



Navigating between Scylla and Charybdis

ACADEMIC ARTICLE

GIEL STOEPKER 



ABSTRACT

This article examines the role of law clerks in the Dutch administrative appellate courts and how they collaborate with judges in judicial decision-making. While law clerks in Dutch district courts have previously been studied, there was limited knowledge regarding their work at the appellate courts. Drawing on semi-structured interviews with both judges and law clerks, this empirical study explores how law clerks contribute to case preparation, hearings, deliberations, and drafting rulings, and how their involvement influences both procedure and outcome.

Findings show that law clerks perform a broad range of substantive tasks: conducting legal triage, writing in-depth memos or draft rulings, contributing actively during deliberations, and drafting final texts after hearings. Judges generally value law clerks as equal discussion partners, appreciating their ability to provide counterarguments and prevent tunnel vision. Simultaneously, the collaboration is marked by institutional paradoxes. On the one hand, close cooperation allows judges to manage an increasing caseload effectively and efficiently. On the other hand, fundamental rule-of-law principles require that judges, not clerks, retain sole responsibility for adjudication. Law clerks thus navigate a delicate balance: they aim to contribute substantively without undermining judicial independence, impartiality, or authority. Professional standards may help clarify the law clerk's role and strengthen their legitimacy in judicial decision-making. In this sense, law clerks, like Odysseus, navigate between Scylla and Charybdis – striving to avoid both inefficiency and the erosion of rule-of-law safeguards.

CORRESPONDING

AUTHOR:

Giel Stoepker

Utrecht University, NL

gielstoepker@gmail.com

KEYWORDS:

Law clerks; judicial assistants; appellate courts; judicial decision-making; collaboration with judges

TO CITE THIS ARTICLE:

Giel Stoepker, 'Navigating between Scylla and Charybdis' (2026) 16(3) *International Journal for Court Administration* 3. DOI: <https://doi.org/10.36745/ijca.649>

Judges work together with law clerks.¹ Empirical research at district courts demonstrates the influence of these clerks on the procedure and the outcome of cases. By questioning what role clerks play, how do they collaborate with judges and what influence do they have this article² reports on a study conducted at administrative appellate courts in the Netherlands.

1. INTRODUCTION

In handling cases, judges at Dutch administrative courts collaborate with law clerks. The judge and the law clerk have a common goal: to make sound decisions in cases. Previous research at Dutch district courts shows that the law clerks perform various tasks to achieve this common goal.³ They assist the judge in the handling and preparation of cases, usually serve as the clerk during hearings, act as a discussion partner during deliberations, and draft preliminary judgments based on the judge's instructions. In short, the law clerk supports the judge with advice and action. Their contributions enhance the legal quality.⁴

The question arises as to how collaboration occurs behind the scenes at Dutch administrative appellate courts, namely the Judicial Division of the Council of State (JDCOS, in Dutch: Afdeling bestuursrechtspraak van de Raad van State), the Central Appeals Tribunal (CAT, in Dutch: Centrale Raad van Beroep), and the Trade and Industry Appeals Tribunal (TIAT, in Dutch: College van Beroep voor het bedrijfsleven).⁵ There is less known about the proceedings at these appellate courts. This is significant because these courts handle numerous cases. Approximately 45% of administrative law cases involve appeals.⁶ The reasons for this are diverse but typically relate to the quality expected from the appeal process. For example, citizens hope for judgements that are both fair and understandable although some may prioritize one over the other.⁷ Similarly, administrative bodies seek legal clarity and expect to find it in an appeal.⁸ In short, both citizens and administrative bodies have high expectations of the appellate courts.

1 In this article I use the term law clerk for the Dutch term *gerechtsjurist*. Deliberately, I chose not to use the more direct translation 'court clerk', as it implies that this official performs only administrative tasks. For the sake of completeness, I note that most law clerks, like judges, have studied law at a university.

2 This is a modified version of an article that was published earlier in Dutch (Giel Stoepker, "Schipperen tussen Scylla en Charybdis," *Jurisprudentie Bestuursrecht plus* no. 3 (2024), 43–62).

3 Nina Holvast, *In the shadow of the judge: The involvement of judicial assistants in Dutch district courts* (Eleven International Publishing, 2017).

4 Giel Stoepker, "Rechterlijke stadsmuzikanten," *Rechtstreeks* no. 2 (2023).

5 These are three (of four) courts of final instance in Dutch administrative law. The fourth court of final instance (regarding taxation) is the Supreme Court of the Netherlands (in Dutch: Hoge Raad). This court is excluded, because it is not a court of facts but a court of cassation. In the Netherlands there exists no court of cassation in other areas of administrative law.

6 Bert Marseille and Marc Wever, "Procedeergedrag van de overheid in procedures bij de bestuursrechter," *Nederlands Juristenblad* 376 (2024).

7 Martje Boekema, *De stap naar hoger beroep. Een onderzoek naar appelgedrag van burgers in bestuursrechtelijke zaken* (Boom Juridische uitgevers, 2015), 164–165.

8 Reyer Baas, *De meerwaarde van meervoud. Verschillen en overeenkomsten tussen meervoudige en enkelvoudige rechtspraak, in het bijzonder in civiele zaken* (Wolters Kluwer, 2020), section 9.2; Teun Geurts e.a., *Bestuursorganen in hoger beroep* (WODC, 2023), 38–43; Marseille and Wever, "Procedeergedrag van de overheid in procedures bij de bestuursrechter," section 3.

Thus, there is every reason to investigate how collaboration between law clerks and judges takes place in the Dutch appellate courts and to gain insight into the extent to which the proceedings differ from those at the district courts. The goal of this article is to highlight that law clerks at these appellate courts struggle with a dilemma. Specifically, investigating the structural dilemma implicit in the working relationship between the law clerk and the judge and judicial independence that is paramount under the principles of the rule-of-law. The questions that this article is seeking to answer are the following: what role does the law clerk play at the Dutch administrative appellate courts, how do they collaborate with the judge, and what influence do they have on the procedure and outcome?

Research into the working methods of appellate courts is socially relevant. Transparency regarding who is involved in handling a case; policymakers, justice partners and members of society are empowered to engage in discussions about how the appellate courts should be organized. Additionally, this research can provide individual law clerks and judges tools to strengthen their collaboration. The search for such tools is ongoing. Various recommendations have been made in the childcare benefits scandal-reflection reports of the JDCOS and the district courts to enhance collaboration, dialogue, and (internal) checks and balances.⁹ The visitation report 2022–2023 on the Dutch courts also recommends reinforcing the cooperation between law clerks and judges by finding a new balance and reasoning from each party's contribution to high-quality jurisprudence. Furthermore, this research addresses a gap in existing research by focusing on Dutch appellate courts, an area that has not been thoroughly investigated by researchers.¹⁰

This article presents the findings of research to address the aforementioned questions. This article is structured as follows. First, previous research on the role of the law clerk is discussed (section 2). Next, the research design (section 3) and the results of that research are presented (section 4). Then follows a brief discussion on the dilemma faced by the law clerk at the appellate courts (section 5). Finally, concluding remarks follow (section 6).

2. RESEARCH ON LAW CLERKS

The role of the law clerk has received scientific attention in international literature for quite some time. Most of this research has been conducted on law clerks in the United States (U.S.), particularly at the Supreme Court and the courts of appeal. While the workings of the U.S. Supreme Court are confidential, information about its operations is available. For example, the personal archives of deceased justices have been made public.¹¹ Additionally, some law clerks have written books or articles describing their experiences.¹²

9 See the different reports of the JDCOS and the district courts: *Lessen uit de kinderopvangtoeslagzaken*, 54–56; *Verslag van de werkgroep rechterlijke oordeelsvorming*, 31–34 and 48–50; *Recht vinden bij de rechtbank*, 46–47, 56 and 61.

10 Holvast, *In the shadow of the judge*, 34; Nina Holvast, “Het belang van onderzoek naar de betrokkenheid en invloed van juridische ondersteuning,” *Rechtstreeks* no. 2 (2023), 50–51.

11 Linda Greenhouse, *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey* (Times Books, 2006).

12 Edward Lazarus, *Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court* (Penguin Books, 2005).

Todd Peppers, Artemus Ward and David Weiden, Stephen Wasby, and Ward have provided a clear overview of the developments concerning the role of law clerks in the United States.¹³ Until 1920, they primarily performed administrative tasks. Around 1940, their role evolved into that of a research assistant. Over time law clerks became involved in all phases of the judicial process. The increasing workload is often cited as the main reason for this shift.¹⁴ They began working for a single justice for a period of (usually)¹⁵ one year. As a result, the position of law clerk became prestigious. This was because the justice they would work for personally selected them, usually choosing someone who had studied at a highly regarded law school. Moreover, experience as a law clerk proved to be an excellent springboard to a prestigious career elsewhere in the legal field.

The tasks of law clerks at the U.S. Supreme Court vary by justice and have evolved over time.¹⁶ Their role in the judicial process has expanded significantly; in this regard, Posner refers to this as “the century of the law clerk.”¹⁷ The tasks now performed by law clerks include assessing the admissibility of cases, writing analytical memos, assisting justices in preparing for hearings, drafting opinions based on instructions, and collaborating with justices to refine and finalize those opinions. Law clerks work in close proximity to the justices for these tasks and engage in both professional and social interactions – ranging from formal meetings to shared lunches and informal gatherings. Through these formal and informal interactions, law clerks frequently discuss case content with the justices and may even influence their decisions or the arguments presented in rulings.¹⁸ This is not without controversy.¹⁹ From a rule-of-law perspective, it is fundamental that only the judge is responsible for adjudication. Judges are selected, trained, and socialized for this purpose.²⁰ Moreover, their

13 Todd Peppers, *Courtiers of the marble palace: the rise and influence of the Supreme Court law clerks* (Stanford University Press, 2006); Artemus Ward and David Weiden, *Sorcerers' apprentices: 100 years of law clerks at the United States Supreme Court* (New York University Press, 2006); Stephen Wasby, “The world of law clerks: tasks, utilization, reliance, and influence,” *Marquette Law Review* no. 1 (2014); Artemus Ward, “Law Clerks,” in *The Oxford Handbook of U.S. Judicial Behavior*, ed. Lee Epstein and Stefanie Lindquist (Oxford University Press, 2017). See also Rick Swanson and Stephen Wasby, “Good stewards: law clerk influence in state high courts,” *The Justice System Journal* no. 1 (2008); Todd Peppers e.a., “Surgeons or scribes? The role of United States Court of Appeals law clerks in “appellate triage,”” *Marquette Law Review* no. 1 (2014); Todd Peppers and Clare Cushman (eds.), *Of courtiers and kings: More stories of Supreme Court law clerks and their justices* (University of Virginia Press, 2015); Adam Bonica e.a., “Legal rasputins? Law clerk influence on voting at the U.S. Supreme Court,” *Journal of Law, Economics en Organization* no. 1 (2019).

14 Jonathan Cohen, *Inside appellate courts: the impact of court organization on judicial decision making in the United States courts of appeals* (The University of Michigan Press, 2002).

15 Swanson and Wasby, “Good stewards”.

16 Chester Newland, “Personal assistant to supreme court justices: the law clerks,” *Oregon Law Review* no. 4 (1961); Paul Baier, “The law clerks: profile of an institution,” *Vanderbilt Law Review* (1973); Todd Peppers and Christopher Zorn, “Law Clerk Influence on Supreme Court Decision-Making,” *DePaul Law Review* (2008).

17 Richard Posner, *How judges think* (Harvard University Press, 2008).

18 Lazerus, *Closed Chambers*; David Garrow, “How *Roe v. Wade* was written,” *Washington and Lee Law Review* no. 2 (2014); Adam Glynn and Maya Sen, “Identifying judicial empathy: does having daughters cause judges to rule for women’s issues?,” *American Journal of Political Science* no. 1 (2015); Bonica e.a., “Legal rasputins?”.

19 Peppers, *Courtiers of the marble palace*.

20 Wade McCree, “Bureaucratic justice: An early warning,” *University of Pennsylvania Law Review* no. 4 (1981); Ernestine Köhne-Hoegen, “De raio-opleiding als socialisatieproces: uittreders aan het woord,” *Recht der Werkelijkheid* no. 1 (2008).

position is surrounded by various safeguards to ensure independence, impartiality, and integrity. If a law clerk is extensively involved in case decisions and potentially influences them, it raises the question of whether their role is compatible with the fundamental principles of the rule-of-law.

There is also a wealth of literature available on the role of law clerks in the European tradition. This role exists not only in the common law systems of the United Kingdom and Ireland but also in the civil law systems of the Romanic, Germanic and Nordic traditions.

Similar to law clerks in the United States, law clerks in Western European countries occupy a position between the administrative staff of a court and its judges. Unlike administrative staff, law clerks in most European countries are appointed to assist judges in substantive judicial work, according to Opinion No. 22 of the Consultative Council of European Judges (CCJE).²¹ The primary reasons for their involvement are often to manage an increasing caseload²² and/or to contribute to the quality of judicial decision-making.²³ However, as Sanders has shown, the role of law clerks is not implemented uniformly across Europe; there are different models of collaboration.²⁴

In the European context, the involvement of law clerks is also not without controversy. The CCJE emphasizes that caution is required from a rule-of-law perspective when law clerks come closer to judicial decision-making.²⁵ Law clerks may only support judges, not replace them. Ultimately, only the judge should be responsible for adjudication – no one else. This warning is also reflected in studies on judicial practices in various countries. Peter Bieri studied the Swiss judicial system, where judges are not appointed for life but for a specified time, and cautioned that an excessive number of law clerks, who are employed permanently, could undermine judicial independence.²⁶ Tatyana Nesterchuk showed that law clerks were encouraged and trained to think like judges and that a law clerk's memo was expected to serve as a roadmap, helping to save the judge's time.²⁷

21 Opinion no. 22 on the role of judicial assistants, Consultative Council of European Judges 2019.

22 Peter Bieri, "Law clerks in Switzerland – a solution to cope with the caseload?," *International Journal for Court Administration* no. 2 (2016).

23 Gunnar Grendstad e.a., *Proactive and powerful. Law clerks and the institutionalization of the Norwegian Supreme Court* (Eleven International Publishing, 2020); Gunnar Grendstad e.a., "From backlogs to quality assurance. The development of law clerk unit at Norwegian courts," *International Journal for Court Administration* no. 2 (2020).

24 Anne Sanders, "Judicial Assistants in Europe – A Comparative Analysis," *International Journal for Court Administration* no. 3 (2020). See also Anne Sanders, "Law Clerks," in *The Oxford Handbook of Comparative Judicial Behaviour*, ed. Lee Epstein e.a. (Oxford Academic, 2024).

25 Opinion no. 22 on the role of judicial assistants, Consultative Council of European Judges 2019, section 19.

26 Bieri, "Law clerks in Switzerland". See also Andreas Lienhard and Peter Bieri, "Gerichtsschreiberjustiz?," *Justice – Justiz – Giustizia* no. 4 (2017).

27 Tetyana Nesterchuk, "The view from behind the bench: the role of judicial assistants in the UK Supreme Court," in *Judge and jurist: Essays in memory of Lord Rodger of Earlsferry*, ed. Andrew Burrows e.a. (Oxford University Press, 2013). Zie ook Cohen, "Inside appellate courts"; Otwin Massing, "The legal assistants at the German Federal Constitutional Court: A "black box" of research?," in *Constitutional courts in comparison: The US Supreme Court and the German Federal Constitutional Court*, ed. Ralf Rogowski and Thomas Gawron (Berghahn Books, 2016).

In the Netherlands, research on the role of the law clerk only began a few years ago with the publication of Nina Holvast's dissertation.²⁸ In her study, Holvast investigated how law clerks are involved in the judicial decision-making process at the district courts and what consequences that involvement has for how justice is administered. Through empirical research, Holvast demonstrated that little has been documented regarding the role of the law clerk.²⁹ There is a discrepancy between this limited, formal position and the significant variation in actual involvement.³⁰ Law clerks perform many tasks.³¹ They assess incoming cases and subsequently write a memo before the hearing, referred to as (translated into English) the "instruction," which assists the judge in handling the case and preparing for the hearing. In the instruction, the law clerk summarizes the main aspects of the case and sometimes provides a brief personal analysis. During the hearing, the law clerk typically serves as the clerk and takes notes. Additionally, the law clerk is occasionally given the opportunity to ask questions of the parties. During the deliberation in the council chamber, it is the informal rule that the law clerk is given the first opportunity to share their perspective on the case. The law clerk is also involved in further discussions. After the council chamber meeting, the preliminary judgment is written by the law clerk, drawing from the instructions given by the judge during the meeting. In short, an important task of the law clerk is to serve as a sounding board. They are busiest when performing this task.³²

As a result of these assigned tasks, law clerks are able to influence the procedure and the judicial decision.³³ In this context, influence means guidance. The law clerk also provides some level of direction to the progression of the case. Guidance is provided regarding the decision to be made by the judge through the instruction and during the deliberation. Research by Mascini and Holvast indicates that the degree of influence depends on the extent of the judge's trust in the law clerk.³⁴ The more trust, the more influence.³⁵ Moreover, influence increases when the judge embraces managerial values and assumes a managerial role in the collaboration with the law clerk and the accompanying values of efficiency and effectiveness.³⁶ Additionally, this influence compounds when the judge is convinced that the benefits of the law clerk's involvement outweigh the associated rule-of-law risks.³⁷

²⁸ Holvast, *In the shadow of the judge*.

²⁹ See also Bert Marseille, "De normering van de taak van de gerechtsjuristen binnen de rechtspraak," *Rechtstreeks* no. 2 (2023), 14–15.

³⁰ Holvast, *In the shadow of the judge*, section 8.1.1.

³¹ Holvast, *In the shadow of the judge*, chapters 5 and 6. See also Nina Holvast and Peter Mascini, "Is the judge or the clerk making the decision? Measuring the influence of judicial assistant via an experimental survey among Dutch district court judges," *International Journal for Court Administration* no. 3 (2020), section 2.

³² Holvast and Mascini "Is the judge or the clerk making the decision?," section 4 and 5.

³³ Holvast, *In the shadow of the judge*, section 8.1.3.

³⁴ Peter Mascini and Nina Holvast, "Explaining judicial assistants' influence on adjudication with principal-agent theory and contextual factors," *International Journal for Court Administration* no. 3 (2020). See also Christopher Kromphardt, "Fielding an excellent team: law clerk selection and chamber structure at the US Supreme Court," *Marquette Law Review* no. 1 (2014).

³⁵ Holvast, *In the shadow of the judge*, section 7.1.1.

³⁶ Holvast, *In the shadow of the judge*, section 7.1.2.

³⁷ Mascini and Holvast found no evidence to support the hypothesis that influence increases as the judge collaborates with a more experienced law clerk. Nor was there evidence for the hypothesis that influence decreases as the judge acts from a perspective more strongly focused on values and norms associated with the rule-of-law.

The degree of influence does not depend on whether the law clerk works for a single-judge chamber or a multiple-judge chamber; in both cases, the involvement of the law clerk is valuable. According to Charlotte Perquin-Deelen, a single-judge chamber can achieve the same results as a multiple-judge chamber if it collaborates with an experienced law clerk, and that collaboration is based on respect and mutual trust. Collaboration in a single-judge chamber is also desirable from the perspective of a cognitive control mechanism, according to Perquin-Deelen.³⁸ Furthermore, in a multiple-judge chamber, the input of the law clerk is of added value. Substantive contributions are also appreciated by judges in a multiple-judge chamber, according to Reyer Baas.³⁹

Holvast evaluates the influence of the law clerk in her dissertation based on two normative perspectives: rule-of-law and managerial. In the rule-of-law perspective, the judge is central.⁴⁰ They are the authoritative personification of the judiciary. From an independent and impartial position, they provide a counterbalance to other state powers, thus helping to protect the rights and freedoms of citizens. To achieve this goal, various conditions apply to the judge, such as ancillary positions and parties' right to ask for recusal. The fact that the judge collaborates with and is influenced by a non-judge is at odds with this perspective. The second perspective, which Holvast refers to as the managerial perspective, aligns with the new public management introduced in the 1980s and stems from the idea that the judiciary should meet the needs of modern society.⁴¹ Important values include responsibility, transparency, efficiency, and effectiveness, which should lead to increased productivity (with an accompanying output-based funding model). This ultimately benefits those seeking justice. In this perspective, collaboration is not only useful but also necessary.

Holvast concludes that the Dutch judicial organization aims to increase efficiency and effectiveness while reducing rule-of-law risks.⁴² From the rule-of-law perspective, the law clerk should primarily perform what Holvast calls administrative-secretarial tasks.⁴³ However, this is problematic. Certain administrative-secretarial tasks have the potential to also influence the administration of justice. They contain advisory or discussion-related elements. Consider, for example, writing the instruction prior to the hearing. Thus, the law clerk's secretarial-administrative involvement may also be problematic from the rule-of-law perspective. Moreover, Holvast concludes that while it is reassuring from a rule-of-law standpoint that, based on her research, judges seem reluctant to place too many responsibilities on the law clerk, this reluctance is inconsistent with the managerial perspective.⁴⁴ If the judge makes only modest use of their law clerk, it is neither efficient nor effective.

³⁸ Charlotte Perquin-Deelen, *Biases in de boardroom en de raadkamer. Een juridische en filosofische analyse van de bestuurlijke taakuitoefening en rechterlijke beoordeling, mede aan de hand van een empirische studie* (Wolters Kluwer, 2020), section 4.4.2.

³⁹ Reyer Baas, *De meerwaarde van meervoud*, sections 4.4.4, 6.6.3 and 7.7.3.

⁴⁰ Holvast, *In the shadow of the judge*, section 4.1. See also Elaine Mak, *De rechtspraak in balans. Een onderzoek naar de rol van klassiek-rechtsstatelijke beginselen en 'new public management'-beginselen in het kader van de rechterlijke organisatie in Nederland, Frankrijk en Duitsland* (Wolf Legal Publishers, 2008), 27–33.

⁴¹ Holvast, *In the shadow of the judge*, section 4.2. See also Mak, *De rechtspraak in balans*, 33–36.

⁴² Holvast, *In the shadow of the judge*, section 8.2.

⁴³ Holvast, *In the shadow of the judge*, section 8.2.1.

⁴⁴ Holvast, *In the shadow of the judge*, section 8.2.2.

The law clerk must balance between both perspectives. This is not simple. At times, one perspective takes precedence (the judge should not lean too heavily on the law clerk due to their authority and legitimacy). In other cases, the opposite perspective is dominant (the judge must collaborate with the law clerk, as this is efficient and effective). The ambiguity that arises from this can, according to Holvast, be alleviated by taking steps to strengthen and ensure the independence, impartiality, and professionalism of the law clerk.⁴⁵

The aforementioned research on the role of the law clerk in the district courts provides a valuable theoretical framework for studying the law clerk in the Dutch appellate courts. The questions remain, what tasks the law clerk is assigned at the appellate courts, how the law clerk and judge achieve their common goal, and in what ways the law clerk guides the process and judicial decision.

3. RESEARCH DESIGN

To gain more insight into the operations of the Dutch administrative appellate courts, the personal experiences and insights of law clerks and judges were chosen as the object of study.

Empirical research was conducted in the form of 24 semi-structured interviews. These interviews included law clerks and judges from the JDCOS, the CAT, and the TIAT.⁴⁶ In selecting the respondents, efforts were made to achieve a balanced representation of various functions and levels of experience (maximum variety sampling strategy).⁴⁷ All respondents were personally invited, and none of them refused to participate. The number of interviews aligned with the goal of collecting data until saturation was reached (this point was achieved around approximately 20 interviews).⁴⁸

To ensure the validity of the interviews, a so called topic lists were created during the exploratory phase. These lists outlined the subjects brought up and questions asked in the interviews. The topic lists were adhered to as closely as possible during the research; they were only minimally supplemented.

The following should also be noted regarding validity. The author works as a law clerk at the CAT. This position allowed for more in-depth and critical questions. Additionally, the author may have been granted a higher level of trust, potentially leading to more truthful data. Also, it is possible that the respondents were willing to participate because of the author's position at the CAT. However, the author's position also carries risks. The author could unintentionally be biased or find it challenging to ask difficult or obvious questions due to a possible lack of an external perspective. There is also a risk that some data may go undiscovered, as respondents might mistakenly assume that the author already knows the answers. To minimize these risks, it was

⁴⁵ Holvast, *In the shadow of the judge*, section 8.1.2 and 8.3.

⁴⁶ Regarding the generalizability of the research results, it can be noted that the study was conducted only within the domain of administrative law. It would be interesting to examine how collaboration takes place in other appellate courts within different legal fields, such as civil law and criminal law. Moreover, research into the procedures at the Supreme Court of the Netherlands is useful, as it concerns cassation and cases from all legal fields that are handled there.

⁴⁷ Interviews were conducted with respondents who handle cases both in appeal procedures and in first and sole instance procedures.

⁴⁸ Hennie Boeije, *Analysis in qualitative research* (Sage, 2010).

decided to explicitly include critical questions and aspects in the topic lists and to also conduct research at other courts where the author is less familiar. Additionally, an agreement was made with the CAT-board to consistently emphasize that the author is conducting research in the role of a researcher, not as a colleague.

The interviews primarily took place in person, although some were conducted virtually through the Microsoft Teams platform. Each interview lasted approximately one hour. An audio-recording was made of each interview, which was subsequently transcribed into an anonymized report. During the interviews, discussions included the tasks, roles, and responsibilities of the law clerk and the judge, as well as how collaboration occurs in practice and the boundaries and possibilities that exist in this context. Additionally, there was room for the respondent's own input or for follow-up questions based on the answers given by the respondent.

Below is an overview of the respondents:

APPELLATE COURT	NUMBER OF INTERVIEWS (24)
JDCOS	4 (judges: 2, law clerks: 2)
CAT	14 (judges: 6, law clerks: 8) ⁴⁹
TIAT	6 (judges: 2, law clerks: 4)

These interviews provide valuable insights into practice at the Dutch administrative appellate courts but can never present a comprehensive picture. Interviews can only capture what respondents are willing to talk about. Moreover, the output is influenced by the themes that are brought up and the questions asked.

Reports of the interviews were analyzed using software called NVivo. The data was then coded into several categories and subcategories (axial coding). These codes were based on the interviews (ex post coding, grounded theory, bottom-up).⁵⁰ The researcher then connected the coded passages to each other, which revealed themes that form the basis for this article.⁵¹

4. THE LAW CLERK AT THE DUTCH ADMINISTRATIVE APPELLATE COURTS

This section presents the results of the research. It describes the position of the law clerk within the organizations of the appellate courts (section 4.1), the tasks performed by the law clerk (section 4.2), how the law clerk collaborates with the judge in carrying out these tasks (section 4.3), and the extent to which the law clerk influences the procedure and the judicial decision (section 4.4).⁵²

⁴⁹ The CAT is somewhat overrepresented in the study. This is because the study aimed to explore matters in greater depth, and therefore respondents from all workflows of de CAT were included.

⁵⁰ Juliet Corbin and Anselm Strauss, *Basics of qualitative research: Techniques and procedures for developing grounded theory* (Sage, 2007).

⁵¹ Joseph Maxwell, *Qualitative Research Design, an interactive approach* (Sage, 2013), 156.

⁵² The different interviews are referred to in the footnotes. "LC" stand for law clerk and "J" stands for judge.

4.1. POSITION IN THE ORGANIZATION OF THE APPELLATE COURTS

Although the CAT and the TIAT do not strictly belong to the Dutch judiciary, many provisions of the Judicial Organization Act (in Dutch: *Wet op de rechterlijke organisatie*) are applicable to these appellate courts. For example, the CAT and TIAT have a court administration.⁵³ Historically, the JDCOS is organized very differently than the CAT and TIAT and does not have a court administration based on the Judicial Organization Act.⁵⁴

Both the CAT and the TIAT have judges and law clerks. These include (senior) judges, substitute judges, (senior) law clerks, and legal advisors. In addition, there are members of the judiciary at these appellate courts who are not involved in adjudication, namely (senior) court auditors (in Dutch: *gerechtsauditeurs*).⁵⁵ The JDCOS consists of members, judges, and judges in extraordinary service. Additionally, law clerks work in a different division of the Council of State⁵⁶ (and thus not in the Judicial Division). These law clerks work as (senior) jurists or unit coordinators.⁵⁷ Law clerks, including court auditors, are employed for an unspecified amount of time by the Dutch courts, whereas judges are appointed for life.

The appellate courts are organizationally “divided” into separate work units.⁵⁸ Cases are handled in these work units, often in a panel of three judges, which is the standard in Dutch appellate proceedings. At the JDCOS these work unit are called chambers.⁵⁹ The chambers are divided into units. At the CAT, these work unit are called workflows.⁶⁰ At the TIAT these work units are called clusters.⁶¹ The units, workflows and clusters consist of teams. Those teams consist of judges and law clerks.

At the CAT, each team has a presiding-judge. In contrast, at the TIAT, a so-called gatekeeping-judge and a gatekeeping-law clerk head each team. At the JDCOS, a judicial (substitute) chamber president leads a chamber. Each of the different units

⁵³ Paul Bovend'Eert, *Rechter, rechterlijke organisatie en rechtspraak in de democratische rechtsstaat* (Wolters Kluwer, 2022), 220–223.

⁵⁴ Bovend'Eert, *Rechter, rechterlijke organisatie en rechtspraak in de democratische rechtsstaat*, 206–215; Bart Jan van Etteken and Thom de Graaf, *De Raad ontraadseld* (Boom, 2024), 21–28.

⁵⁵ The position of court auditor – a term derived from the French judicial system – was established in 1972 (Stb. 1972, 461). This role was initially intended to make entry into the judiciary more appealing to outsiders who were not yet fully qualified for appointment as judges. The legislator explained, among other things, that “in all these judicial bodies [...] working in an assisting role will benefit training and the gaining of experience. Conversely, the judicial bodies can benefit from the support such an official can provide.” See *Kamerstukken II* 1969/70, 10808, no. 3, 15–16. Although each court has the option to appoint court auditors, currently only the CAT and the TIAT employ such officials. At these courts, however, it is not a preliminary position leading to judgeship.

⁵⁶ The Council of State has two primary tasks, carried out by two separate divisions. The Advisory Division, as its name implies, advises the government and Parliament on legislation and governance, while the Judicial Division is the highest general administrative court in the Netherlands.

⁵⁷ Respondent 15 (JDCOS, LC).

⁵⁸ Van Etteken and De Graaf, *De Raad ontraadseld*, 122–123 and 133–135.

⁵⁹ There are three chambers within the JDCOS, namely: (in Dutch): *Algemeen*, *Omgeving*, *Vreemdelingen*.

⁶⁰ There are three workflows within the CAT, namely (in Dutch): *Bijstand*, *Sociale verzekeringen* and *Ambtenarenzaken/sociale voorzieningen/internationale kamer*.

⁶¹ There are eight clusters within the TIAT, namely (in Dutch): *Dieren*, *Landbouw*, *Varia*, *Financieel toezicht/consumentenbescherming*, *Gezondheid/geneesmiddelen*, *Mededinging*, *Tucht*, *Groei/bloei*.

is presided over by a judicial unit leader who also serves as the substitute chamber president. Judges at the JDCOS and the TIAT serve in multiple chambers or clusters.⁶² At the CAT, this option exists as well but is used sparingly in practice. Law clerks work in only one unit or team at the JDCOS and the CAT.⁶³ In contrast, at the TIAT, law clerks work in multiple clusters.⁶⁴

While the websites of the JDCOS and the TIAT published an overview of the judicial chamber and cluster structure the CAT has not. Moreover, none of the appellate court websites mention who works there as a law clerk or to which chamber, workflow, cluster, unit, or team they belong.

Given the organizational structure described above, all appellate courts exhibit a high degree of specialization among law clerks. The quality standards are high.⁶⁵ For example, law clerks at the JDCOS are trained and supervised by a senior jurist. These senior jurists review the work of the junior jurists and provide them with substantive guidance.⁶⁶ The intention is for each jurist to work independently on the long run. A training program is provided for this purpose.⁶⁷ At the CAT and TIAT, junior law clerks receive similar guidance and instruction.⁶⁸ This program offers them a mentor whom they can approach with questions and from whom they can learn what is expected.⁶⁹

Law clerks at the CAT and TIAT, like those at the district courts, constitute a majority. At the district courts, the ratio is between 1.42 and 1.7 law clerks per judge.⁷⁰ At the CAT and the TIAT, this ratio is 2 (CAT) and 1.9 (TIAT) law clerks per judge, respectively.⁷¹ While the number of law clerks at the CAT and TIAT somewhat aligns with the number of judges, the law clerks at the JDCOS constitute a significant majority. There are approximately 3.4 law clerks per judge (general chamber). In the environmental chamber and aliens chamber, this ratio is 6.6 and 9.4 law clerks per judge, respectively.⁷²

⁶² Respondent 14 (JDCOS, J) and 24 (TIAT, LC). See also Roos-Marie van der Heide and Lex Michiels, “Bestuursrecht bij de Afdeling bestuursrechtspraak,” in *Bestuursrecht in het echt*, ed. Jacobine van den Brink (Wolters Kluwer, 2021), 588–589.

⁶³ Respondent 14 (JDCOS, J).

⁶⁴ Respondent 24 (TIAT, LC).

⁶⁵ Respondent 8 (CAT, LC).

⁶⁶ Respondent 15 and 20 (JDCOS, both LC).

⁶⁷ Respondent 20 (JDCOS, LC). See also Van Ettehoven and De Graaf, *De Raad ontraadseld*, 124.

⁶⁸ Respondent 10 (CAT, J), 16 and 24 (TIAT, both LC).

⁶⁹ Respondent 13 (JDCOS, J).

⁷⁰ Marseille, “De normering van de taak van de gerechtsjuristen binnen de rechtspraak,” 14–15.

⁷¹ In the article mentioned in the previous footnote, Marseille also discussed the staffing structure at the CAT and the TIAT. For the CAT and TIAT, he based his analysis on an estimated ratio of 0.67 law clerks per judge. However, this is incorrect; judges at the CAT and TIAT are also supported by court auditors. These are not judicial officers but judicial officials (who are not assigned to adjudication). Therefore, these staff members should not be counted on the judges’ side. The information presented in this article is based on data requested from the CAT at the beginning of 2024 and the 2023 annual report of the TIAT.

⁷² Marseille, “De normering van de taak van de gerechtsjuristen binnen de rechtspraak,” 16; Van Ettehoven and De Graaf, *De Raad ontraadseld*, 122.

Interviews reveal that law clerks – regardless of whether they hold the position of senior legal assistant, legal advisor, court auditor, or jurist⁷³ – assist the judge in the handling and preparation of cases in the appellate courts, just as they do in the district courts.⁷⁴ Below is a summary of the tasks of a law clerk in the appellate courts.

4.2.1. Prior to the hearing

At all appellate courts, law clerks assess incoming cases at an early stage in the proceedings to determine which route they will take. For example, based on certain principles they evaluate which subject the case concerns, whether the file is complete, if the party positions are correct, whether the (higher) appeal is admissible, whether the case should be handled individually or in a panel, whether a hearing is necessary, and which judge(s) cannot handle the case due to a conflict of interest.⁷⁵ Unlike at the district courts, the law clerk – where possible at this stage of the proceedings – will also assess and signal whether issues of legal development or uniformity are at stake, whether prejudicial questions should be raised, whether the case is suitable for conclusions, and whether the instrument of *amicus curiae* should be employed.⁷⁶ Cases are mapped out as much as possible by the law clerk using this legal “triage” and, if necessary, clustered.⁷⁷ Triaging contributes to efficient and effective case handling, as the law clerk at the JDCOS and the TIAT can make proposals to the judge based on this assessment.⁷⁸ The judge then makes a decision. At the CAT, the triage proposal is recorded in a so-called typification form and used by the registry (principally with minimal judicial involvement) to further shape the course of the case (from which the judge may sometimes deviate in practice).⁷⁹

Once a case is ready for substantive consideration, it is the law clerk’s task – similar to what happens at the district courts – to write a memo.⁸⁰ This is the most important task of the law clerk.⁸¹ At the CAT and the TIAT, the memo is referred to as “instruction,” just as at the district courts. At the JDCOS, this memo is called a “draft ruling before the hearing”. The law clerk at the JDCOS delivers the memo about three weeks before

⁷³ Respondent 8 (CAT, LC) and 24 (TIAT, LC). The distinction between court auditors and law clerks in other roles is irrelevant to some judges; they also do not always know who holds which formal position (respondent 23, TIAT, J).

⁷⁴ The research indicates that the nature of the procedure (appeal procedure or procedure in first and sole instance) makes little difference to the duties of the law clerk (respondents 23 and 24, TIAT, J resp. LC).

⁷⁵ Respondent 7 (CAT, LC), 16 and 24 (TIAT, both LC). This assessment is particularly significant in multiparty disputes (respondent 20, JDCOS, LC).

⁷⁶ Respondent 20 (JDCOS, LC). At the CAT, for example, lists of topics to watch for are kept by law clerks with this in mind.

⁷⁷ Respondent 18 (TIAT, J). Clustering means, for example, that cases (from the perspective of efficiency and effectiveness) should be handled in the same session or by the same judge.

⁷⁸ Respondent 20 (JDCOS, LC) and 24 (TIAT, LC).

⁷⁹ Stoepker, “Rechterlijke stadsmuzikanten,” 32.

⁸⁰ Almost all respondents mention this task directly during the interview (in most cases, no encouragement was even needed for this response). See also Van Ettehoven and De Graaf, *De Raad ontraadseld*, 150.

⁸¹ Respondent 11 (CAT, LC).

the hearing.⁸² At the TIAT, an unwritten deadline of two weeks is observed.⁸³ At the CAT, in light of the desire to maintain control, there is a push for a submission deadline of eight weeks before the hearing.⁸⁴

The purpose of the memo is to guide the judge through the case file and the underlying legal questions in a comprehensive manner. The memo should have judge's perspective in mind.⁸⁵ To achieve this goal, the law clerk maps out the relevant facts, adds case law and other information, and discusses the positions of the parties.⁸⁶ They identify the decision points and uncertainties of the case.⁸⁷ Additionally, proposals are made for the content of the hearing.⁸⁸ If possible, the law clerk further suggests ways to maintain control or make procedural decisions.⁸⁹ This might include asking written questions or sending a hearing agenda so that parties are not surprised during the hearing.⁹⁰ It may also involve making procedural decisions such as confidentiality concerns or engaging an expert.⁹¹ Finally, in relevant cases, the law clerk may address conflicts and issues underlying the legal dispute. There should be room for empathy.⁹² This can help the judge reach a settlement between the parties.⁹³ In this way, the memo also contributes to efficiency and effectiveness, as the judge becomes familiar with cases more quickly and can decide more swiftly.⁹⁴

There is a general consensus that the memo should also include an analysis of the case. In this regard the law clerk cannot conclude their memo with the simple remark that they wish to discuss the outcome with the judge. Nor can the law clerk merely point to a consistent line of case law.⁹⁵ The memo is expected to identify any pain points and any uncertainties, including those that could be potentially raised by the parties, and address them based on legal research.⁹⁶ In short, the law clerk should provide a comprehensive proposal for the ruling and provoke thought from the judge, especially if the outcome of the case is not entirely clear.⁹⁷ Given the rule-of-law

⁸² Respondent 20 (JDCOS, LC).

⁸³ Respondent 21 and 24 (TIAT, LC resp. J). However, that timeframe is becoming increasingly flexible, for example, because coordination of case handling is needed (respondent 23, TIAT, J).

⁸⁴ There are also methods where cases are only scheduled for hearings once the instruction is ready (respondent 11, CAT, LC).

⁸⁵ Respondent 13 (JDCOS, J).

⁸⁶ Respondent 13 (JDCOS, J), 12 (CAT, J), 23 and 24 (TIAT, LC resp. J).

⁸⁷ Respondent 14 and 20 (JDCOS, J resp. LC).

⁸⁸ Respondent 19 (CAT, J).

⁸⁹ Respondent 5, 8 (CAT, LC) and 18 (TIAT, J).

⁹⁰ Respondent 11 (CAT, LC).

⁹¹ Respondent 15 (JDCOS, LC), 7 and 8 (CAT, LC).

⁹² Respondent 5 (CAT, LC).

⁹³ Respondent 3 and 22 (CAT, J resp. LC). See also Giel Stoepker, "Conflict- en probleemoplossende bestuursrechtspraak vanuit de coulissen," *Recht der Werkelijkheid* no. 2 (2024).

⁹⁴ Respondent 1 (CAT, LC).

⁹⁵ Respondent 9 (CAT, LC).

⁹⁶ Respondent 19 (CAT, J).

⁹⁷ Respondent 13 (JDCOS, J), 11, 10, 19 (CAT, LC resp. twice J), 16 and 18 (TIAT, LC resp. J).

relationships, cautious (but still conclusive) wording may sometimes be appropriate.⁹⁸ However, if it is clear which direction the case should take, the law clerk should simply write that down.⁹⁹

If necessary, the memo also includes a discussion of the case in a broader context. For instance, the law clerk can critically evaluate established lines of case law. Dispute resolution by an appellate court requires – not only providing individual legal protection and/or conflict resolution – but also promoting legal uniformity. Established lines of case law might sometimes need an update. This way the law clerk prevents the judges from developing tunnel vision.¹⁰⁰

With this part of the memo, efficiency is generally served, as it saves the judge time. Generally, since the work of the law clerk is sometimes (partially) repeated by the judge.¹⁰¹

Compared to the district courts memos, the appellate court memos appear to be more comprehensive.¹⁰² To achieve the required depth, the qualities of the law clerk must be at a certain level. For instance, the law clerk must possess sufficient knowledge and experience to recognize the pain points in the file and determine what can be done about them prior to the hearing.¹⁰³ This knowledge and experience is variably present in practice, depending on the number of years of service and the specific function.¹⁰⁴ Research shows that the quality of the memo only slightly depends on workload. Although law clerks also experience work pressure, they carry out the necessary work—sometimes resulting in considerable overtime—because they feel responsible for the proper handling and resolution of the case, wish to contribute to it, and want to prevent the work from ending up on the already busy judge’s desk.¹⁰⁵

At all appellate courts, the memo is an “original” text drafted by the law clerk. As at first instance, it is appreciated if the memo is written in the form of a draft ruling.¹⁰⁶ However, this is not always the case. Sometimes, for example, the law clerk may not yet fully analyze the case or may intend to alert the judge(s) to the possibility of reaching a settlement. In that case, the facts may be presented in draft form, and the analysis may be presented in a more narrative format.¹⁰⁷

4.2.2. During the hearing

Law clerks at the CAT and sometimes the TIAT do not act as registrars during the hearing and, unlike at the district courts, do not take notes on what is said during

⁹⁸ Respondent 11 (CAT, LC).

⁹⁹ Respondent 14 (JDCOS, J).

¹⁰⁰ Respondent 6 and 9 (CAT, J resp. LC).

¹⁰¹ Respondent 5 (CAT, LC). One respondent indicated that the analysis mentioned earlier is not necessary because the judge must always analyze the case themselves (respondent 23, TIAT, LC).

¹⁰² Holvast, *In the shadow of the judge*, 112–114.

¹⁰³ Respondent 8 and 10 (CAT, LC resp. J).

¹⁰⁴ Respondent 3 and 12 (CAT, both J).

¹⁰⁵ Respondent 5, 9 (CAT, both LC), 16 and 21 (TIAT, both LC).

¹⁰⁶ Van Ettehoven and De Graaf, *De Raad ontraadseld*, 150.

¹⁰⁷ Respondent 20 (JDCOS, LC), 19 (CAT, J) and 21 (TIAT, LC).

the hearing.¹⁰⁸ This is done by session registrars. This allows law clerks to listen and observe more attentively. As will be shown below, this also benefits the quality of the deliberation.¹⁰⁹

During the hearing, the law clerk occasionally has the opportunity to ask questions at the hearing (especially in cases handled by a single judge).¹¹⁰ These questions usually concern aspects of the case that have not been discussed but are important or needed for further handling and/or resolution.¹¹¹ Other questions are typically avoided – not due to a lack of necessary courage – but because law clerks do not want to disrupt the judge’s strategy and/or do not want to ask awkward or irrelevant questions.¹¹² Law clerks are also hesitant to push the parties in a particular direction through an uncoordinated question. They do not seek to influence the hearing.¹¹³ Thus, the tasks of the law clerk during the hearing are minimal.¹¹⁴ However, as one interviewee noted, some judges may appreciate a law clerk who is actively engaged during the hearing. In the words of the interviewee: “the law clerks presence is not without purpose”.¹¹⁵

4.2.3. After the hearing

After the hearing, discussions take place in the deliberation room. The law clerk and judge converse about the next steps in the case, usually the ruling.¹¹⁶ Initially, the focus during the deliberation is on the decision in the current case, but attention is also given to the implications of the ruling for other—sometimes not even yet raised—cases. In this way, law clerks also have a role in legal development.

In practice, the deliberation occurs among four people since cases are usually handled in panels at the appellate courts. This deliberation can take a considerable amount of time; cases that are handled in panels often require more and/or deeper reflection. Furthermore, there are more participants in the discussion, who must reach consensus. Deliberation in a panel context often begins formally. The law clerk, for example, usually speaks first.¹¹⁷ They open the discussion and contribute their thoughts.¹¹⁸ The judges can then reflect on this input and/or build upon it.¹¹⁹ This allows the law clerk to showcase themselves and their qualities.¹²⁰ They make an active contribution.¹²¹

¹⁰⁸ In practice, this is explained to the parties, and it is clarified that the law clerk is involved in the preparation and drafting of the ruling (respondent 15, JDCOS, LC; 6, CAT, J; 16 and 18, TIAT, LC resp. J). See also Stoepker, “Rechterlijke stadsmuzikanten,” 30.

¹⁰⁹ Respondent 23 and 24 (TIAT, LC resp. J).

¹¹⁰ Sometimes the law clerk briefly discusses their questions with the judge before the hearing so that the judge can ask those questions (respondent 15, JDCOS, LC).

¹¹¹ Respondent 13 (JDCOS, J), 10 (CAT, J) and 23 (TIAT, J).

¹¹² Respondent 13 (JDCOS, J), 10 (CAT, J) and 24 (TIAT, LC).

¹¹³ Respondent 19 (CAT, J).

¹¹⁴ Respondent 11 (CAT, LC), 17 and 24 (TIAT, LC resp. J).

¹¹⁵ Respondent 3 (CAT, J).

¹¹⁶ Respondent 13 (JDCOS, J), 19 (CAT, J) and 21 (TIAT, LC).

¹¹⁷ Respondent 4 (CAT, LC) and 17 (TIAT, LC). Although it can sometimes feel like an interrogation (respondent 21, TIAT, LC), that is not the intention (respondent 19, CAT, J).

¹¹⁸ Respondent 22 (CAT, LC).

¹¹⁹ Respondent 20 (JDCOS, LC), 2 and 7 (CAT, J resp. LC).

¹²⁰ Respondent 24 (TIAT, LC).

¹²¹ Respondent 13 (JDCOS, J), 1 (CAT, LC) and 24 (TIAT, LC).

Afterward, a substantive conversation usually follows.¹²² It must be acknowledged that there is a risk that the law clerk may get overshadowed. In practice, it can happen that the judge repeats the law clerk's view but presents it as an original thought.¹²³ Although the law clerk may want their voice to be heard, ultimately, the judge must reach an agreement. However, individual judges may also have the mindset that a panel consists of four individuals (three judges and the law clerk).¹²⁴ Therefore, judges residing in a panel may also wish to persuade the law clerk.¹²⁵

In short, the law clerk has the task of acting as an equal conversation partner, who autonomously contributes ideas and provides counterbalance and (friendly)¹²⁶ contradiction where necessary.¹²⁷ The law clerk can help prevent tunnel vision.¹²⁸

Once the deliberation has concluded, the judge will make a decision.¹²⁹ In principle, the law clerk will then write down this decision based on the instructions or guidelines given by the judge.¹³⁰ This is referred to as the “draft ruling after the hearing” at the JDCOS. At the CAT and the TIAT, it is simply called a draft ruling. The fact that the judge provides instructions does not mean that the law clerk will follow them blindly. In drafting the ruling, the law clerk has a certain responsibility. If they discover during the writing phase that something is wrong, for example, in the reasoning or outcome, they must re-engage in conversation with the judge and address the problem they are facing.¹³¹ This requires not only a critical view of the result of the deliberation but also the courage to inform the judge of any omissions. Sometimes renewed deliberation can lead to a different outcome.

At all appellate courts, the judge ultimately reviews and evaluates the draft ruling provided by the law clerk. The judge supplements and refines it as necessary and creates their own ruling from it.¹³² Sometimes, special attention is given to the substantive considerations as the decision relies on them rather than the introductory considerations or when stating the facts of the case.¹³³

4.3. ON COLLABORATION WITH THE JUDGE

Although it must be established that the Dutch Judicial Organization Act stipulates that a law clerk is obliged to comply with the judge's instructions in performing their tasks – indicating a functionally hierarchical relationship – the collaboration in practice

¹²² When the members of the panel are less familiar with each other, for example, because a substitute is participating, the deliberation room often remains somewhat more formal (respondent 23, TIAT, J).

¹²³ Respondent 13 (JDCOS, J).

¹²⁴ Respondent 18 (CAT, J).

¹²⁵ Respondent 11 (CAT, LC).

¹²⁶ Respondent 8 (CAT, LC).

¹²⁷ Respondent 13 (JDCOS, J) and 12 (CAT, J).

¹²⁸ Respondent 19 (CAT, J).

¹²⁹ That is his task (respondent 13, JDCOS, J).

¹³⁰ Respondent 13 (JDCOS, J), 8, 9 (CAT, both LC), and 23 (TIAT, LC). The fact that the judge does not write the rulings themselves is sometimes perceived as a loss (respondent 14, JDCOS, J).

¹³¹ Respondent 13 (JDCOS, J) and 19 (CAT, J).

¹³² Respondent 1 (CAT, LC).

¹³³ Respondent 14 (JDCOS, J).

is not structured hierarchically. A pleasant atmosphere is essential for effective collaboration.¹³⁴ Most respondents also found it important to give the law clerk the recognition they deserve.¹³⁵ The judge should regard the law clerk – especially due to the substantively meaningful work they perform – as an equal.¹³⁶ However, for this to happen, the law clerk and judge sometimes need to work together longer to build trust and discover each other's strengths and weaknesses.¹³⁷

The law clerk and judge share a common goal and therefore should accept mutual contradiction, value each other's contributions, and take each other seriously.¹³⁸ This viewpoint is typically upheld at the district courts, although sometimes it is not.¹³⁹ At the appellate courts law clerks and judges primarily see each other as colleagues.¹⁴⁰ This means that law clerks are allowed (and encouraged) to approach judges, and judges are open to this.¹⁴¹ The relationships are based on trust in each other's abilities.¹⁴² However, this is not always the case; some judges place little trust in their law clerk, preferring to do much of the work themselves.¹⁴³ This approach, where the judge repeats or duplicates what the law clerk has already prepared, is considered undesirable. For example, rewriting a soundly written ruling or doing more research into case law when the law clerk already did comprehensive research.

The overlap between the work of the law clerk and the judge should be kept as minimal as possible, according to one interviewee.¹⁴⁴ If the law clerk is sufficiently trained for this, it should also be accepted from an efficiency perspective that the law clerk performs certain administrative tasks on behalf of the judge.¹⁴⁵

This collegial relationship means that the law clerk and judge regularly have contact in the phase leading up to the hearing. This collaboration contributes to the quality of the decisions made by the judge.¹⁴⁶ The initiative for this is usually taken by the law clerk.¹⁴⁷ Sometimes, time must genuinely be set aside for this, especially if the judge is too busy.¹⁴⁸ During such a contact moment, the law clerk might present a

¹³⁴ Respondent 1 (CAT, LC).

¹³⁵ Respondent 1 (CAT, LC).

¹³⁶ Respondent 14 (JDCOS, J), 11, 6, 12 (CAT, LC resp. twice J), and 16 (TIAT, LC). At the district courts, the law clerk also performs certain administrative tasks. Since this is less frequently the case in appellate courts, the relationship becomes more equal (respondent 9, CAT, LC).

¹³⁷ Respondent 19 (CAT, J).

¹³⁸ Respondent 8 (CAT, LC).

¹³⁹ Respondent 8 (CAT, LC).

¹⁴⁰ Respondent 20 (JDCOS, LC) and 11 (CAT, LC). Only one law clerk indicated that they do not view the judge as a colleague because the judge is at a different (namely higher) 'level' (respondent 15, JDCOS, LC).

¹⁴¹ Respondent 23 (TIAT, J). At the JDCOS, it is intended that law clerks hold discussions with the senior legal officer beforehand (respondent 13, JDCOS, J).

¹⁴² Respondent 7 (CAT, LC) and 8 (TIAT, LC).

¹⁴³ Respondent 2 (CAT, J).

¹⁴⁴ Respondent 5 (CAT, LC).

¹⁴⁵ Respondent 8 and 10 (CAT, LC resp. J).

¹⁴⁶ Respondent 1 (CAT, LC).

¹⁴⁷ Respondent 5 (CAT, LC) and 21 (TIAT, LC).

¹⁴⁸ Respondent 5 (CAT, LC).

hearing proposal arising from their triage work to the judge, after which they may exchange thoughts if necessary.¹⁴⁹ Additionally, during the memo-writing phase, the law clerk and judge converse, for instance, when directing the process. Unlike in the first instance, judges in appeal cases usually have a good grasp of the case during such exchanges.¹⁵⁰

What stands out is that, unlike at district courts, discussions at the appellate courts about what the judge expects from the law clerk and the content of their memo or other preparatory work occur less frequently. Some respondents believe that such conversations are desirable.¹⁵¹ The reason for not discussing expectations seems to be that judges at the appellate courts have a high degree of trust in the abilities and judgment of the law clerk, which leads to a certain freedom.¹⁵² The judge thus provides less direct guidance to the law clerk and the law clerk therefore has more autonomy. This aligns with the focus on legal development. If the law clerk is provided with excessive guidance, they may be less effective in providing counterbalance. Furthermore, it is common practice for law clerks at the appellate courts to consult with other law clerks. They may spar with each other over case approaches, sometimes read each other's texts for collegiality, and provide feedback upon request.¹⁵³ This occurs not only when the law clerk is supervised by, for example, a court auditor (at the CAT and the TIAT) or a senior jurist (at the JDCOS) but also when the law clerk works independently. However, this freedom can also lead to uncertainty and caution. Law clerks may fear missing important aspects or feel unsure how far they can and should go regarding directing and contradicting.¹⁵⁴

Collaboration also takes place just before the hearing and immediately after it. The substantive discussions right before the hearing—focused on what decision should follow in the case—usually occur shortly before the hearing at the appellate courts. At the CAT and the TIAT, a preliminary discussion is typically held (though not always), where the judge indicates their preliminary view of the case and how they wish to utilize the hearing. The law clerk is invited to reflect on this.¹⁵⁵ At the JDCOS, the discussion just before the hearing usually occurs in writing. The judge typically responds to the law clerk's memo with a "judgment letter," in which they outline their perspective. This deepens and continues the legal discussion.¹⁵⁶ Depending on the quality of the law clerk's memo, this judgment letter can be longer or shorter.¹⁵⁷

The collaboration after the hearing aims to foster "good conversation," and meaningful dialogue. Not all law clerks are equally adept at articulating their views and/or positions; given their primary task, they may sometimes be better at putting their opinions in writing. However, the oral exchange is considered essential.¹⁵⁸ The

¹⁴⁹ Respondent 20 (JDCOS, LC) and 23 (TIAT, LC).

¹⁵⁰ Respondent 10 (CAT, J). But not always (respondent 15, JDCOS, LC).

¹⁵¹ Respondent 17 (TIAT, LC).

¹⁵² Respondent 13 (JDCOS, J), 5, 8 (CAT, LC) and 17 (TIAT, LC).

¹⁵³ Respondent 24 (TIAT, LC).

¹⁵⁴ Respondent 16 (TIAT, LC).

¹⁵⁵ Respondent 3 (CAT, J), 17 and 18 (TIAT, LC rep. J).

¹⁵⁶ Respondent 14 (JDCOS, J).

¹⁵⁷ Respondent 20 (JDCOS, LC).

¹⁵⁸ Respondent 19 (CAT, J).

law clerk's role is to think along and, when necessary, provide counterbalance and contradiction. The law clerk should also be able to do this both orally and in writing. For this reason, a constructively critical attitude from the law clerk is expected and appreciated in collaboration.¹⁵⁹ Taking a minority position is not viewed as undesirable; it can contribute to a more discursive justification of the judicial ruling. To meet this expectation, the law clerk must possess courage and decisiveness.¹⁶⁰ The judge may need to encourage the law clerk to be more proactive if they notice the law clerk is being unnecessarily reserved.¹⁶¹

4.4. ON THE INFLUENCE OF THE LAW CLERK

The consequence of the previously described position, tasks, and collaboration with the judge is that the law clerk in the appellate courts both guides the process and influences the judicial decision.

The law clerk influences the process by controlling the route a case takes within the appellate court and the manner in which it is handled.¹⁶² While this guidance occurs within broad parameters, these parameters are set up in such a way that the law clerk has some leeway within them. Although it is the judge who decides on the triage proposal prepared by the law clerk, the law clerk is the first to see the case and has the time to delve deeply into it. When the law clerk proposes a triage suggestion, such as handling the case by a panel or processing it without a hearing, the judge usually aligns with this in practice.

In practice, the law clerk influences the judicial decision at the appellate courts in three ways.

First, influence occurs when the law clerk makes proposals before the hearing. Influence is also evident when the law clerk proposes the content of the hearing. These directions and hearing proposals may appear innocuous but are usually not. Asking certain questions can either broaden or narrow the dispute between the parties; mentioning or not mentioning an expert can affect the evidential position of the parties, and setting an agenda for the hearing can influence how parties prepare for and conduct the hearing.

Second, influence occurs because the law clerk is expected to adopt and advocate for a substantive position regarding the case in the memo before the hearing and during deliberation after the hearing. The degree of influence depends on how assertively the law clerk presents their view and how critically the judge reflects on that view. Contradiction (both ways) is the magic word in this case. However, the interview held at the Dutch administrative appellate courts does not indicate a reference effect, where a proposal from the law clerk is taken as a starting point and other perspectives are automatically set aside, but it has become clear that the law clerk can provide the judge with some direction.

¹⁵⁹ Respondent 23 (TIAT, J).

¹⁶⁰ Respondent 3 (CAT, J).

¹⁶¹ Respondent 17 (TIAT, LC). Furthermore, it is in this context relevant that Dutch law clerks do not have a lifetime appointment, which makes their position more precarious when they are being too bold. This also applies to the fact that it is common for the judge to provide feedback to the supervisor regarding the law clerk's performance, which is used in performance reviews (respondents 1, CAT, LC and 16, TIAT, LC).

¹⁶² Respondent 21 (TIAT, LC).

Third, influence occurs during deliberation and while writing a draft ruling. While the judge provides instructions for the ruling during the discussion in the deliberation room, these instructions are not such that writing the ruling becomes a simple fill-in-the-blanks exercise.¹⁶³ In practice, the law clerk has considerable freedom to make choices regarding the order of arguments, structure, wording, and formulations when writing the draft ruling. Sometimes, when trying to write a ruling it may turn out to be not possible. For example because the arguments discussed do not support the decision. That leads to further discussions and, at times, a different ruling. Additionally, regarding the JDCOS, a unit coordinator first reviews the draft ruling before the judge sees it. For this reason, the draft rulings presented to the judge at the appellate courts are usually very well thought out. Although the judge creates their own text from the draft ruling, the division of tasks leads to the judge's role becoming that of an editor of the law clerk's work. From an efficiency perspective, this division of tasks is valuable; after all, the judge can make decisions in more cases. However, from a rule-of-law perspective, this development is concerning, as it becomes unclear whose ruling it is, and it can lead to the judge becoming somewhat less adept at writing. In practice, however, this is seen as an acceptable consequence of the efficiency-oriented collaboration.¹⁶⁴

5. BALANCING

In the previous sections, the position of the law clerk, their tasks, the manner of collaboration with the judge, and the influence that the law clerk has on procedures and outcomes has been discussed. This paragraph briefly addresses the dilemma the law clerk faces as a result. Based on the aforementioned research, it can be established that the law clerks at the appellate courts struggle with defining their role. This struggle is comparable to that of law clerks at the district courts, which Holvast has already written about.¹⁶⁵ At times, efficiency and effectiveness dominate the collaboration with the judge, while at other times, it is governed by rule-of-law principles and values. In practice, this may lead to a clash of perspectives, resulting in discomfort. This will be explained further.

Both the law clerk and the judge may wish to collaborate intensively and vigorously. Most respondents, both law clerks and judges, view this collaboration as beneficial, as it leads to increased efficiency and effectiveness.¹⁶⁶ For example, triage proposals result in faster and more case-specific handling. The involvement of the law clerk in the pre- and post-hearing phases allows the judge to timely address the numerous cases on their desk. Given the norm regarding the number of cases to be handled, the judge does not have enough time to read all the cases cover to cover; they must limit themselves to the relevant documents. The law clerk can delve deeper into the file, select the relevant documents, and guide the judge through the file.¹⁶⁷ The substantive collaboration between the law clerk and the judge is also efficient. Collaborative thinking and counterarguments prevent tunnel vision and lead to better

¹⁶³ In certain cases, the instructions consist of nothing more than the comment/question that the law clerk will “manage, right?” (respondent 9, CAT, LC).

¹⁶⁴ Respondent 19 (CAT, J).

¹⁶⁵ Holvast, *In the shadow of the judge*, section 8.1.1. and 8.1.2.

¹⁶⁶ Respondent 20 (JDCOS, LC), 1, 8, 10 (CAT, twice LC resp. J) and 18 (TIAT, J).

¹⁶⁷ Respondent 13 (JDCOS, J).

judicial decisions that are made more expediently. In short, the collaboration with the law clerk increases the judicial capacity.¹⁶⁸ Law clerks may feel a certain responsibility for this contribution to quality, whether or not they co-sign judgments.¹⁶⁹ This process also promotes judicial authority and trust in society and the parties involved as it can be clearly demonstrated that more individuals have carefully examined the case, which instills confidence that the judicial decision is sound.¹⁷⁰

However, this intensive and proactive collaboration, which stems from the managerial perspective, clashes with the rule-of-law perspective from which some judges (and thus law clerks) perform their work. In that perspective, there are objections to case handling and resolution by or in collaboration with someone who is not a judge, which sometimes leads law clerks to exercise caution and restraint.¹⁷¹ Judges are appointed for life and tasked with delivering justice; law clerks are not. No matter how responsible the law clerk feels for case handling and resolution, they are not judges. A judge cannot transfer or share their judicial responsibility with a law clerk. Since judges represent state power, it must be clear and remain clear to the parties that the judge is the *dominus litis*, that the decision originates from them, and that they alone bear the (full) responsibility.¹⁷² The law clerk derives their existence from the judge and should not become a (co)decision-maker. Most respondents find it incorrect for a judgment to state that the judge made that ruling “in collaboration with” the law clerk.¹⁷³

For this reason, law clerks work under the conviction that they must not in any way undermine the trust and authority of the judge. This leads them to minimize their visibility and vocal contributions during the hearing. They are wary of appearing too prominent. Even behind the scenes, most law clerks are aware of their limitations. While it is evident that they should offer counterarguments, the extent to which they should or may do so is not clear. In practice, this leads to an unclear division between the judicial domain and the organizational domain.¹⁷⁴ For instance, the law clerk will ensure that the decision-making process is explicitly left to the judge in the memo and during the council meeting, only providing perspectives and building blocks.¹⁷⁵

Thus, finding balance is essential. First, it is necessary for the law clerk to be regarded as a legal professional with their own craft—not only by the judge with whom they work, but also by themselves. This craft does not include making decisions but does encompass facilitating judicial decisions. The strength of the law clerk’s role lies precisely in this. They do not compete with the judge and do not wish to overshadow them; rather, they stand (or sit) alongside the judge. Law clerks should embrace their own professionalism more firmly to derive the conviction that they do not need to aspire to a judgeship in order to contribute meaningfully to the judiciary.

Second, achieving balance requires that the law clerk has a tool that allows them to be transparent about their role and influence. This way, they can communicate who they are and what they do (and what they do not do). Such a tool is currently lacking

¹⁶⁸ Respondent 14 (JDCOS, J), 8, 10 (CAT, LC resp. J) and 18 (TIAT, J).

¹⁶⁹ Respondent 16 (TIAT, LC).

¹⁷⁰ Respondent 2 (CAT, J).

¹⁷¹ Respondent 15 (JDCOS, LC), 9, 12 (CAT, LC resp. J), 16 and 18 (TIAT, LC resp. J).

¹⁷² Respondent 2 (CAT, J) and 16 (TIAT, LC).

¹⁷³ Respondent 12 (CAT, J).

¹⁷⁴ Respondent 15 (JDCOS, LC) and 5 (CAT, LC).

¹⁷⁵ Respondent 15 (JDCOS, LC).

for the law clerk as the practice is not very transparent. Memos are not sent to the parties involved. Parties only have access to general job descriptions or a superficial remark at the start of the hearing that the law clerk “helped prepare the case.” During the hearing, however, the law clerk appears as a suspiciously silent sphinx. Furthermore, accountability afterwards is impossible. What the law clerk discusses with the judge after the hearing (*Raadkamer* in Dutch) remains confidential. The General Administrative Law Act does not allow for the challenge and formal recusal of law clerks. This can be frustrating for the parties involved; sometimes, they are unsure how to deal with the law clerk. Some parties prefer to keep the law clerk out of the loop for safety reasons. This reflex is not surprising; the superficial description of the law clerk’s tasks presents an image of a non-judicial officer who nonetheless has a significant influence on judicial matters, for which they cannot be held accountable. Therefore, parties occasionally request the recusal of the law clerk. In practice, such requests are usually based on European Court of Human Rights (ECHR) case law, which indicates that recusal of supporting staff is possible when they perform tasks of significant relevance to the case. However, in the Netherlands, such requests do not lead to approval because law clerks allegedly do not perform the tasks with significant relevance as defined in jurisprudence of the ECHR.¹⁷⁶

Professional standards tailored to the tasks, position, and influence of the law clerk and their collaboration with the judge could provide solutions for the issues discussed above.¹⁷⁷ These standards could guide the craft and professionalism of the law clerk and offer parties insight into what takes place behind the walls of the appellate courts (and what does not). They could clarify that the law clerk performs useful and important work but does not make decisions.

6. CONCLUSION

This article empirically investigates the role of the law clerk in the Dutch administrative appellate courts, how they collaborate with the judge, and how the law clerk exerts influence on the procedure and the outcome. The conclusion is that the law clerk in the appellate courts, just like in the district courts, performs a variety of tasks. The collaboration is intensive. The law clerk takes work off the judge’s hands, actively engages in discussions, serves as a conversation partner, provides continuations, and offers counterarguments. The law clerk and the judge share a common goal and actively work towards achieving it. As a result, the law clerk guides the process and the decisions made by the judge at the appellate courts, contributing to legal quality. However, in practice, this also leads to feelings of discomfort. Although the law clerk wants to make a valuable contribution, they do not wish to become a (co)decision-maker; creating a clash of perspectives.

This inherent struggle can be illustrated by one of Odysseus’s adventures. On his way to his kingdom Ithaca, Odysseus sails through a strait. On one side of the strait swims Scylla, a monster with six dog heads that eats Odysseus’s crew members without hesitation, and on the other side lies Charybdis, which creates whirlpools that cause most ships to disappear to the seabed. Odysseus is given the choice of which peril he wishes to confront.

¹⁷⁶ EHRM 21 June 2011, ECLI:CE:ECHR:2011:0621JUD004657509 (*Bellizzi v. Malta*).

¹⁷⁷ Holvast, *In the shadow of the judge*, section 8.3; Nina Holvast and Giel Stoepker, “Professionele standaarden voor juridisch medewerkers Een belangrijke stap in het professionaliseren van de rechtspraak,” *Nederlands Juristenblad* 406 (2022).

Just like Odysseus, the law clerk at the appellate courts navigates between Scylla and Charybdis. Should the law clerk assert their substantive weight by collaborating efficiently and effectively with the judge, risking that they may direct the judge too much, take on the role of a (co)decision-maker, and be accused of not being impartial? Or should the law clerk limit the collaboration to providing limited but sound support from the background, running the risk that the judge – and thus also the individual they are ruling on – gets swallowed in a sea of cases?

COMPETING INTERESTS

The author has no competing interests to declare.

AUTHOR INFORMATION

Giel Stoepker works at the Central Appeals Tribunal (the Netherlands). In addition, he is an external PhD candidate at Utrecht University, working on a dissertation about the collaboration between Dutch law clerks and judges.

AUTHOR AFFILIATIONS

Giel Stoepker  orcid.org/0009-0000-1422-2331
Utrecht University, NL

REFERENCES

- Baas, Reyer. *De meerwaarde van meervoud. Verschillen en overeenkomsten tussen meervoudige en enkelvoudige rechtspraak, in het bijzonder in civiele zaken*. Wolters Kluwer, 2020.
- Baier, Paul. "The Law Clerks: Profile of an Institution," *Vanderbilt Law Review* (1973): 1125–1169.
- Bieri, Peter. "Law clerks in Switzerland – a solution to cope with the caseload?," *International Journal for Court Administration* no. 2 (2016): 29–38. DOI: <https://doi.org/10.18352/ijca.201>
- Boeije, Hennie. *Analysis in qualitative research*. Sage, 2010.
- Boekema, Martje. *De stap naar hoger beroep. Een onderzoek naar appelgedrag van burgers in bestuursrechtelijke zaken*. Boom Juridische uitgevers, 2015.
- Bonica, Adam, et al. "Legal Rasputins? Law Clerk Influence on Voting at the U.S. Supreme Court," *Journal of Law, Economics en Organization* no. 1 (2019): 1–36. DOI: <https://doi.org/10.1093/jleo/ewy024>
- Bovend'Eert, Paul. *Rechter, rechterlijke organisatie en rechtspraak in de democratische rechtsstaat*. Wolters Kluwer, 2022.
- Cohen, Jonathan. *Inside appellate courts: the impact of court organization on judicial decision making in the United States courts of appeals*. The University of Michigan Press, 2002. DOI: <https://doi.org/10.3998/mpub.17111>
- Corbin, Juliet, and Anselm Strauss. *Basics of qualitative research: Techniques and procedures for developing grounded theory*. Sage, 2007. DOI: <https://doi.org/10.4135/9781452230153>
- Etteken, Bart Jan van, and Thom de Graaf. *De Raad ontraadseld*. Boom 2024.
- Garrow, David. "How *Roe v. Wade* was written," *Washington and Lee Law Review* no. 2 (2014): 893.

- Geurts, Teun, et al. *Bestuursorganen in hoger beroep*. WODC, 2023.
- Glynn, Adam, and Maya Sen. "Identifying judicial empathy: does having daughters cause judges to rule for women's issues?," *American Journal of Political Science* no. 1 (2015): 37–54. DOI: <https://doi.org/10.1111/ajps.12118>
- Greenhouse, Linda. *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey*. Times Books, 2006.
- Grendstad, Gunnar, et al. "From backlogs to quality assurance. The development of law clerk unit at Norwegian courts," *International Journal for Court Administration* no. 2 (2020): 1–17. DOI: <https://doi.org/10.36745/ijca.352>
- Grendstad, Gunnar, et al. *Proactive and powerful. Law clerks and the institutionalization of the Norwegian Supreme Court*. Eleven International Publishing, 2020.
- Heide, Roos-Marie van der, and Lex Michiels, "Bestuursrecht bij de Afdeling bestuursrechtspraak," in *Bestuursrecht in het echt*, edited by Jacobine van den Brink. Wolters Kluwer, 2021.
- Holvast, Nina. "Het belang van onderzoek naar de betrokkenheid en invloed van juridische ondersteuning," *Rechtstreeks* no. 2 (2023): 49–54.
- Holvast, Nina, *In the shadow of the judge: The involvement of judicial assistants in Dutch district courts*. Eleven International Publishing, 2017.
- Holvast, Nina, and Giel Stoeper. "Professionele standaarden voor juridisch medewerkers Een belangrijke stap in het professionaliseren van de rechtspraak," *Nederlands Juristenblad* 406 (2022): 480–486.
- Holvast, Nina, and Peter Mascini. "Is the judge or the clerk making the decision? Measuring the influence of judicial assistant via an experimental survey among Dutch district court judges," *International Journal for Court Administration* no. 3 (2020): 1–19. DOI: <https://doi.org/10.36745/ijca.358>
- Köhne-Hoegen, Ernestine. "De raio-opleiding als socialisatieproces: uitreders aan het woord," *Recht der Werkelijkheid* no. 1 (2008): 11–34.
- Kromphardt, Christopher. "Fielding an excellent team: law clerk selection and chamber structure at de US Supreme Court," *Marquette Law Review* no. 1 (2014): 289–311.
- Lazarus, Edward. *Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court*. Penguin Books, 2005.
- Lienhard, Andreas, and Peter Bieri. "Gerichtsschreiberjustiz?," *Justice – Justiz – Giustizia* no. 4 (2017): 1–6.
- Mak, Elaine. *De rechtspraak in balans. Een onderzoek naar de rol van klassiek-rechtsstatelijke beginselen en 'new public management'-beginselen in het kader van de rechterlijke organisatie in Nederland, Frankrijk en Duitsland*. Wolf Legal Publishers, 2008.
- Marseille, Bert. "De normering van de taak van de gerechtsjuristen binnen de rechtspraak," *Rechtstreeks* no. 2 (2023): 14–15.
- Marseille, Bert, and Marc Wever. "Procedeergedrag van de overheid in procedures bij de bestuursrechter," *Nederlands Juristenblad* 376 (2024): 440–448.
- Mascini, Peter, and Nina Holvast. "Explaining judicial assistants' influence on adjudication with principal-agent theory and contextual factors," *International Journal for Court Administration* no. 3 (2020): 1–18. DOI: <https://doi.org/10.36745/ijca.357>
- Massing, Otwin, "The legal assistants at the German Federal Constitutional Court: A "black box" of research?," in *Constitutional courts in comparison: The US Supreme Court and the German Federal Constitutional Court*, edited by Ralf Rogowski and Thomas Gawron. Berghahn Books, 2016. DOI: <https://doi.org/10.2307/j.ctt1b1btbw22.13>

- Maxwell, Joseph. *Qualitative Research Design, an interactive approach*. Sage, 2013.
- McCree, Wade. "Bureaucratic justice: An early warning," *University of Pennsylvania Law Review* no. 4 (1981): 777–797. DOI: <https://doi.org/10.2307/3311746>
- Nesterchuk, Tetyana. "The view from behind the bench: the role of judicial assistants in the UK Supreme Court," in *Judge and jurist: Essays in memory of Lord Rodger of Earlsferry*, edited by Andrew Burrows, et al. Oxford University Press, 2013. DOI: <https://doi.org/10.1093/acprof:oso/9780199677344.003.0011>
- Newland, Chester. "Personal assistant to supreme court justices: the law clerks," *Oregon Law Review* no. 4 (1961): 299–317.
- Peppers, Todd. *Courtiers of the marble palace: the rise and influence of the Supreme Court law clerks*. Stanford University Press, 2006. DOI: <https://doi.org/10.1515/9781503625891>
- Peppers, Todd, and Christopher Zorn, "Law Clerk Influence on Supreme Court Decision-Making," *DePaul Law Review* (2008): 51–78. DOI: <https://doi.org/10.2139/ssrn.925705>
- Peppers, Todd and Clare Cushman, eds., *Of courtiers and kings: More stories of Supreme Court law clerks and their justices*. University of Virginia Press, 2015.
- Peppers, Todd, et al. "Surgeons or scribes? The role of United States Court of Appeals law clerks in "appellate triage"," *Marquette Law Review* no. 1 (2014): 313–332.
- Perquin-Deelen, Charlotte. *Biases in de boardroom en de raadkamer. Een juridische en filosofische analyse van de bestuurlijke taakuitoefening en rechterlijke beoordeling, mede aan de hand van een empirische studie*. Wolters Kluwer, 2020.
- Posner, Richard. *How judges think*. Harvard University Press, 2008.
- Sanders, Anne. "Judicial Assistants in Europe – A Comparative Analysis," *International Journal for Court Administration* no. 3 (2020): 1–18.
- Sanders, Anne. "Law Clerks," in *The Oxford Handbook of Comparative Judicial Behaviour*, edited by Lee Epstein et al. Oxford Academic: Oxford University Press 2024. DOI: <https://doi.org/10.1093/oxfordhb/9780192898579.013.21>
- Stoepker, Giel. "Conflict- en probleemoplossende bestuursrechtspraak vanuit de coulissen," *Recht der Werkelijkheid* no. 2 (2024): 14–40. DOI: <https://doi.org/10.5553/RdW/138064242024045002002>
- Stoepker, Giel. "Rechterlijke stadsmuzikanten," *Rechtstreeks* no. 2 (2023): 26–41.
- Stoepker, Giel. "Schipperen tussen Scylla en Charybdis," *Jurisprudentie Bestuursrecht plus* no. 3 (2024): 43–62.
- Swanson, Rick, and Stephen Wasby. "Good stewards: law clerk Influence in state high courts," *The Justice System Journal* no. 1 (2008): 24–46.
- Ward, Artemus, "Law Clerks," in *The Oxford Handbook of U.S. Judicial Behavior*, edited by Lee Epstein and Stefanie Lindquist. Oxford University Press, 2017. DOI: <https://doi.org/10.1093/oxfordhb/9780199579891.013.14>
- Ward, Artemus, and David Weiden, *Sorcerers' apprentices: 100 years of law clerks at the United States Supreme Court*. New York University Press, 2006.
- Wasby, Stephen. "The world of law clerks: tasks, utilization, reliance, and influence," *Marquette Law Review* no. 1 (2014): 111–130.

TO CITE THIS ARTICLE:

Giel Stoepker, 'Navigating between Scylla and Charybdis' (2026) 16(3) *International Journal for Court Administration* 3. DOI: <https://doi.org/10.36745/ijca.649>

Published: 05 February 2026

COPYRIGHT:

© 2026 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.

International Journal for Court Administration is a peer-reviewed open access journal published by International Association for Court Administration.

