Reading case files: the material organization of cases and the work of judges

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Building on the body of research describing legal work, to which the various anthropological traditions have contributed, this chapter studies the material organization of case files and the way they are used. The focus is thus on the reading and writing activities performed by judges. An important argument for ethnographic analyses is their ability to capture the process of elaboration of a judgment, the writing concluding a case. This process, which turns an initial event into a final text, follows a formal procedure, regulating the stages over the course of which each case is processed, step by step. But it also involves a whole range of intermediary documents without which judges' ability to take up a case, to conduct it in court and to deliberate in order to deliver justice would be far more difficult: folders, slips, summaries, notes, files, etc. We here endeavour to better understand the nature and organization of this bureaucratic equipment, characteristic of any case file: in what way does it contribute to the characterization of situations and their processing?

To answer this question, we examine cases where work situations are faced with a change in this material environment. Such is the case of penal orders, considered in this chapter. These orders concern minor offences with no victims for which there is sufficient evidence, such that the public prosecutor is authorized to refer them to the court for a decision without a hearing. This so-called "simplified" procedure, which is quicker than the ordinary trial procedure, is used extensively in a growing number of cases, particularly including traffic fines and offences that

generate huge volumes of litigation (1). Without going into the literature analysing the genesis and implementation of alternative procedures designed to remedy the slowness of the judicial system (2), our contribution stems from an observation: the introduction of penal orders has gone hand in hand with significant change in the working tools used by judges, with increased use of computer tools (filing and inputting of cases, assistance in drafting judgments, computer-assisted decision making, etc.). To what extent can these developments also be seen as contributing to the acceleration of the decision-making process? What are these transformations doing to the work necessary to enforce the law? This link between judges' ability to rule on events and the material organization of case files is at the core of our discussion, focused on the concrete activities that judges carry out when studying the multiple documents involved (handling, leafing through, typing, striking out, listing, copying, signing, etc.).

To this end, this chapter draws on the findings of a study carried out in France several years ago, with small claims court judges in charge of the least serious offences and directly affected by the rise in the number of penal orders (3). In the first section of the chapter, we emphasize the importance of the material frameworks inextricably linked to reading and writing activities, and essentially to case files. We discuss two key points, drawn from science and technology studies and new literacy studies respectively (**Section 1**). We then venture into the office of a judge, whose work we follow through two emblematic situations, the one relating to the processing of penal orders, and the other to ordinary proceedings. This second section particularly focuses on the material configurations of the case file, the activities involved to process it and their consequences on legal reasoning (**Section 2**). Finally, we highlight some of the main properties of the case file and how they have evolved, taking into account its status under both procedures (**Section 3**).

1 Introduced in 2003, criminal penal orders are now the most widely used tool for relieving the courts. They are the second most used prosecution procedure (in numbers) and, at the time of the study, accounted for over a quarter of all prosecutions (Roussel, 2014).

2 These procedures to expedite justice, such as instituting proceedings without a hearing, need to be situated within the context of countries with a continental tradition. They are inspired by the mechanisms characteristic of *common law* countries, such as *plea bargaining,* which reduce the procedural stage and the role of the court. For a comparative perspective on these measures in continental Europe, see Cécile Vigour (2018).

3 The court in question had civil jurisdiction over disputes for less than €4,000 (minor everyday disputes) and criminal jurisdiction over offences liable to fines of less than €750 (minor offences against the rules of life in society). Created in 2002 and made up of lay judges, it was definitively removed in 2017.

Section 1 – Technologies and texts

The study of legal work through the meticulous observation of the scenes in which it is actually performed is no longer new territory. A wide range of research exists on the activities performed by legal professionals, studied on the ground. Alongside the analysis of the interactions opposing different protagonists in contexts organized by criminal procedure (cross-examination, defence speech, deliberation, etc.), precise studies have investigated the reading of documentary material, the preparation of certain administrative documents (police reports), and the mobilization of textual resources (4). But what is the place of the case file itself in this context? Since the first studies in ethnomethodology (5), two particularly relevant areas of research have emerged: science and technology studies (STS) and literacy studies. These research pathways, which both place emphasis on situated action, help to further our understanding of case files.

The case file as a technology

Science and technology studies are probably the better known of the two research areas. To describe the production of scientific knowledge, a host of studies have focused on the writing and reading practices actually performed by researchers. This ethnographic research, anchored in laboratories (Latour and Woolgor, 1988; Knorr-Cetina, 1981; Lynch, 1985), attributes a central role to administrative writings, visualization processes and, more broadly, all graphic artefacts: memos, scribbled notes, statements, tables, reports, boards, maps, drawings, and so on. And with good reason, for they are at the heart of the production of scientific statements, the steps of which consist in gradually translating a reality into text. In light of this, the importance of the case file has been emphasized. This seemingly insignificant object actually plays a decisive role, insofar as it allows documents to be assembled and circulated (Latour, 1987: 255-256).

4 This includes namely the preparation of police reports and the juvenile police (Meehan, 1986), the filing of documents and the organization of reading practices at a law firm (Suchman, 2000), the pre-hearing interview for immediate trial (Gonzalez-Martinez, 2006), and the preparation of testimony (Lynch, 2015).

5 Namely the pioneering work of Harold Garkinkel on patient orientation based on the review of clinical records (1967, 186-207) or of Don Zimmerman (1969) who wrote his thesis on the paperwork of social services staff in a US federal agency.

This has offered an inspiring perspective for studying the work of bureaucrats in charge of pronouncing the law. As in the laboratories or medical departments where they have served as a common thread to investigate professional practices (Heath, 1982; Berg, 1996; Bruni, 2005), case files have been scrutinized over the course of their processing. They have been described as material equipment inextricably linked to the activities that staff must perform to qualify situations, handle cases and reach a decision. In this respect, Bruno Latour's ethnographic study of a French supreme court seems emblematic. Meticulously followed the case files, the sociologist described the long process through which judges reached their decisions, the particularities of their reasoning, and the work that they had to carry out (Latour, 2010). Beyond the multiple material devices available to trace, project and visualize a phenomenon, he stressed the importance of "inscriptions", for it is through this intense production of traces that judges are able to pronounce the law: "in the same way that we do not understand anything of Science if we think that words are distant from and opposite to things, in the same way we do not understand anything of Law if we seek to pass directly from the norm to the facts of the particular case without this modest accumulation of papers of diverse origin" (ibid.: 90). In light of this, the role of case files is central. Owing to its ability to bring together heterogeneous elements of a case and thereby bring into relief an overall picture, it stands out as the necessary vehicle for judges to legally qualify cases by articulating duly constituted material facts and legal texts, as required by the Penal Code. The case file, a sort of small vehicle to move from one end of a case to the other without losing sight of the final text to be constructed, appears to be a technology that is both "mobile" and "immutable" (6).

The file as text

The second significant area of research partly builds on this observation. As it was developed in dialogue with the work of Jack Goody, it is significant that for Goody, syllogistic reasoning – the discriminating criterion supposed to reveal a society's capacity for abstraction, and of which law is an emblematic activity – refers not to a specific form of thinking, but to technologies of the intellect and the reading and writing operations they make possible: tables, formulas, lists, and so

6 On this notion of "mobile immutable", an expression which became very popular, see Latour (1990).

on (Goody, 1977). The same is argued to apply to case files. Through the formal, cognitive and linguistic operations they allow, case files have become essential material supports inextricably linked to legal reasoning. More broadly, they contribute to the very organization of the law, through the standardization of the observations they organize, the critical perspective they afford on statements stabilized through writing – as evidenced by the activity of signing, for example –, and the accumulation and memory of precedents that they make possible (Goody, 1986: 127-170).

This analysis of literacy, understood as the ability to read and write, has not gone unchallenged. In the 1990s, building on the early studies of the effects of writing on cognition and uses of reading in diverse societal contexts (7), Goody's analysis was criticized for being too general, for attributing too much autonomy to literacy, and for its ambiguous relationship with technological determinism (Cole & Cole, 2006). In fact, the *New Literacy Studies* current was born out of the call to document situated practices and the complex relationships they have with the spoken word, based on the observation of "literacy events" (8). Studies that adopt this perspective on reading and writing practices specifically in relation to administrative documents, and more crucially to case files, remain rare (9). Still, they are consistent with other ethnographic explorations, equally attentive to writing and reading practices and endeavouring to describe these bureaucratic objects, within specific contexts, as texts, documents made of language, the creation and use of which correspond to literary genres (forms, letters, etc.) and organized situations (input, instruction, etc.). In order for an administrative document to take on the performative force of law and to act, it must conform with specific practical conditions that need to be described (10).

These different orientations, all attentive to the material and textual dimension of writing in different ways, offer a useful extension of the praxeological perspective. With regard to case files

7 These studies on literacy in traditional societies were undertaken by psychologists, linguists and anthropologists. They focused namely on the Vai people of Liberia, in relation to whom Sylvia Scribner and Michael Cole (1981) questioned the intellectual effects of writing taught in school (English), different from everyday life (Vai) and Koranic schools (Arabic); and the uses of writing in Iran since the 1980s, studied by Brian Street (1984). Béatrice Fraenkel is credited with introducing these studies to French-speaking academia (Fraenkel and Mbodj-Pouye, 2010).
8 A paradigmatic example of these literacy events is the bedtime story, studied by Shirley Heath (1982). Beyond the work of Street (1984), considered to be foundational, see David Barton, Mary Hamilton and Roz Ivanič (2000).
9 One example is the scriptural activities surrounding the management of cattle at auctions, studied by Kathryn Jones (2000).
10 Regarding the production of legal documents, Béatrice Fraenkel's French work on signatures or chains of writing (2007 and 2008) offer a key source of inspiration. Another example is the study by anthropologist Matthew Hull (2012) of the planning services of the city of Islamabad.

in particular, they call for a study the multiple statuses that these files potentially take on in the action as it unfolds since the latter consists in producing a decision. In medical activity, ethnomethodology has stressed the role that case files play in: equipping attention; regulating interaction in consultations; maintaining the continuity of the patient as a case as their body transforms with the care provided; coordinating with the multiple care providers; and allowing for the distribution of tasks in a hierarchical context (Garfinkel, 1967: 186-207; Berg, 1996). In judicial activity, the questions that apply are similar: what role do case files play in the documentary production of the final judgment? What role do they play in the necessary coordination work with the multiple protagonists involved in a case (prosecutor, victim, accused) or actors in charge of managing it (judges, registrars, bailiffs)?

Section 2 - The bundle and the stack: two reading and writing situations

The two situations through which we examined reading and writing activity were part of a study on small claims court judges. This study, carried out about ten years ago, closely monitored the work that these judges had to carry out in penal cases to produce their judgment. While the study was concerned with understanding a new jurisdiction (11), this was also one of the first jurisdictions to be affected by the rapid increase in penal orders, massively used by the Public Prosecution at the time to process traffic fines and offences. To gain insight into the impact of this introduction of penal orders on the work of judges, we focus on judges' reading and writing activities (12). What role do documents play, in view of the evolution of formats (typed

11 The investigation followed the processing of just over 200 cases, based on the observation of work scenes before and during the trial (picking up case files from the Registry of the Court, preparing before the hearing, conducting the hearing itself, final drafting and signing). The cases observed as part of this study related to criminal offences that fell within the jurisdiction of the Police Court. These were violations with a degree of seriousness that could neither incur penalties exceeding €750 nor result in imprisonment, except in specific cases provided for in the procedural code. They involved a range of litigation (road code, disturbance, violence, etc.), with a clear prevalence of traffic offences. At the time of the study, the judgment of these offences fell under an autonomous jurisdiction, which has since been removed.

12 In addition to interviews with judges and other professionals involved in the management of their cases (bailiff, Registry of the Court, president of the district court, conciliator, prosecutor, professional judges) (n=54), the research methodology consisted essentially in observing the work activities of several judges (n=9) in two key settings: the courtroom and the judges' office. We drew on a corpus of criminal cases (n=212) representative of the court's significant litigation, from which we drew the two cases discussed here. During this observational research, office scenes were studied through an original lens: recording were made of the judges' comments, spoken out loud at the

documents, computer screens)? How do these transformations affect the interpretative activity that these judges must carry out? How are the elements that make up cases approached? To answer these questions, we examine the work performed by a same judge for two cases which, though subject to the same legal texts, were processed differently: while the first case fell under the simplified procedure, which is largely automated and leads to a computer-assisted decision, the second one, in accordance with ordinary procedure, was examined manually.

A young person getting carried away during a police check

The first case falls within the "penal orders" that judges must process. It is important to remember that this is criminal litigation involving minor offences with sufficiently conclusive elements and no victims, such that the proceedings initiated lead to a judgment without adversary proceedings. The case of Kevin De Suza (13) falls under this simplified procedure. Consider the desk of the judge in charge of examining the case.

The first noteworthy formal element is that the case file was in a specific stack of such files on the judge's desk, that he had been to collect from the Registry of the Court office that day. The stack, bound to others with a rubber band, was invariably part of a batch of 25 stacks. Within this framework, the summary slip, written by the Prosecution, forwarded to the Registry of the Court and placed at the top of the bundle, stated the elements motivating the proceedings for each case: the last name and first name of the accused; the date, place and description of the facts; the laws applicable and the amount of the demand. These are the three essential elements for any offence, without which the offence would not exist. For a prosecution to take place, there must be: (i) legal texts defining the prohibited conduct (criminal law), in accordance with the principle that *nullum crimen nulla pœna sine lege* (14); (ii) the material facts charged, given that in order to exist, just like in the case studied here, the offence must be materialized by an act such as:

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invitation of the sociologist who was there to observe them, on the files they had to process. Where possible, this recording was also supplemented with photographs of the documents.

13 The last names have been anonymized, but retain their original connotations.

14 No crime, no punishment without law. This customary and fundamental rule is reiterated in the Penal Code: "No one may be punished for a felony or for a misdemeanour whose ingredients are not defined by statute, nor for a petty offence whose ingredients are not defined by a regulation" (Art. 111-3)

"NOISES DISTURBING THE PEACE OF THE NEIGHBOURHOOD"; and (iii) the identity of the defendant (15). These elements – which penal literature refers to as legal, material and moral, respectively – thus define the legal framework of an offence laid out in the summary slip, the purpose of which is to summarize the batch of cases held together. However, this summary has no legal value, and the slip itself is not linked to the bundle in any way: it only serves as a summary.

To study the case itself, one needs to be familiar with the elements of which it is comprised. In this case, these consist of a set of several pages firmly stapled together, as though to give them substance and act as a reminder that they are the voice of one single entity: the Public Prosecution. This set of pages is comprised of three elements. The "demands", through which the public authorities intend to enforce the law in the name of the general interest, base their conclusions on the other elements attached to the document. The "police statement", in the form of a literal account in which a sergeant – a police officer or a *gendarme* – records the facts observed, contains all the information deemed useful for describing the facts, explicitly referencing the legal text authorizing them to draw up a report. Finally, the actual police report, in the form of a pink card, mentions a certain amount of information detailed in the statement, along with the identities of the sergeant reporting the offence and the offender, and their respective signatures. Of course, all this information is not always as complete and accurate as expected. It can happen that the sergeant, while trying to describe the offence as accurately as possible, reports the offending behaviour under an unsuitable category. It can also happen that the offender refuses to sign. In fact, this is what Kevin De Suza decided to do, when he was stopped by the police that day for driving "his vehicle (...) on the pavement and up a one-way street". The man protested vigorously, and in his outburst, seems to have expressed his anger in colourful language. The sergeant reporting the offence, who transcribed some of these words (16), determined that this constituted offensive disturbance of the peace, and reported the offender.

15 Criminal liability applies when a causal link is established between the acts committed and the damage caused by the contravention of a criminal legal norm. In the case of misdemeanours, offences are presumed to be unintentional, characterized by recklessness or negligence. For this reason, there is no need to prove culpable intent, only force majeure being able to nullify the offence.

16 Excerpt from the police report: "IS THAT ALL YOU GIVE A SHIT ABOUT, FINING A POOR WORKING KID? GO TO THE HOUSING ESTATES INSTEAD OF BOTHERING US ON THE ROAD" (in capitals in the text) (our translation).

These were the only elements documenting the penal order. The case did not include any other elements, nor did any of the other cases in the bundle. The judge we observed, who told us that a growing number of cases were dealt with in this way, stressed the automated nature of this procedure. Thus, after taking several bundles out of a metal cabinet where she stored them, and putting them all on her desk, she turned to her computer and opened a program called MINOS. The outline of an ancient temple against a blue background appeared on the screen. After entering her login details and recording the summary slip number, the judge could then proceed to examine the case – or rather cases, for she processed all of the cases in one go, checking that the elements appearing on the screen did indeed match the information stated on the slip. Her examination of those elements revolved around the key question that she asked herself in that moment: is the action admissible? In other words: are the formal elements of any offence, which are stated on the summary slip, properly described (17)? Once she had completed this formal check, the judge validated the information. Before pressing the key on her keyboard, it was her duty to establish that adversary proceedings were indeed unnecessary and that she could rule by order. But as the judge admitted, "that never happens". She attributed this to procedure: first, the processing of a bundle never called for in-depth inquiry into the cases and, second, the defendant could challenge the decision issued by the ruling, therefore forcing adversary proceedings to take place to judge the case. The judge therefore launched the program. After just a few seconds, the empty columns were filled with new information about the nature of the decision (the sentence) and the penalty amount that was calculated automatically (18).

The judge then printed out the decisions, also drafted automatically, read them out to formally check the wording (identity of the defendant, address, texts, etc.), and signed them. The case discussed here was no exception: De Suza was to receive a fine of €190 (Excerpt no. 1). However, based on our observations, at no point were the elements that made up the case examined more closely than when the references were checked to ensure that the data on the screen matched the

17 This information, provided in the form of a table, concerns respectively the program's processing reference number (Column no. 1), the enrolment number stated by the Public Prosecution (Column no. 2), the identity of the defendant (Column no. 3), the type of offence recorded (for example, Code 13313 refers to noise made on a public road, disturbing the peace of the neighbourhood or human health) (Column no. 4), and a coefficient indicating the number of offences recorded (Column no. 5).

18 According to the judge we met, this amount is the result of a calculation based on sentences already pronounced over the last year for the same type of offence. But other elements are also stated, such as the fact that discrepancies between demands and sentences pronounced are taken into account, without any further investigation having been carried out. The fact is, in this case, the sentence matched the conclusions of the Public Prosecution.

content of the bundle.

Excerpt no. 1: Police Court Observation M2a 27.04.08 (19)

time		*Comment by the judge*	*Material device*
03:20:19	01	you want to see how it looks right now? * yes yes * these are… then we'll see on the computer... it's case files that come up... these are case files… you'll see… [gets up to pick up two bundles stored in a compartment of a metal cabinet]	filing cabinet compartment
03:22:54	02	here you go, this is what I'm going to collect from where we went yesterday [a room of the Court Registry reserved for the receiption of the cases] well… it's always like that, I often have several of them I put them there [points to the cabinet] but I'll show you…	bundle
03:23:35	03	the slip... it lists the 25 offences that are here. it's always like that… they're pending. I have to start the computer… [the Minos program launches] I put in my login and my password… there you go. I have to enter the slip number here… *batch 00265*... here you go	computer
03:25:43	04	so there you see the 25 cases… there… I need to check that I have everything on the slip in the table… there, I check I have the… *5722 5723 5724 5727 28 5732 33 37 5741* hmmm *5747*... well even normally the judge can refuse to put a case in PO [Penal Order] eh but… * you're basing yourself on…?* no but no… that never happens… now I see it's fine… I validate…	summary slip table
03:26:12	05	[the empty boxes corresponding to the decisions and the amount of the sentences are filled in] * it's incredible though… how does it calculate?* the computer compares the cases to the average sentence for the same type of offense… but maybe there are discrepancies with the demands it's on that basis… *and they're all the same?* (same amounts)?* yes yes here they're grouped together… (by type of offense)	table completed
03:27:02	06	so now I can start printing for the Registry of the Court... let's be straight, it's real mindless work!... I hate doing it. I've got loads of them waiting [points to the compartments of the filing cabinet]… you don't become a small claims court judge to do that.	printing

The friend of a motorist in a fight with police officers on rollerblades…

The second case was rather similar in substance: it concerned an individual who got carried away, following the illegal parking for which his friend, the driver, was fined, such that he himself ended up being ticketed for offensive disturbance. But the case followed ordinary procedures this time: the judge familiarized herself with the elements ahead of the hearing, which was to take

19 The table shows respectively the sequences, comments and the material devices involved in the judge's activity. In square brackets, we provide information about certain details of the scene, such as body movements or manual operations performed. In parentheses, we mention contextual elements. Between two *, we indicate the observer's comments, interacting with the person concerned. In italics, we indicate the excerpts read aloud, taken from the material media (documents, screen). Underlined text corresponds to phrases pronounced with heavy emphasis.

place the next day. This difference materialized formally from the distribution of the case files covering her desk, forming another stack consisting of a set of cardboard folders, each of which contained the documents necessary for each case. It is worth emphasizing the nuance: while for penal orders, the judge must manage a batch, processing a flow, the elements of which are connected by a rubber band, and working through the slips, for adversary proceedings, each case must be considered individually, without any particular connection with any of the case files of the day, even if they will be tried in the same hearing. Although the general movement differed, the elements relating to the making of the judgment remained the same: on each case file, the sheet attached listed the characteristics of the case, from the general grammar of any penal offence, successively stating the identity of the accused, the nature of the offence, and the relevant legal norm. Obviously, however, only the content of the folder mattered from a legal standpoint, which the judge was about to study.

Like all the others, the case file concerning Edmond Jaquier was comprised of three distinct sets of documents. The first one, which the judge checked perfunctorily, was made up of all the elements attesting to the admissibility of the proceedings initiated (demands, summons to appear, serving). The judge ensured that the proceedings were valid, that the court had jurisdiction and that the accused had been reached. The second set of documents, which required that the substance of the case be studied, concerned the offence itself (police statement, police report). The judge assessed the acts of which the offender was accused and the validity of the legal texts used by the Public Prosecution to qualify them. Finally, the third set of documents was made up of all the other information produced by the defendants, and sometimes the victims (medical certificate, employer's letter, employment contract, public service certificate, etc.). In this respect, the Jacquier case file appeared to have been reduced to a minimum: no elements other than those in the first two sets of documents featured, except for the check on the defendant's criminal background, which is always included, and the document concerning it, attached to the back of the cardboard folder. The information, which the judge noted down as she formally inspected the documents, was important because in this case, the accused had a criminal record. She noted its presence on the file that would serve as a memo for her to conduct the hearing, stating the reason ("he has a record ... insulting a police officer"). Once she had entered the formal elements of the offence on her computer, she examined the case more thoroughly.

The case related to the ticketing of a driver for "disorderly parking", in the middle of a public road and blocking access to an underground car park. More specifically, it concerned Edmond Jaquier, a friend of the driver in question who, after interfering with the police check and getting so carried away that he uttered colourful language, was himself ticketed for offensive disturbance. The judge took into account these elements by reading the police statement, which was written by the rollerblade patrol that had carried out this police check. Her reading was precise: while she endeavoured to reconstruct the facts based on the report of a sergeant detailing the circumstances of the situation that had led to the sanction, she did so based on the rule called for by the statement itself, asking herself whether it really "held up". At this stage, the judge doubted the solidity of the proceedings: in what way did the unkind words uttered by the offender ("I'll go where I want ... we're on a public road" ... "don't touch me... go on... go rollerblading") constitute an insult? And even if the defendant had had a few run-ins with the police and was quick to quarrel ("the guy doesn't like them... that's clear"), could what he said that day really be considered offensive? The judge could however only hypothesize at this stage, given the uncertainties of the hearing (Excerpt no. 2).

Excerpt no. 2: Police Court Observation M2a 26.04.08

time		*Judge's comment*	*Material device*
02:21:30	01	so 19… we're up to 19.	folder
02:21:45	02	then this one's *Jacquier*... [turns to her computer and types on the keyboard] J-A-C-Q-U-I-E-R [spells out each letter]	word file
02:21:53	03	so what's his deal [examines the case file folder] … *offensive disturbance*... that's daytime disturbance again ... [opens the folder and checks the time mentioned on the requisitions, then turns the cardboard folder over] ah ah … he's got a record: *insulting an officer* ... [grabs the sheet with the requisitions] *250 euros* … well he's got a record though	folder requisitions criminal record
02:22:19	04	[turns to computer and types in the information regarding the qualification of the offence and the criminal record]… *it's not nightly disturbance* [types DISTURBANCE in capital letters]… *offensive <u>offensive</u> disturbance. [*types OFFENSIVE]	word file
02:22:34	05	Offensive disturbance on a public road… *at 1:55 pm*... what's going on? [reads the police statement aloud]… Ah! *Rollerblade patrol… Saint Honoré market… a vehicle illegally parked*... [reads aloud at a fast pace] *after having checked the administrative documents of the vehicle and those of its driver… ... the driver's friend started shouting at me … he found it inadmissible that his friend was being fined for disorderly parking... I should specify that the driver had parked...* What's going on here?	police statement
02:23:10	06	[reads address from the police report mumbling very quickly, then goes back to the statement]…okay.	police report
02:23:14	07	*at the aforementioned address in the middle of the traffic lane thus preventing*	police

		vehicles from entering the underground car park. Oh yes, I know this parking garage... *while my colleague was writing the ticket, the friend in question kept arguing... interfering in the police check. I asked him several times to step away and stay out of the police check to let us get on with our work and… not to let the police check turn sour. This individual did not want to stay out of the police check, so I tried to get him to move away by taking him with my arm, explaining to him for the umpteenth time that he had to move away for our safety and his own. This individual replied: I'll go where I want ... we're on the a public road ...* that's not insults hey… *I continued to push him away gently but the man got even more angry and he shouted as he spoke to me informally: "DON'T TOUCH ME ... GO ON… GO ROLLERBLADING*" [written in capital letters in the statement] It's not offensive eh... I say it's not offensive... *I asked him for his ID card* [continues reading briefly]	statement
02:24:25	08	Well on the other hand [reading the criminal record] it's sure that the guy has already been sentenced for insulting an officer so obviously it's a bit of an issue… *insulting a person in charge of public authority* well for sure… the guy doesn't like them… that's visible… but there's no insult though…	criminal record
02:24:43	09	[turns to the computer and inputs her comment, in capitals] NO?	word file
02:24:46	10	[then returns to the police report] because I'm sorry, let's unpack this again: Captain Michel, he's going to find me in the same space as the other day [refers to the Public Prosecution officer probably speaking at the next hearing, referring to a previous hearing] *"I'll go where I want… we're on the public highway"… "Don't touch me… go on… go rollerblading"* that's not an insult, that's a poor charge! If there was a rebellion, that's one thing, but... that doesn't hold up!	police statement
02:25:20	11	well, for this case, on the face of it I'm strongly in favour of the defendant but… imagine that at the hearing he pipes up saying they're all idiots… I'm going to change eh… it is just a cold reading … the tables can turn! That's the point of a debate... so that everyone can explain [saves file]	word file

The case hearing was held the next day. Though it was established that the defendant was aware of the summons to appear addressed to him, he did not attend. The adversary proceedings did nevertheless take place, in accordance with the procedure. Like all other cases of the same type, the discussion with the Public Prosecution was delayed to the end of the public hearing. When Case No. 19 was reopened, the deputy public prosecutor restated the charges. The judge questioned the validity of the qualification: was this really offensive disturbance as defined by Article 623-2? Did the words transcribed in the police report really constitute an insult? The Public Prosecution officer went on to consult the penal code, such that a discussion ensued: even if an invective was devoid of insults, could it not be considered as offensive, just like a noise? Could the intention to disturb the police check not be interpreted as a moral element that should make it possible to punish the perpetrator? The judge ultimately sentenced Emile Jacquier to a €200 fine, which was less than the penalty set by the code. She wrote down this decision in the record (court registry) handed to her by the court clerk, stating the formal aspects of the offence. She signed the record, which would be used by the Registry of the Court to enter the information

to draft the final judgment, the document of which is generated by a dedicated computer program.

The two cases recounted above certainly describe contrasting situations. The scene seems similar, involving a judge in her office, with a computer and cases. In both situations, she must legally qualify criminal acts committed by a perpetrator whom the Public Prosecution intends to prosecute, within the same criminal system. However, although the offences concerned involved the same laws and shared a number of common features, their processing involved different reading and writing activities. In terms of material media, first of all, cases linked to penal orders are part of a flow, arrive in a bundle and are examined by a judge whose computer plays a central role (automatic inputting, calculation of the penalty). Those linked to ordinary proceeding, on the other hand, constitute a stock; they form a pile and require case-by-case processing where the computer's role appears to be peripheral (note taking). As for reading activities, for the former they are limited to the formal aspects that appear on the screen, with the graphic arrangement of the writings presented facilitating this work (table, software design). For the latter, they involve a longer process, requiring the articulation of all the pieces organized precisely inside a folder. With regard to writing activities, even though the actual drafting of the final judgment is automated in all cases, the work to reach this stage involves equally different forms and media (printing, proofreading and signing for orders; stylized notes, preparation of the Registrar's notes in court, then inputting by the Registry of the Court, printing, proofreading and signing for adversary proceedings). As for the legal reasoning itself, it did not take into consideration the criminal qualification of the offence in the first case when, on the contrary, the judge weighed up the validity of the second one. Yet the judge could have consulted the police statement, assessed the content of the words spoken and formulated as many questions about them as she had about the motorist's passenger: were they really offensive? Did the situation not call for considering the particular circumstances of the police check, given the uncertainty surrounding the "vehicle", the use of which on a pavement was not formally called into question (20). Does the law not stipulate that the judge's assessment remains sovereign? Finally, in both cases, moral concerns were present, but not in the same place. While the judge did not question the legitimacy of a sanction without adversary proceedings, let alone the amount of the penalty, she was not insensitive to the

20 This brings to mind the canonical example given by Hart (1961, 126) about the "No Vehicles in the Park" rule, which was not certain to apply to bicycles or tanks, especially since the police statement did not specify the nature of the vehicle (a bicycle? a scooter?) and mentioned only the police check.

meaning of what she was accomplishing. While signing the notifications and admitting to the researcher that it was "really mindless work", she delegated to procedure the task of repairing any decision taken too quickly: the order amounts to a penalty proposal, which the defendant can challenge. Conversely, in the case of adversary proceedings, she herself was responsible for the promise of reparation, believing that the hearing should be educational; it was not enough to state the sentence for it to be heard, it had to be explained.

Having noted these observations, it is important to stress the role of case files in each of the two situations. Evidently, their examination did not receive the same attention. But beyond the acceleration of processing made possible by the elimination of adversary proceedings, what do these differences tell us about the way legal decisions are produced?

Section 3: The properties of case files in action

From the bundle to the stack, in light of the research areas calling for case files to be considered as technologies and texts respectively, praxeological specification brings three particular results into relief.

Assembling

A first result stems from the finding that a case file is first and foremost an extraordinary entanglement of material and language. Made of paper, cardboard, rubber bands and staples that can be handled, it also contains documentary entities that can be read. This assembling appears significant, for through this reading activity, it participates in the very production of the case. The case file is not just the medium for recording information that is already there, but rather a powerful instrument for formatting situations, turning them into a reality that is compatible with the thinking from which legal activity stems (21).

21 On this capacity of the case file to transform reality into a "clear case", a "manageable problem", see Berg (1996).

In this respect, the comparison of the two cases is a reminder that one of the important properties of the case file is its ability to bring together heterogeneous documents within a single container; it acts through what it offers up for reading. Opening the cardboard folder of a case, such as that of the passenger of the motorist who was fined for offensive disturbance, one finds heterogeneous documents assembled for the first time, which force one to describe the offence from a perspective that has never been so broad. Through the writings it reveals, or even through what these writings preclude from understanding, due to the very fact of being compiled in this way in the same container, the case file produces the capacity to ask questions, by offering up a new collection of points of view that it brings together and which are potentially complicated to grasp as a result of their juxtaposition: "so what's his deal?", "what's going on?". This activity, deployed at the place of the documents to anticipate the fate of the case and to test the solidity of the qualification provided by the sergeants, is inextricably linked to the material qualities of the case files: through handling, skimming through, opening and closing them, they allow for reading documents in possibly multiple ways. Here, the case in question did not lend itself to further examination other than by the Public Prosecution alone, for lack of additional documents. But the judge could not know this without opening the case file*,* and the examination of the documents did not prevent her from questioning things, rereading the police report, examining the criminal record, and positing potentially hostile though not offensive behaviour. However, given that the case file seemed to be limited to a single sheet of paper, summarized by a line written on a computer, and that the procedure provided for the possibility of a challenge by the defendant, a detailed examination of the case file seemed less useful. Moreover, the optical resources offered by the screen, allowing one to see the bundle all in one piece, encouraged this limitation. And in that context, the reading was reduced solely to the space in a table that could not be interfered with in any way other than to validate it (22).

The significance of the increase in interpretations facilitated by the perspective afforded by case files through the multiple writings they contain has been pointed out in the literature (Latour,

22 There are many studies on the importance of material media and the reading they induce. About Richard Harper's documentary production at the IMF: "More specifically, research is suggesting that paper documents provide an organisation allowing the reader of a document to impute the relationships between document sections. Although this research is still rather incomplete, the key seems to be that paper-based documents allow and support a certain form of embodied interaction. In a single phrase, paper allows users of documents to get to grips. This is more difficult to do in, say, a hypertext environment, which makes the reading of hypertext documents quite different to the reading of paper documents" (Harper, 1998: 22).

1990; Weller, 2018a). But it also echoes another argument, put forward by literacy studies, of the polyphonic nature of the case file: the writings contributed by the various parties allow the reader to understand the situation of which they discover the elements from a multiplicity of voices, without there necessarily being any convergence. Referencing the work of Mikhail Bakhtin, this contrapuntal dimension of the case file as a text has also been highlighted (Fraenkel, 2008; Hull, 2012: 150). What is more, this marks a difference with the case of orders, the material elements of which are by definition confined to the sole voice of the police.

Circulating

A second finding relates to the ability of any case file to circulate. From hand to hand, from folders to hard disks, it is read by several professionals and, as it journeys on, is handled and transcribed in various ways. It does not designate a stable entity, fixed once and for all. On the contrary, it is an entity intended to circulate, given the division of labour that governs the legal treatment of situations. This applies from the time it is created at the Public Prosecutor's Office, through to the Registry of the Court and the judges of the competent court, and finally its archiving. Its processing – classifications, annotations, post-it note additions, etc. – must thus be mindful of the fact that others will read it. This observation, which has been widely described in relation to police records (Meehan, 1986; Komter, 2006), highlights two findings. The processual and distributed nature of the production of a judicial decision entails a specific documentary production, designed to equip any case file with a memory of what has been done up until that point and to force those in charge of processing it to coordinate with one another. The notion of boundary object, as envisaged by Susan Star and James Griesemer (1989) with regard to scientific work is a reminder here of the importance of intermediary representation mechanisms. Though they have no legal value in the strict sense of the term, these mechanisms are involved in the management of information: reference numbers written on the folders and a number of documents allowing all the actors of the penal procedure chain to find the case; summaries attached to the folders; slips; updatable computer tables showing the elements of the cases for penal orders; and court records which, during the adversary proceedings, circulate between the Registrar and the judge, so as to keep a record of elements relevant from a legal standpoint, used

to draft judgments. But this ability for these professionals to coordinate with one another is also owed to the literary and graphic form of each case file. Bakhtin stresses the importance of speech genre, which, by using an impersonal tone and stylistic figures that neutralize any involvement of the writer, ensures the homogeneity of writings and enables the professionals to understand and coordinate with each other (Bakhtin, 1986: 62-63).

In the two disturbance cases discussed here, the case file thus circulated differently. The writing work carried out by the judge appears to be minimal: reduced to the act of the signature in the first case, it takes the form of more personal typed notes in the second one, with the judge noting down some details regarding the case and her reasoning in order to recall the case in court the next day. In both cases, however, the writing appears to be highly standardized: it is the institution writing, not a person (23). It is also highly automated. Nevertheless, the making of the final decision – a notification or a judgment – differs from one procedure to the other. For penal orders, the table generated by the software plays a major role in the way the reading is formatted and thus at the same time allows for the coordination of the actors of the penal procedure chain. With adversary proceedings, the process is sequential and driven by the writing of the court record which, although standardized, is nevertheless handwritten and literal.

Immobilizing

A third property, finally, is the ability that the case file affords the reader to prepare a single final text. Whether it is the notification under the simplified procedure, which becomes a final judgment only after a period of time during which the defendant is able to file an opposition, or the judgment resulting from adversary proceedings under ordinary proceeding, these documents require a precise form: the "statement of reasons", which sets out the charges against the defendant and states the laws applicable (the grounds for the judgement); followed by the "pronouncement", which states the decision reached by the court. The latter documents thus materialize a deductive reasoning, whereas what has been duly established ("Whereas Mr. X. is

23 On this effacement and the control of the writer's body it entails, see the cases of writing in a civil registry office (Fraenkel, 2008) or the preparation of expert opinions (Dupret, 2005).

being prosecuted for having…", "whereas it has been sufficiently established that Mr. X. did indeed commit the acts of which he is accused…", "charged with having committed the following offence on XX/XX/XX…") precipitates a perfectly logical judicial decision ("finds Mr. X. guilty…"), "we sentence him to a fine of Y euros…"). This demonstration, which attests to a positivist conception and is founded on legal syllogism, nevertheless appears to be a reconstruction established after the fact. That is not to say that it is itself artificial, but it says nothing about the situated interpretive work that had to be done for it to be seen as natural, as though the facts had simply been observed and qualified, based on a perfectly established criminal standard (24).

Both cases are a reminder that this process is not so mechanical and may take different paths. Did the case of the driver's passenger, who was fined for the colourful words he uttered to the police officers ticketing his friend, not cause the judge to doubt the validity of the qualification ("It's not offensive, eh… I say it's not offensive…")? Did she not acknowledge, on the strength of the elements that she discovered by reading the criminal record, that the movement that inspired the offender was probably not the result of a best intention ("the guy doesn't like them… that's clear") but that the remarks he made to the police officers did not constitute an insult ("'*I'll go where I want… we're on a public road… 'Don't touch me… go on… go rollerblading'* that's not an insult!")? And, when the hearing was held, was the consideration of possibly dropping the charges ("That's bad prosecution!") itself not reversed, based solely on the elements of the case file and the relevant laws, even though the defendant did not appear in court? While the way of moving from the scarce documents contained in a case file to a final text certainly cannot be reduced to the reasoning described in the final document, it takes different paths depending on the cases studied. In the case of simplified procedure, the material facts are associated with legal texts by means of a calculation; in the case of adversary proceedings, this is done by outlining a narrative. Admittedly, in the first case discussed here, the final decision was not entirely automatic: there was still a human in the loop. But the judge only felt the need to check the legal conformity of the elements entered into the computer so that the program could precipitate a decision. In the second case, she had to be able to assess the coherence of the documents gathered, by producing a plausible scenario of what happened, and assessing its consistency with the legal

24 For an exploration of the legal work involved in syllogism, see Dupret (2011).

qualification that had been proposed.

*

These different findings regarding the properties of case files call for three concluding remarks. By focusing attention on the material substance of judicial work, this chapter first of all reminds us that the ability of judges to grasp events and to qualify them from a legal standpoint relies on tools, first and foremost case files, which allow for the collection, storage and transportation of documents. One of the aims of the ethnographic study was to capture its multiple nature, comprised of paper and electronic material. A second finding shows that, in order to move from the scattered documents that make up any case to the production of a legal decision, an approach limited to formalized texts does not make it possible to understand the way in which legal facts are developed. Thus, between the two so-called "simplified" and common versions of criminal procedure, orders are characterized not only by the elimination of adversary proceedings, as provided for in the law, but also the way in which the multiple documents of a case are successively examined to arrive at a judgment, by way of calculation and no longer based on a narrative. This finding, which owes nothing to procedure, is a reminder of the importance of the materiality of case files, in terms of the ability to reasoning and to act with which they endow their users. Finally, a third finding begs us to consider the impact of such "infrastructure" on the forms of production of the law (Weller, 2018b). Depending on the information production processes that characterize them, case files reveal possible inconsistencies in a case through the documents they contain or of which they homogenize the content using ready-to-use tables, forcing the judge to relate what they are reading to case law built up through experience, or automate the comparison with other cases deemed similar by calculation. In short, case files do not literally "form" the same cases, even if they involve the same texts. The standardization of decisions and the massive volumes of processing that seem to be handled by computer tools call for investigation of the situated conditions of enunciation of the law that they enable or prevent. The case of penal orders examined here speaks volumes: while the procedure provides that the judge may refuse to rule by order and may refer the case back for adversary proceedings, or that the defendant may object to the notification they receive, our research has shown that in practice

such contention is very rare (25).

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25 It is understood that this very low referral or opposition rate also relates to other elements that go beyond the scope of this contribution. One example is the negotiations conducted locally between headquarters and the public prosecutor's office to agree on the type of cases that can be referred to, in order to reduce the risk of disputes.

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