00-11.00	involved in a hearing	22-5-2013
21	Judge	10-6-2013	13.45-15.00, 16.00-16.20	involved in a hearing	27-5-2013
18	Judge	26-6-2013	15.30-16.55	involved in a hearing	31-5-2013
22	Judge	4-7-2013	10.10-11.15	involved in a hearing	4-6-2013
24	Judge	3-7-2013	10.00-11.10	involved in a hearing	7-6-2013
28	Judge	12-6-2013	13.00-14.20	involved in a hearing	12-6-2013
27	Judicial assistant	19-6-2013	15.00-16.00	involved in a hearing	22-5-2013
30	Judicial assistant	17-6-2013	15.00-16.35	involved in a hearing	27-5-2013
26	Judicial assistant	25-6-2013	16.00-17.00	involved in a hearing	31-5-2013
25	Judicial assistant	14-6-2013	10.00-11.15	involved in a hearing	4-6-2013
23	Judicial assistant	4-7-2013	15.00-16.10	involved in a hearing	7-6-2013
33	Judicial assistant	24-6-2013	15.00-16.15	involved in a hearing	12-6-2013
31	Staff lawyer	25-6-2013	10.00-11.05	special	not applicable
29	Junior judicial assistant	26-6-2013	10.00-10.35	special	not applicable
19	Senior administrative assistant	26-6-2013	13.50-14.15	special	not applicable

<b>Respondent no.</b>	<b>Position</b>	<b>Interview date</b>	<b>Interview time</b>	<b>Type of interview</b>	<b>Attended hearing of interviewee</b>
<b>Court 2 Admin law division</b>					
54	Team manager location 1	30-9-2013	13.00-14.10	special	not applicable
55	Team manager location 2	15-10-2013	09.30-11.30	special	not applicable
62	Judge	23-10-2013	09.30-10.40	involved in a hearing	23-9-2013
65	Judge	5-11-2013	09.30-10.30	involved in a hearing	25-9-2013
64	Judge	17-10-2013	10.00-11.25	involved in a hearing	3-10-2013
59	Judge	22-10-2013	15.00-16.25	involved in a hearing	8-10-2013
52	Judge	30-10-2013	15.00-16.10	involved in a hearing	11-10-2013
60	Judge	29-10-2013	09.10-10.10	involved in a hearing	14-10-2013
61	Judge	4-11-2013	13.10-14.20	special	not applicable
05	Judge	13-10-2013	11.00-11.50	special	not applicable
63	Judicial assistant	2-10-2013	09.30-11.25	involved in a hearing	23-9-2013
53	Staff lawyer	6-11-2013	09.30-10.40	involved in a hearing	25-9-2013
49	Judicial assistant	30-10-2013	10.00-11.20	involved in a hearing	3-10-2013
51	Judicial assistant	12-11-2013	10.30-11.40	involved in a hearing	8-10-2013
56	Judicial assistant	31-10-2013	14.00-15.05	involved in a hearing	11-10-2013
57	Judicial assistant	7-11-2013	09.30-10.30	involved in a hearing	14-1-2013
58	Staff lawyer	13-11-2013	15.30-16.50	special	not applicable
66	Judicial assistant	13-11-2013	10.20-11.05	special	not applicable
<b>Court 2 Criminal law division</b>					
35	Team manager	30-12-2013	10.00-11.10	special	not applicable
38	Judge	4-12-2013	16.00-17.15	special	not applicable
47	Judge	7-1-2013	10.30-11.50	involved in three hearings	20-11-2013/13-12-2013/ 07-01-2014



<b>Respondent no.</b>	<b>Position</b>	<b>Interview date</b>	<b>Interview time</b>	<b>Type of interview</b>	<b>Attended hearing of interviewee</b>
41	Judge	19-12-2013	10.40-11.55	involved in three hearings	27-11-2013/13-12-2013/07-01-2014
40	Judge	30-12-2013	13.30-14.40	involved in a hearing	28-11-2013
42	Judge	14-1-2014	09.20-10.40	involved in two hearings	29-11-2013/05-12-2013
45	Judge	9-1-2014	10.00-11.15	involved in two hearings	27-11-2013/05-12-2013
43	Judicial assistant	13-1-2014	09.25-10.30	involved in a hearing	20-11-2013
46	Judicial assistant	13-1-2014	13.30-14.50	involved in a hearing	27-11-2013
39	Judicial assistant	19-12-2013	13.00-14.15	involved in two hearings	28-11-2013/05-12-2013
48	Judicial assistant	9-1-2014	13.00-14.15	involved in two hearings	28-11-2013/05-12-2013
44	Judicial assistant	9-1-2104	15.45-16.40	involved in a hearing	29-11-2013
37	Judicial assistant	8-1-2014	14.00-15.20	involved in two hearings	13-12-2013/07-01-2014
36	Judicial assistant	7-1-2014	15.30-16.55	involved in a hearing	13-12-2013
<b>N=66</b>					

## APPENDIX 4 – INTERVIEWED RESPONDENTS ADDITIONAL INTERVIEWS (ANONYMISED)

<b>Resp. no.</b>	<b>Court</b>	<b>Division</b>	<b>Function</b>	<b>Date</b>	<b>Time</b>
<b>Prior to fieldwork</b>					
78	Appellate court Amsterdam	Criminal law	Judicial Assistant	29-5-2012	10.15-11.30
74	District court Zeeland-West-Brabant	Admin. law	Judicial Assistant	20-6-2012	10.15-12.00
75	District court Zeeland-West-Brabant	Civil law	Staff lawyer	20-6-2012	14.00-15.00
83	District court Noord-Holland	Criminal law	Judge	8-8-2012	15.00-16.30
82	District court Amsterdam	Admin. law	Former judge	20-8-2012	11.00-13.00
77	District court Oost-Brabant	Admin. law	Judge	13-12-2012	15.45-17.15
68	District court Amsterdam	Civil law	Former judge	18-12-2012	11.00-12.00
<b>After fieldwork</b>					
76	Administrative Court for Trade and Industry	Admin. law	Judicial Assistant	25-9-2014	09.00-10.15
81	Administrative Jurisdiction Division of the Council of the State	Admin. law	Judicial Assistant	2-10-2014	12.00-13.00
80	Higher Social Security Court	Admin. law	Judicial Assistant	6-10-2014	15.15-16.25
69	Higher Social Security Court	Admin. law	Judicial Assistant	13-10-2014	15.00-16.00
67	Supreme Court	Criminal law	Judge	9-7-2014	14.30-16.00
70	Administrative Jurisdiction Division of the Council of the State	Admin. law	Judge	22-8-2014	16.00-17.45
72	Administrative Court for Trade and Industry	Admin. law	Judge	25-9-2014	10.30-11.45
79	Administrative Court for Trade and Industry	Admin. law	Judge	25-9-2014	13.15-14.05
73	Higher Social Security Court	Admin. law	Judge	6-10-2014	14.00-15.10
71	Higher Social Security Court	Admin. law	Judge	13-10-2014	16.10-17.20
<b>N=17</b>					



## APPENDIX 5 – MEMBERS OF THE STEERING COMMITTEE

1. Leny de Groot- Van Leeuwen (chair) (Em.) Prof. Rechtspleging Radboud University Nijmegen
2. Jacomien Bins-Scheffer, (former) judicial assistant in Administrative law, District court Zeeland-West-Brabant
3. Karsten Gilhuis (from beginning 2016), Criminal law judge, District court Gelderland
4. Rinus Otte (until end 2015), Criminal law judge, Court of Appeal Arnhem
5. André Verburg, Administrative law judge, District court Midden-Nederland



## APPENDIX 6 – CHECKLIST FOR ASSESSING THE MEMO

This is a translation from the original Dutch version. The Dutch version is available on request.

*Hearing/case no.:*

*Involved judicial assistant:*

*Involved judge(s):*

*Type of case (admin/cr, single/panel):*

*Brief facts of the case:*

*Additional info:*

### GENERAL

- *How many pages is the memo and what is the thickness (in cm) of the case files?*
- *Format of the instruction (concept-judgment, checklist or different format)?*
- *Is the format strictly followed or adjusted, and if so; how?*
- *Is it written using own words or literally copied from the files?*
- *Is it easy to understand what the case is about when reading the memo, without reading the files?*

### SOURCES OF INFORMATION INCLUDED IN THE MEMO

- *Legal Acts? Yes/No*
- *Case law? Yes/No*
- *Literature? Yes/No*
- *Own experience in similar cases? Yes/No*
- *Other sources? Yes/No*

### REVEALING VISION OF JUDICIAL ASSISTANT

- *Are any subjective terms used? Which, how many and concerning what aspects?*
- *Does the judicial assistant reveal his/her own view with regard to what the judgment should be? How is this substantiated?*

- *Are different alternatives for handling the case mentioned?*

#### COMMUNICATION WITH JUDGE(S)

- *Does the memo contain points of attention on what to ask/discuss during the hearing?  
If so, what points?*
- *Does the memo contain information regarding what points require extra attention or  
need further research before reaching a judgment?*

#### ADDITIONAL COMMENTS

## APPENDIX 7 – CHECKLIST FOR ASSESSING THE HEARING AND DELIBERATION SESSIONS

This list is a translation from the original Dutch version. The Dutch version is available on request.

*Date and time:*

*Type of hearing (admin. law/crim. law, panel/single-judge, additional specifications):*

*No. of cases:*

*Involved judicial assistant:*

*Involved judge(s):*

*Other attendees:*

*Duration of hearing:*

*Setup during hearing:*

*Duration deliberations:*

*Setup during deliberations:*

*Additional info:*

Before the hearing report

...

Lunch report

...

### HEARING

1. *Does the judge introduce the judicial officers including the judicial assistant to the public?*
2. *Do the judge(s) and judicial assistant engage in any contact (verbal or nonverbal)? What does the contact entail?*
3. *Does the judge provide the judicial assistant with room to speak or ask questions? At which moment(s)?*
4. *Does the judicial assistant make use of the possibility to speak? When and how?*
5. *Does the judge make use of the memo during the hearing?*
6. *How does the judicial assistant make notes (computer or paper)?*



7. *Is the hearing adjourned? For what reason? How often and for what duration?*
8. *Additional comments*

#### DELIBERATION SESSION

##### *General observations*

1. *What is the duration of the deliberation session?*
2. *Where are the deliberations held?*
3. *Is there any structure (order of speaking) in the deliberations? What is the structure?*
4. *Is the memo used during deliberations? In what way?*
5. *How long do the different deliberations of cases last?*
6. *Is the judicial assistant afforded room to speak and/or does he or she speak?*
7. *Is the judicial assistant involved in the discussion regarding the content? In what way?*
8. *In what aspect of the deliberation is the assistant involved (evidence, punishment, legal aspects of the judgment)?*
9. *Is the involvement related to legal and/or emotional aspects?*
10. *How do(es) the judge(s) respond to the involvement of the assistant?*
11. *Do(es) the judge(s) and judicial assistant agree on the judgment or is there discussion? On which points and how is the potential disagreement solved?*
12. *Does the judicial assistant get instructions for writing the judgment? What instructions are provided and to which aspects of the judgment do they apply?*
13. *Does the judge check with the assistant if he or she possesses enough information to write the judgment?*
14. *Additional comments*

## APPENDIX 8 – CHECKLIST FOR ASSESSING THE DRAFT- AND FINAL JUDGMENTS OF THE HEARING

This list is a translation from the original Dutch version. The Dutch version is available on request.

[when necessary specified per judgment]

*Involved judicial assistant:*

*Involved judge(s):*

*Type of hearing (admin. law/crim. law, panel/single-judge, additional specifications):*

*No. of cases and types of cases:*

*No. of pages of each judgment:*

### GENERAL

- *Were any 'building blocks' used?*
- *Who wrote the drafts?*

### MEMO

- *Were any parts of the judgment adapted from the memo? Which ones?*
- *Are any aspects very different from what was written in the memo?*

### DELIBERATION SESSION

- *Which discussions from the deliberations are adapted in the draft?*
- *Are there any parts of the deliberation that are not included in the judgment? Which ones?*
- *Are any parts added which were not discussed during deliberations? Which ones?*

### ADJUSTMENTS MADE BY THE JUDGE(S)

- *Who made adjustments and in what order did this occur?*
- *Are any adjustments made regarding the style?*
- *Are any adjustments made in the content of the judgment?*

- *What elements were changed and how much were they changed?*
- *Are the adjustments alterations, changes and/or deletions?*
- *In which part of the judgments are the adjustments made?*
- *Is any general feedback to the assistant included in the revised version?*

## APPENDIX 9 – EXAMPLE OF AN ITEM LIST USED FOR THE INTERVIEWS WITH RESPONDENTS INVOLVED IN THE HEARING

This is a translation from the original Dutch version. The Dutch version is available on request. The slightly modified item lists used for judicial assistants and for court 1 are available on request too.

### **Item list Judge, admin. Law court 2**

#### INTRODUCTION

##### *Description and explanation of research and interview*

- Anonymity
- Permission from respondent to record interview

#### GENERAL

##### *Position*

- Duration of position at the court and previous positions (at which divisions, courts)
- Reasons for choosing to work at the judiciary

##### *Education*

- RAIO/RIO (entrance within 6 years after graduation or later entrance) and attention in education to relationship with assistant
- Additional training

##### *Career*

- Thoughts on future of career (within or outside the judiciary) and ambitions

*Duties*

- Additional duties besides regular case work and what these entail

## DECISION-MAKING PROCESS (PARTLY RELATED TO OBSERVED HEARING(S))

*Preparation for hearing**Preliminary consultations*

- Whether preliminary consultations are held and if so when
- What the preliminary consultations entail
- Goal of these consultations

*General*

- Preparations for a hearing; how these are conducted
- Manner and extent of reading the court files
- Making additional, individual, notes
- Differences in preparations when chair or not

*Usage of the memo*

- Manner of usage and order of reading memo and files
- The manner in which judicial assistant are followed (blindly following on any aspects)
- Adding own information
- Ask respondent clarifying questions about possible observations made by researcher regarding memo usage
- Ideas regarding preferred type of memo from the assistant

*Relations with judicial assistant*

- Views of judge on judicial assistant presenting their own views
- Whether and the manner in which the respondent makes use of these views

*Contacting the parties*

- The aspects that result in contact with the parties to be necessary
- The officer that has contact with the parties: judge/assistant/both
- The degree of supervision by the judge when assistants contact the parties

*Hearing*

- The main duties of the assistant during the hearing
- Degree that assistants are provided room to participate in the hearing and manner in which this is done

- Usage of the memo during the hearing
- How the observed hearing may have differed in relation to other hearings; if anything out of the ordinary occurred
- Ask respondent clarifying questions about possible remarkable observations made by researcher during the hearing

*Deliberation sessions*

- When chair, specific way(s) of structuring deliberations
- The speaking order of the deliberation participants (incl. assistant)
- Effect of judicial assistant on outcome of deliberations in general (and examples of possible influence)
- Manner of handling disagreements
- Views on importance of including assistants in the discussions
- The judges perception of the judicial assistant if the judicial assistant would not wish to share his or her views
- Usage of the memo during deliberations
- Ask respondent clarifying questions about possible remarkable observations made by researcher during the deliberations

*(Draft)-judgments*

- Manner of adjusting drafts
- Ideas on extent to which drafts are (and should be) adjusted
- The degree of blindly trusting assistants regarding certain aspects of the (draft)-judgment (e.g. administrative aspects)
- Importance of making adjustments in the writing style employed by the assistant
- Occurrences and examples of alterations to an original judgment during the drafting process
- Examples of things that have gone wrong in the drafting
- Ideas regarding the sense of responsibility over the final judgment (and the part that the assistant plays therein)

*General issues*

- Views on importance of following case law
- Importance of consistency in handling cases within own court
- Comparison of own method of work to that of other judges

## FACTORS THAT AFFECT THE MANNER OF WORK AND VIEWS ON THE ROLE OF THE JUDICIAL ASSISTANT

### *Role perceptions*

- Views on own role as a judge and difference to role of assistant
- Views on magnitude of current duties of assistant
- Ideas about what possible boundaries to the role should be

### *Appreciation of work judicial assistant*

- Qualities of an ideal judicial assistant
- Preference of working with certain assistants and reasons for it

### *Workload*

- Views on workload at the court and court division
- The extent to which time constraints affect certain tasks, and the tasks that receive less attention due to time pressure

## PROFESSIONAL AND SOCIAL RELATIONSHIPS

### *Hierarchy and atmosphere*

- Description of atmosphere at the court (division)
- Description of relationships with assistants; the degree of hierarchy that is employed

### *Performance reviews of judicial assistants*

- Involvement of respondent in providing feedback for performance reviews of assistants

## MISCELLANEOUS

- Ideas on modifications in work at the judiciary and role of judicial assistant over time
- [If worked at different locations] ideas about differences between divisions and/or courts
- Aspects not discussed which respondent believes to be of relevance to the research topic

## CONCLUSION

- Thank you
- Explanation of usage of data and quotes in dissertation
- Whether the respondent wishes to receive transcript to check accuracy





## APPENDIX 10 – LIST OF CODES USED FOR THE ANALYSIS IN ATLAS.TI

This list is a translation from the original Dutch version. The Dutch version is available on request.

### POSITION AND EXTRA DUTIES

- 1.1. Position
- 1.2. Extra duties

### CAREER AND EDUCATION

- 2.1. Choice to work at judicial organisation
- 2.2. Education and background
- 2.3. Training and coaching
- 2.4. Future career
- 2.5. Switch from judicial assistant to judge

### PRELIMINARY PHASE

- 3.1 Procedure preliminary phase
- 3.2 Division of cases

### PREPARATIONS FOR THE HEARING

- 4.1. Memo
- 4.2. Views judicial assistant on case
- 4.3. Contact with parties
- 4.4. Contact judicial assistant and judge/pre-trial consultations
- 4.5. Including additional information in preparations
- 4.6. General about preparations and individual ways of preparing
- 4.7.1. Preparations – trust
- 4.7.2. Preparations – difference between judge and judicial assistant
- 4.7.3. Preparations – impact and influence

- 4.7.4. Preparations – remaining

## HEARING

- 5.1. Duties judicial assistant at the hearing
- 5.2. Usage memo during hearing
- 5.3. Providing the judge(s) with feedback
- 5.4. Adjournments
- 5.5.1. Hearing – trust
- 5.5.2. Hearing – difference between judge and judicial assistant
- 5.5.3. Hearing – impact and influence
- 5.5.4. Hearing – remaining

## DELIBERATIONS

- 6.1. Order of speaking and structure of meetings
- 6.2. Usage memo during deliberations
- 6.3. Discussion and disagreement
- 6.4. Place within case law
- 6.5. Providing directions for writing judgment
- 6.6. Asking advice from colleagues
- 6.7.1. Deliberations – trust
- 6.7.2. Deliberations – difference between judge and judicial assistant
- 6.7.3. Deliberations – impact and influence
- 6.7.4. Deliberations – remaining

## WRITING THE JUDGMENT

- 7.1. Who is writing the judgment
- 7.2. Usage memo during writing
- 7.3. Order of revising judgment-draft
- 7.4. Adjusting the judgment to the judge
- 7.5. Revisions by judges
- 7.6. Changing the judgment during drafting-process
- 7.7. Refusing to write or sign case
- 7.8.1. Judgment – trust
- 7.8.2. Judgment – difference between judge and judicial assistant
- 7.8.3. Judgment – impact and influence
- 7.8.4. Judgment – remaining

#### ORGANISATION AND STRUCTURE OF COURT DIVISION

- 8.1. Organisation of division – practical matters
- 8.2. Performance reviews
- 8.3. Contact with manager and/or board
- 8.4. Role and usage of staff lawyers

#### JUDICIAL ORGANISATION CHARACTERISTICS

- 9.1. Changes in role judicial assistant over time
- 9.2. Differences between courts
- 9.3. Differences in involvement judicial assistant in panel or single-judge decision-making
- 9.4. Differences between divisions
- 9.5. Remaining judicial organizational issues
- 9.6. Workload and time pressure
- 9.7. Professional relationships and hierarchy
- 9.8. Differences in involvement judicial assistants in different types of cases

#### ROLE OF JUDGE AND JUDICIAL ASSISTANT

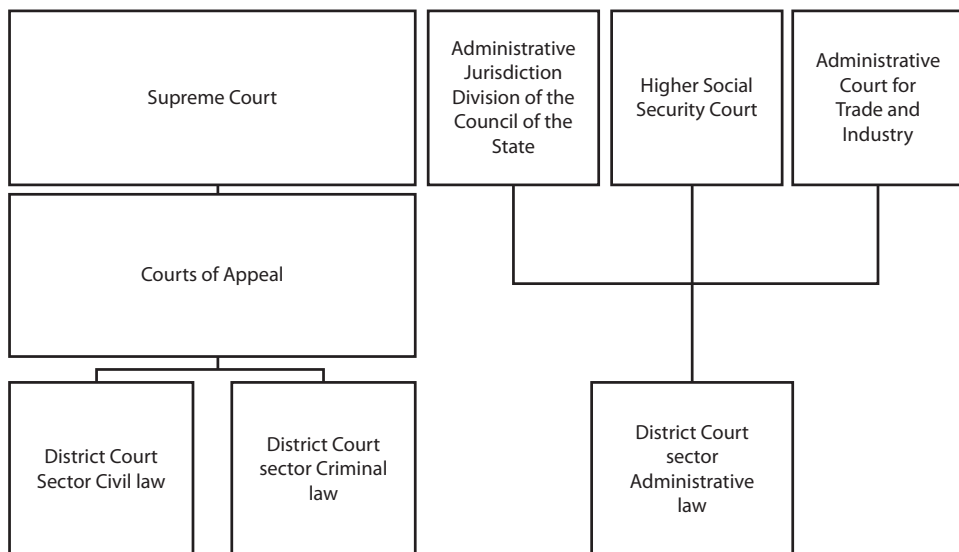
- 10.1. Views on role judge and judicial assistant
- 10.2. Boundaries to involvement of judicial assistants
- 10.3. Role conflicts and possibilities to develop careers
- 10.4. Expertise
- 10.5. Experience
- 10.6. Sense of responsibility
- 10.7. Personality and character
- 10.8. Qualities of ideal judicial assistant
- 10.9. Appreciation and rewarding of judicial assistants
- 10.10. Different types of judicial assistants (personality etc.)

#### REMAINING ISSUES

- 11.1. Issues regarding the methodology of the research
- 11.2.1. Remaining – trust
- 11.2.2. Remaining – difference between judge and judicial assistant
- 11.2.3. Remaining – impact and influence
- 11.2.4. Remaining factors that might affect the involvement and impact of judicial assistants on judicial decision-making



# APPENDIX 11 – HIERARCHY OF THE DUTCH COURTS





## APPENDIX 12 – OVERVIEW OF LITERATURE REGARDING HEURISTICS, AND COGNITIVE AND SOCIAL BIASES IN JUDICIAL DECISION-MAKING<sup>1</sup>

Adjudication involves decision-making and when decisions are made people tend to rely on heuristics to a certain extent. Therein biases can also occur. As judicial assistants are regularly highly involved in the process of decision-making their participation can enhance or decrease the reliance on heuristics and occurrence of biases, and as such their involvement can affect the decision-making.

Although judges are specially selected and trained to make just judicial decisions, research demonstrates that in making judgments, judges in many respects perform similar to ‘ordinary people’ (see e.g. Guthrie et al., 2007; Ten Velden & De Dreu, 2012a). They tend to first evaluate ideas on the basis of intuition, which is an automatic, effortless and rapid process (also named system I) (Tversky & Kahneman, 1974). The great advantage of this system lies in the fact that this generates results quickly and, in general, the outcomes are decent. Therefore in ordinary life, this type of decision-making often suffices. However, the usage of heuristics (mental shortcuts to ease the decision-making) in this process can also result in errors. For decisions in which it is crucial to avoid errors – such as judicial decisions – a second, deliberative, process should take place in which judges monitor the intuitively derived judgment to determine whether it needs to be endorsed, corrected or overridden (system II). This process involves time, effort and the application of rules (Kahneman & Frederick, 2002; Tversky & Kahneman, 1974).

It turns out to be difficult to overcome an initial decision made via system I and to properly overrule them using system II thinking, also in judicial decision-making. Several biases may occur during the decision-making process. These cognitive biases have been associated with miscarriages of justice in various studies (see for some Dutch court cases: Derksen, 2006; Koppen, 2003; see also: Rassin, 2010, p. 154).

A common phenomenon that causes biases is ‘anchoring’ (Kahneman, 1992). This phenomenon suggests that people adjust their judgment to an initial value that serves as a reference point or anchor for the judgment (Tversky & Kahneman,

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1. This section is partly based on the article “Considering the consequences of increased reliance on judicial assistants: A study on Dutch courts”. *International Journal of the Legal Profession*, 20(1), 39-59, 2014.



1974). This initial value can be manifested in the manner by which a problem is stated or information is presented. As another strand of research is focused on the phenomenon of 'framing'. It reveals that the way in which a problem is framed influences the associated decision-making considerably (Tversky & Kahneman, 1981).<sup>2</sup> In judicial decisions, these values can, for example, be identified in the case briefs presented by an attorney or the prosecutor's office. In 1989 Schünemann and Bandilla (1989) revealed that, in an experimental setting, judges in criminal cases who had knowledge of case files before a hearing more frequently convicted defendants than judges with no prior knowledge. More recently, Guthrie, Rachlinski and Wistrich (2007) demonstrated that anchoring also occurs when judges are deciding on awarding compensatory damages (see Guthrie, Rachlinski, & Wistrich, 2001 p. 1286-1294; Wistrich, Guthrie, & Rachlinski, 2005 p. 778-793). Ten Velde and de Dreu (2012) studied anchoring in the Dutch context and found that the anchoring effect also occurred when Dutch criminal law judges were faced with different levels of charges of the prosecution officer (see for another study conducted in Germany: Englich et al., 2005).

Closely related to anchoring and framing is the phenomenon of 'confirmation bias', or tunnel vision (see Nickerson, 1998). This refers to the predisposition to look for evidence that confirms our presumptions, thereby causing one to overlook or underestimate evidence that contradicts these presumptions. These phenomena can occur in motivated or unmotivated forms. That is, biases can be motivated by a conscious or unconscious desire to defend one's beliefs, but they can also occur without such motivation (see Nickerson, 1998, p. 176; on motivated reasoning, see e.g. Kunda, 1990).

The aforementioned biases are primarily related to the individual decision-making process. Additional social biases can occur in relation to the fact that judicial decision-making is often a group activity (Cohen, 2002, p. 25; Martinek, 2010). These group-related biases are expected to be particularly manifested in court cases that are heard by a panel of judges. Nonetheless, similar mechanisms can also occur in a normal work environment. 'Groupthink', defined as 'a collective pattern of defensive avoidance' (I. L. Janis & Mann, 1977, 129), may occur. In this context the strong desire to meet consensus and avoid conflict might inhibit the quality of the actual decision-making. The quality of group decision-making can also be obstructed by conformity effects (Sunstein, 2003). Decision-makers are often concerned about their personal relations with other group members whilst making decisions which can inhibit optimal decision-making (De Dreu, Nijstad, & Van Knippenberg, 2008; Janis, 1982). The extent to which one conforms to the expectations of other group members is significantly related to the status or authority held by the group

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2. See on this topic also a study by Monahan and Silver (2003) in which they present 26 judges with information in percentages or in a number out of a 100. The way in which it was presented affected the choices that the judges made. See for how the use of different words can even make a difference the work on framing in linguistics by Charles Fillmore and George Lakoff.

members (see e.g. Cialdini & Goldstein, 2004; Robbins & Judge, 2013, p. 319-321). People with a higher status also tend to have more influence on the decision-making than people with a lower status (Levine & Moreland, 1990, p. 600). A final problem that can occur is when group members do not all possess the same information. The group will then mainly discuss the shared information with the group, leaving the unshared information frequently unmentioned and thus unknown to the rest of the group (Lu et al., 2012; Strasser & Birchmeier, 2003). The likelihood of certain biases occurring in practice is related to various personality traits: such as a persons need for cognition and ones pro-self or prosocial motivation. Additionally there are various situation based drivers, such as time pressure and accountability to the process, that affect the likelihood of biases occurring (De Dreu et al., 2008; Ten Velden & De Dreu, 2012a).