

NARRATIVES AND PRACTICES IN PRE-TRIAL  
HEARINGS: A LEGAL ANTHROPOLOGICAL  
APPROACH TO JUDICIAL EFFICIENCY

Ricardo Iván VÁSQUEZ LÓPEZ\*

*ABSTRACT: This article aims to shed light on the practical organization of judicial operators in the pre-trial hearings of local Mexico City courts. Firstly, the aim is to describe cognitive, social, and objective formations, both conscious and volitional, linked to achieving the goals of the judicial bureaucracy in the practice of preliminary hearings in the justice system (the distribution, organization, and interpretation of the work) that take place and shape the social-judicial domain. Ethnographic observation and the narratives of agents in this field yield a theoretical framework formed by the actor-network theory, anthropological concepts from Garfinkel's ethnomethodology and Bourdieu's ideas of social field to provide a better description of agent practices in the field that produce a judicial "efficiency" that sustains, maintains, and drives the bureaucracy of the justice system, specifically during pre-trial hearings.*

*KEYWORDS: Pre-trial Hearings, Justice Efficiency, Narratives, Practices, Ethnography.*

*RESUMEN: Este trabajo tiene como objetivo comprender la organización práctica de los actores judiciales en las audiencias iniciales de los juzgados locales de la Ciudad de México. En primer lugar, se busca describir formaciones cognitivas, sociales y objetuales, conscientes y volitivas, vinculadas a la realización de objetivos de la burocracia de justicia en la práctica de las audiencias preliminares de justicia (distribución, organización e interpretación del trabajo) que se dan y forman una justicia y un campo social, a partir de la observación etnográfica y las narrativas de los agentes que componen este campo. Esto a través de un marco teórico nutrido por la teoría actor-red, las nociones antropológicas de la etnometodología de Garfinkel y la noción de campo social de Bourdieu. Lo anterior con*

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\* Law degree from the Universidad Nacional Autónoma de México, bachelor's degree in psychology from the Instituto Politécnico Nacional, student of the Graduate Studies Division of the Law School of the Universidad Nacional Autónoma de México, Internship in Institute for Legal Research of the Universidad Nacional Autónoma de México. Email address: [rricardo\\_vaz9793@outlook.com](mailto:rricardo_vaz9793@outlook.com).

*el propósito de describir las prácticas de los agentes de su ámbito que construyen una “eficiencia” de justicia que sustenta, mantiene e impulsa la burocracia del sistema de justicia, específicamente en las audiencias preliminares.*

PALABRAS CLAVE: *Audiencias iniciales, justicia, eficiencia, narrativas, prácticas, etnografía.*

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## I. INTRODUCTION

What is efficiency in the judicial system? Traditionally, efficiency denotes the ability to achieve the desired results with the least number of resources possible. This implies understanding the economics of judicial work, which consists of the goals usually established in regulatory frameworks or policies, on the one hand, and the limited number of resources available to reach said goals, on the other. Therefore, this economic understanding implies working within a framework of legal possibility. Every time resources are used, they must be presupposed, planned, and executed based on a legal category, a strategic plan, or a legal provision. Thus, common judicial analyses create lines of compliance between ideals and the use of resources.<sup>1</sup>

<sup>1</sup> Raúl Ojeda Núñez *et al.*, *Compatibilidad entre debido proceso y eficiencia: su aplicación al régimen de apelación en el proceso civil chileno*, 31 (2) REVISTA DE DERECHO (VALDIVIA) 211, (2018); Claudio González Guarda, *La eficiencia en el sistema penal español: con especial referencia al modelo de conformidades*, 7 (3) FUNDAMENTOS DE DIREITO PROCESSUAL PENAL 2061, (2021).

In this case, the answer is not a quantitative index, much less an operational procedure to arrive at an ideal. Our answer probes the everyday, constant, and uninterrupted practices underpinning work practices to solve work-related problems. Thus, the question centers on unspoken practices that form the basis of interactions in judicial work. Attention is thereby paid not to legal premises but to the agents' own insights and interactions mediated by objects, thus creating a perception of efficacy as the workings inherent to the area that are maintained, endorsed, driven, thought out and decided upon by agents, whether adhering to legal frameworks or, more commonly, infringing legal provisions.

This paper aims to contribute to legal anthropology by examining hidden and discrete practices in judicial procedures, specifically in the pre-trial hearings, without lapsing into a merely legal-economic evaluation. The descriptive-analytical intention of our study consists of an in-depth socio-legal description of Initial Hearings at Mexico City courts to better understand the efficiency of the operations, that is, all practices that allow the continued existence of the system itself. Simply put, this paper gives a detailed description of judicial operators' various everyday work-related activities that comprise judicial efficiency, i.e., achieving institutional goals (whether it is complying with a certain number of hearings or simply finishing the court journal, the goal is to complete the necessary tasks efficiently), in order to present the material nature, along with the normative structure, of judicial work, but set out as it actually takes place within the framework of daily judicial activities. This research is part of the National Problems program of the National Council of Science and Technology as research on "Judicial Oversight of Police Detentions and Informal Rules".

Thus, the structure of the paper is following: II. Practices and Techno Cognition: Meta Text (a theoretical section); III. Trials and Practices: Context (a section presenting preliminary information on the issue in question); IV. Statistical Functions: Back Text (a methodological section with statistical functions); V. Events and Interactions: Text (an ethnographic section), which is divided into subsections: 1. Police Action; 2. Programs and Statistics; 3. Evidence; 4. Police Report; 5. Repeated Accounts/Narratives; 6. Institutional and External Agents; 7. Judges and Knowledge; and 8. Arrest. To end with section VI. Conclusions: Post Text.

## II. PRACTICE AND TECHNO COGNITION: META TEXT

In the sociological field of criminal procedural law, research has traditionally reduced analysis to its teleological dimension, to meeting goals in the form of specific products (files, documents, sentences, statistics, reports, etc.) tailored

to the social or political interests marked by its general social field.<sup>2</sup> A second socio-legal convention reduces judicial practices to mere instruments of power relations and ways of establishing legal truths.<sup>3</sup> Yet a third position emerges from the analysis of knowledge and skill, seeing ethnographically to investigate the ways in which subjective, objective, technical, and cognitive agents interact to produce certain specialized forms of creating a continuous practice that ensures the existence of what we will call the juridical social field. Unlike the analysis of power relations brokered by schemes external to judicial processes or institutional subjectivity training mechanisms, an anthropological position defends the establishment of roles and relationships that forge and imprint everyday life on bureaucratic processes as a result of agents deliberate and conscious effort. These are practices, positions, observations, and interactions that cannot be analyzed or studied without an ethnographic look at the daily working life within the judicial system. Thus, this third position goes beyond both the sociological perspective and the legal one by placing the legal system not to restrict possibilities but as an agent at the same level as other agents. Hence, it is imperative to modify the theoretical-methodological procedure for analyzing the events that comprise daily life within judicial spaces.

However, anthropological positioning assumes a dialectical understanding of the above positions. On the one hand, judicial events are understood as symmetrically built dynamics between discourses, interactions, intermediation and interrelationships among different agents that make up a field of action<sup>4</sup> and that at the same time are influenced and immersed in social, political, economic and historical contexts that can also be analyzed from an ethnographic perspective.<sup>5</sup> According to Geertz,<sup>6</sup> ethnography aims at the dense description of “a stratified hierarchy of meaningful structures in terms of which twitches, winks, fake-winks, parody, rehearsals of parodies are produced, perceived and interpreted”, i.e., “sorting out the structures of signification... and determining their social ground and import”. The meaning of interactions emerges from a specific field, imbuing events with contextual differences. Thus, the work lies in discovering the code and understanding the interpretation process used for said code. However, symmetrical anthropology uses flat ontology to closely observe the interactions between agents that produce the conditions for possibilities arising from particular codes.

By adopting symmetrical anthropology, the symbolic ethnographic vision, which contemplates only a deep understanding of the code in its linguistic dimension, is overtaken upon focusing on the ontological interactions condi-

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<sup>2</sup> Leticia Barrera, *Más allá de los fines del derecho: expedientes, burocracia y conocimiento legal*, 41 REVISTA DE CIENCIAS SOCIALES 57 (2011).

<sup>3</sup> MICHEL FOUCAULT, VIGILAR Y CASTIGAR (Siglo XXI, 2nd ed., 2009).

<sup>4</sup> BRUNO LATOUR, NUNCA FUIMOS MODERNOS (Siglo XXI, 2007).

<sup>5</sup> Galeano Gasca & Irene Juárez Ortiz, *Antropología jurídica: reflexiones sobre justicias locales y derechos universales*, 32 (53) BOLETÍN DE ANTROPOLOGÍA UNIVERSIDAD DE ANTIOQUIA (2017).

<sup>6</sup> CLIFFORD GEERTZ, THE INTERPRETATION OF CULTURES (Gedisa, 2006).

tioning, building, mobilizing, operating, organizing and administering practices that produce signifiers, symbols, values, customs, goals, organizations and codes.<sup>7</sup> Another difference with the sociological approach is found in the voluntary, direct, active, and incomparable participation of the agents shaping this daily reality. Garfinkel<sup>8</sup> calls this common and shared construct “reflexivity”, perceiving agents as creators and updaters, of this everyday life, while building cognizance of order, organization, structure, and normality. Thus, these processes, acts, practices, discourses, interactions, and intercommunications prove to be the intrinsic dynamics of the field, as well as the conditions for an environment of comfort, trust, and well-being in the workplace.

In the case of institutional judicial spaces, practices are moderated by the professionalized acumen of specialized knowledge and techniques, such as procedural law and criminal law. The symmetrical and symbolic construction of codes in institutional spaces is similar to that of any other community building social practices,<sup>9</sup> but to understand the particular rational in these spaces, consideration should be given to the concept of “techno cognition”, which stems from the anthropology of knowledge and technique and centers on its cognitive-instrumental activity: “orally-transmitted knowledge and techniques transmitted by gestures”. The concept of techno cognition also implies blurring the boundary between human and non-human by paying attention to the non-subjective agents with which agents interact in their everyday activities, as well as to the objectual interactions that take place without human mediation affecting everyday life.<sup>10</sup>

In short, this dense description is provided to be acquainted with the practical field arising from objective and subjective interactions that give meaning to the practices upholding agents’ everyday life that allow their continuous production/reproduction. These technocognitions categorize all the particular expressions that build rituals, the recurrent behaviors in the dynamics of practices, which at the same time correspond to the set of interactions between human agents and object agents that form part of the judicial field and its dynamics.

In the specific case of the pre-trial hearings, the human agents involved in the bureaucratic activities in the penal system will be referred to as operators: public prosecutors, judges, victim counselors, and public defenders; while the object agents (judgments, technical knowledge, evidence, technology, etc.) will be referred to as agents. The subjective, human facet lies in the analysis of the

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<sup>7</sup> Ricardo Vázquez, *Antropología Simétrica y ciberetnografía orientada a los objetos: reflexiones en torno a un ensamblaje teórico-metodológico*, 56 (1) ANALES DE ANTROPOLOGÍA (2022).

<sup>8</sup> HAROLD GARFINKEL, *ESTUDIOS EN ETNOMETODOLOGÍA* (Anthropos, Hugo Antonio Pérez Hernáiz *trans.*, 2006).

<sup>9</sup> BRUNO LATOUR, *LABORATORY LIFE* (Sage Publications, 1979).

<sup>10</sup> Morales Navarro, Antonio Arellano & Mina Kleiche, *Prácticas curativas en las “Hueras de Malinalco”*: los saberes integrados sobre plantas, padecimientos y curación tradicionales (ENGOV WORKING PAPER No. 3.4) 58 (2013).

“expert” operators of the law who possess different types of knowledge—judges, public prosecutors, public defenders, in the Mexican case—that generate certain practices regarding the institutional execution of their work, a “legal field” that operates according to a logic of its own and gives rise to a series of conventions, roles, and hierarchies for its agents.<sup>11</sup> These practices answer to diverse techno cognitions arising from subjective techniques (orality, legal language, knowledge of the facts), legal knowledge and systems (rules, provisions, plans, strategies, laws), and technological and material instruments (files, evidence, mobile devices). Hence, the judicial field differs from other fields due to the influx of legal technocognitions shaping its dynamics.

Hence, the importance of this ethnography is found in the descriptions of these interactions, in an effort to recover that everyday “efficacy” fashioned in the performance of judicial work. Based on the above, “efficacy” is the collective continuity of certain practices in a process with an autopoietic continuous-infinite goal. In other words, it depends not on external agents to uphold it, but on the active participation of its agents. Meanwhile, “everydayness” refers to the unquestioned, unstated, and discrete reflexive practices exercised on a daily basis that are known, communicated, imitated, and repeated among the agents with knowledge of the judicial field. This implies the opposite of “effectiveness”, understood herein as incorporating practices into ideal structures of action, i.e., the capacity of actors to adapt their actions to externally established precepts (laws, judicial proceedings, written ethical guidelines, operating manuals).

This dichotomy should not be understood as a simple comparison or classification in which every action must be attributed to one or the other, but rather, as proposed by Derrida in *Différance*,<sup>12</sup> actions stem from a pursuit for effectiveness that, when contrasted with institutional practices, routine problems, objectual technologies, human reflexivity, and the practical constraints of bureaucratic work, it leans toward efficacy, seeking to return to effectiveness, which establishes a discussion on effectiveness and efficacy, understood here as “institutional everydayness”. In other words, agents strive to fulfill the legal requests of their work, but they resort to practices devised by agents that do not necessarily observe the techniques and methods established by law.

### III. TRIALS AND PRACTICES: CONTEXT

This text focuses on the emerging ethnography from the initial hearings of the Mexico City judicial system, specifically the stage of judicial control of police detentions from August to December 2019, with more than eight hundred systematic observations on pre-trial hearings in CDMX criminal courts. The

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<sup>11</sup> Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS LAW REVIEW 805-53 (1987).

<sup>12</sup> JACQUES DERRIDA, MÁRGENES DE LA FILOSOFÍA (Cátedra, 1989).

information obtained from direct observation is complemented and enhanced by interviews with arraignment judges, public defenders and public prosecutors involved in such hearings, within the framework of the Initial Hearings of the Mexico City Criminal Justice System research project (the CONACYT National Problems program) coordinated by Dr. Carlos Silva Forné. Due to the closed and discreet nature of these institutions as well as the need to protect the identities of the interviewees, the anonymity of the participants was preserved in both the ethnographic observations and the interviews.

The project revealed a network of field agents' daily interactions in the performance of their duties, which were ethnographically recorded and then cross-referenced with the different responses gathered from interviews with judicial agents. In other words, the practices included in the ethnographic analysis were contrasted with recurrent accounts of said practices. Most practices relate to their immediate context, but some extent well beyond it.

It is possible to identify a higher prevalence of certain offenses as well as collective agreements regarding the practice of such offenses, including consistent accounts that prevent those actions from being carried out and repeated requests or processes to include or exclude certain arguments. However, an examination of these practical regularities corresponds to a close analysis of such factors and the establishment of particularities linked to bureaucratic reflexivity on specific issues that arise when tied in with the distribution of judicial capital. This study provides a general review of the objective-subjective interactions that shape everyday life and efficacy, i.e., a snapshot of the interactions-practices underpinning the existence and continuity of initial hearings, as well as the fulfillment of their goals, mandates, and objectives.

#### IV. STATISTICAL FUNCTIONS: BACK TEXT

The empirical data for this article was collected through a systematic ethnographic observation of pre-trial hearings. This work was carried out by an interdisciplinary group composed of social scientists in the fields of law, anthropology, and sociology over a period of just over 6 months. These observations were accompanied by an observation guide and an audience-data capture format with information on the length of each hearing, each specific procedure in each hearing (control of the arrest, etc.), the various interactions between agents and the parties involved, etc.

The team members visited different Judicial Management Units in Mexico City (Reclusorio Norte, Reclusorio Sur, Reclusorio Oriente, Reclusorio Santa Martha and Dr. Lavista), making ethnographical arguments and observations while collecting the specific information on the forms. Weekly meetings were also held to discuss the personal experiences of the interviewees and particular ethnographic findings, as well as to give presentations on topics of common interest. After completing the observations, all the data in the forms were tran-

scribed and organized in a SPSS database. Additionally, more than 15 interviews were conducted with various judicial agents, public prosecutors, public defenders, and arraignment judges. Semi-structured interviews were carried out, with a script containing questions about interviewees' views on the judicial system, their judicial career, the working environment in the court, the other bailiffs, the underlying causes of crimes and the court's role in solving national problems. These interviews were recorded in audio format, transcribed, and later coded with the MAXQDA program.

The author participated in each stage of this process: daily observation of initial hearings, filling out of the forms, transcribing the data, conducting interviews with judicial agents, transcribing the recordings of said interviews and coding these transcriptions. This empirical and documentary work advanced all the topics covered in this text. This text emerges from the findings obtained in the field and the interviews. The information was compared in the weekly group meetings and with the empirical data. However, the enormous amount of systematized data requires detailed study, which is currently being done by the participants in this project.

Thus, the topic discussed in this article is part of a broader analysis. Therefore, this article does not seek to explain the full scope of the social facts embodied by pre-trial hearings, but rather, to present a series of phenomena that together shape the daily judicial activities in pre-trial hearings. In this way, this ethnographic journey stems from an anthropological perspective, which will be enhanced with upcoming articles to be published by the rest of the research team. Although this might seem like a selective sample, the qualitative nature of the work centers on continuous research in the field, using the team's shared data to reinforce the findings presented.

Moreover, this subject is unquestionably innovative, since the array of available data and statistics only corresponds to cases closed by judicial institutions. In other words, statistics from the INEGI and the TSJCDMX,<sup>13</sup> as well as from other empirical research, are limited to the number of sentences issued, the types of crimes, and other bureaucratic aspects that, while providing the background of the hearings, do not represent a detailed study of everyday court practices. Furthermore, specific data requests were made on the national transparency platform to obtain information about the duration of hearings and corresponding details, such as whether the accused participated, the defense arguments, or number of guards-to cite a few examples. However, the only information obtained was the number of judges at each Judicial Management Unit and the number of hearings held annually. Besides, according to the response of the transparency agency, the court is not obligated to maintain data on these aspects.

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<sup>13</sup> INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA [INEGI] [NATIONAL INSTITUTE OF STATISTICS AND GEOGRAPHY] and TRIBUNAL SUPERIOR DE JUSTICIA DE LA CIUDAD DE MÉXICO [TSJCDMX] [SUPERIOR TRIBUNAL OF JUSTICE OF MEXICO CITY].



## V. EVENTS AND INTERACTIONS: TEXT

Pre-trial hearings are supposed to be, at least as stated in the law, an autonomous place where decisions are made based on the elements brought before the court. However, actual practices go beyond the legality and formality of the hearings and are inspired and motivated by agent dynamics in their institutional, group, cultural, and labor relations.

Judicial logic establishes the scope of action of the various agents involved in criminal proceedings, delimiting it within judicial regulations, which in this case are found in the Political Constitution of the United Mexican States, the National Code of Criminal Procedure, and the Mexico City Criminal Code, as well as the various particular regulations of judicial institutions. From an institutional point of view, these regulations define how agents should ideally act. Categorizing the types and bureaucratic actions would imply the principle of legality, from a socio-legal perspective, and the essential efficacy in our language. However, from the knowledge gained from the ethnography and narratives from agent interviews, actions are bound by a series of considerations related to the availability and intentionality of the objectives of the various agents in judicial spaces and of the bureaucratic processes because of the specific particularities of agents' rationale, along with complete obliviousness towards the legal provisions that define the ideal legal institution.

Such actions are always based on the different working conditions described below with greater weight placed on decision-making and establishing bureaucratic interrelationships in the judicial area as part of an effort to do their work with "efficacy". This efficacy is a perceptual condition of agents to maintain order and a sense of ease at the workplace, which is already bogged down by an excessive workload, stress of working on issues related to the criminal world and the diverse vicissitudes associated with the job.

The different practices are described in chronological order from the possible perpetration of a crime to the initial hearing. The first will discuss building up a written account of the police action and preparing the Public Prosecutor's case file.

### 1. *Police Action*

Chronologically, the first justice event relevant to the ponderation carried out at pre-trial hearings is the merging of police work with that of the Public Prosecutor's Office. The interviews with judicial operators, particularly with members of the Public Prosecutor's Office, constantly mention the lack of efficacy in police work, i.e., the lack of lawfulness surrounding police actions. More specifically, this implies discrepancies in police work, in terms of the detention of alleged offenders with irregularities in its execution, such as human rights violations, the lack of bureaucratic elements in the proceedings, lapses in

the intervention or the prosecution of offenses that do not entail certain types of punishment.

These failings are ignored by the police, who proceed with the bureaucratic process linked to standards on detention, i.e., being taken to the Public Prosecutor's Office. Such actions lead to a daily routine of excessive use of force, police abuse, and the use of torture whenever related to meeting material and symbolic goals, which have been analyzed before in various texts.<sup>14</sup> Due to the ineffectiveness of the police, legal bureaucratic processes require suspending the detention or its subsequent revocation and the removal of the Public Prosecutor from the proceedings, which results in the detainee being released, the possibility of an alternative way out of the process or a summons to a pretrial hearing while the subject under investigation is at liberty. All these options are at odds with the goals of the Public Prosecutor's Office.

## 2. *Programs and Statistics*

Although not entirely in line with the legal precepts established by law, these goals come from the Public Prosecutor's Office approach and imply the "advancement" of the detainees, i.e., the judges' acceptance to move forward with the criminal proceeding. This is closely tied to fulfilling certain statistics and goals imposed on Public Prosecutor's Office agents by institutional authorities. In most cases, according to judicial operators' interviews, the decision of Public Prosecutor's Offices is to continue with the proceedings of detainees regardless of deficiencies in police action, either covering them up or disregarding them, hoping that the judge's lack of attention will allow the proceedings to continue. From the interviews (particularly with public defenders and judges, as this does not happen in all Public Prosecutor's Offices),<sup>15</sup> it is mentioned that the police institution itself is influenced by political programs that exert pressure on its operators, who must comply with a minimum number of detentions within certain periods of time, thus leading to the establishment of effective practices.

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<sup>14</sup> Carlos Silva Forné, *The excessive use of force by Mexico City law enforcement agencies: corruption, normal abuse, and other motives*, 9 (1) MEXICAN LAW REVIEW 3 (2016).

<sup>15</sup> It should be noted that in interviews with public prosecutors, some mentioned the pressure exerted by their superiors to meet certain goals of "indicted detainees" influencing their official actions, since decisions are made under this pressure to send cases lacking formal elements to be heard, expecting judges to act accordingly. In their words, judges' diverse decision-making styles could open a window of opportunity. Consequently, the lack of consistency in judges' decisions may result in allowing a detainee to be indicted even if the investigation does contain the elements to back such a decision. Similarly, the work of defense attorneys indirectly influences this decision because defense attorneys are expected not to notice certain irregularities, either by waiting for a private defense attorney (who, according to the operators, lack experience, expertise and knowledge to keep the case from being sent to trial) or private defense attorney's lack of attention due to overwork. Most public prosecutor's testimonies do not mention this because they can be reprimanded or dismissed from their position if it were known there is an outside influence on them when making certain judicial decisions.

Thus, compliance with political campaign promises that turn into programs, plans, strategies, and institutional goals handed down through the chains of command becomes the driving force behind agents' legal "acrobatics", in addition to the constant threat and risk of losing their jobs for not following institutional orders. Thus, the instructions of their superiors supersede the orders of agents' actual operations.

This results in a greater impulse insofar as the certainty of agents keeping their job is entirely dependent on obeying orders rather than complying with legal provisions; any disobedience would mean their dismissal. This efficacy is not driven by police operators but by production conditions, i.e., the circumstances surrounding them, ranging from authorities' orders to the availability of different technologies, techniques, materials, and legal objects, as well as the silenced consent of the other judicial operators, thus creating a complicity that sustains and upholds certain production requirements. There is a constant complaint in public prosecutors' accounts regarding the excessive workload and the persistent threat of dismissal on grounds of inefficiency for not having enough hearings with binding sentences in a given period.

### 3. *Evidence*

As regards production conditions, aligned police activity can be found in its situational object field. The criminal system does not only have human operators, but also several technological systems that can imbue discursive criminal assumptions with certainty, i.e., they serve as material and probative evidence that helps recreate the conditions in which the facts took place as procedural requirements and as a means to clarify and build certainty for the judge to pronounce judgment. This regulatory notion appears in agents' narratives and practices as judges' requirements to verify the facts that will serve to back the agents' petitions. These structures manifest themselves in hearings as evidence. Thus, police decisions must be conditioned by the discovery, inspection, analysis or even the appearance, introduction or fabrication of evidence. Operators' testimonies show it is possible to extract the modalities of police action and the different behaviors to fulfill their tasks. Should there be a video contradicting the facts laid out by the Public Prosecutor's Office, its mission would be to overturn the evidential validity of said video. Thus, agents' decisions concerning evidence are not geared towards the search for evidence as proof of a given fact, but as a way to back up the arguments conducive to obtaining petitions.

In preparation for the hearing, evidence is scarce and is only needed to determine the legality of the arrest. Therefore, any type of evidence —like C5<sup>16</sup> camera footage, ballistic expert opinions or other circumstantial evidence

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<sup>16</sup> CENTRO DE COMANDO, CONTROL, CÓMPUTO, COMUNICACIONES Y CONTACTO CIUDADANO DE LA CIUDAD DE MÉXICO [C5] [MEXICO CITY'S COMMAND, CONTROL, COMPUTING, COMMUNICATIONS AND CITIZEN CONTACT CENTER].

relevant to a specific case—is discarded. Only in specific cases dealing with remarkable crimes, evidence takes on paramount importance.

Two particular cases stand out from the ethnographic observations. The first one involved an initial hearing on the crimes of extortion, carrying a weapon, crimes against health in the form of drug dealing, and resistance between individuals. According to the official police report, expressed in the public prosecutor's statement of the facts: a police officer who was patrolling noticed that there were several subjects armed with assault rifles inside a moving car, so he launched a chase and asked for back-up. When police back-up arrived, they stopped the two cars with the subjects, who then fired several shots at the police officers attempting to arrest said subjects. The hearing was divided into two phases because the defense attorney had invoked the 144-hour constitutional term to determine the detainee's legal standing.

Once the time elapsed, the defense attorney presented various expert reports during the second part of the hearing. A ballistic expert report demonstrated that the shell casings found at the scene did not match the weapons and that there were no traces or fingerprints on the weapons matching any of the detainees. Other expert reports cast doubt on the times of the arrest and the pursuit. Even then, the judge ruled that the hearing was not intended to cast doubt on the detainees' participation in the crime but to establish that a crime took place and that the detainees might have participated. Thus, a nexus was established, and the proceedings continued while the detainees remained in custody.

The consistency of the hearings showed a lack of interest from the judges about evidence, since it belonged to a different stage of the proceedings. Even in their interviews, judges stated that the proper moment to present, weigh and evaluate evidence was during the trial preliminary hearing. Institutional agents (judges, public prosecutors, and public defenders) even saw private defense attorneys' attempts to be involved in obtaining evidentiary material as a mistake by the institutional agents.

However, a second example that contradicts this position is found in hearings for crimes of violent robbery. According to the public prosecutor's statement of the facts, a cab driver conveying a prostitute (according to the testimony of the cab driver, who was also the complainant), was assaulted by his passenger. The driver requested police support and the accused was arrested moments later. After the constitutional term expired, the defense attorney presented video footage showing inconsistencies surrounding arrest times, consequently placing the legality of the detention in question and leading the judge to rule on the termination of the process. It should be noted that this particular hearing was influenced by the protocol for judging with a gender perspective. Thus, the very consistency of agents' practices makes this hearing more indifferent to the evidence than it would be in extraordinary cases.

#### 4. *Police Report*

The information that can be misrepresented by a video is referred in the official police report, which, according to the operators, is the main source of information for the pre-trial hearings. Thus, most of the information in the preliminary investigation carried out by the Public Prosecutor's Office is drawn from this report. However, operators generally agree that police officers are not trained to fill out such reports. Efficacy implies filing such reports *in situ* to ensure the greatest possible objectivity. However, in view of this, efficacy becomes instead the subsequent filling out of the forms, in aid, complicity, and agreement with the public prosecutor as the person with the alleged knowledge to properly organize the information as needed for the proceedings. Public prosecutors do not establish this as a mechanism for modifying procedures, but rather as a search for an effective way to put together the case files in a way that provides these operators with more opportunities to prosecute a detainee. Thus, the official police report holds substantial value in preparing the case file, playing a paramount role in the decisions made by public prosecutors and the police in the pursuit of a written statement that holds up to a review carried out by the defense.

A third object appears as a target of operators' decisions: the case file. However, at the time the police and public prosecutor put together the case file, it was possible to find fabrications, intervention, additions, or enhancements of certain evidence reinforcing the allegations by linking facts with legal precepts. This means that the elements in the case files are the result of a surreptitious collaboration among these judicial agents. Thus, police officers are required to act accordingly.

Currently, the investigating police play a predominant role, being responsible for carrying out the formality of obtaining evidence to support public prosecutors' statements. The efficacy of this work lies in selecting and obtaining certain elements that tie into the work, and within the period given to do so. At the initial hearing proceedings, where the main opposition is present, the content of the arguments between the public prosecutor and the defense primarily relies on the information provided in the case file. In most cases, this lends itself to the technical establishment of standard peculiarities that allow operators to be efficient in their work.

For example, drug dealing crimes are established through a series of statements, accounts, and evidence that are constantly repeated and known to the public defender, who finds similar features in the course of their routine activities. In doing so, both operators involved in the arguments know the exact points of possible controversy, so they fix their attention exclusively on them. Even with an agreement between the parties with both knowing the judge's possible decision based on the loopholes in the case file, the operators create a pre-trial arrangement in which they mutually agree on the requests each will make to expedite the hearing. If the evidentiary, narrative, and statutory pro-

visions allow the public prosecutor to continue with the proceedings beyond the hearing, the defense generally accepts it; otherwise, the public prosecutor generally accepts the limitations of its investigation, allowing the defense to press their requests.

##### *5. Repeated Accounts/Narratives*

Identical accounts for the various crimes were consistently found in the ethnographic hearings. In the aforementioned drug dealing case, for instance, the elements repeated in each individual hearing all show remarkable similarities in the narration of the circumstances. The accounts always mentioned a police officer in an unmarked patrol car some 5 to 15 meters away from where he could see one or several subjects (depending on the number of detainees) handing over objects that look like plastic bags filled with marijuana or cocaine and receiving money from the other person. The same bag(s) with something like drugs and the money from the exchange would be found during the arrest and subsequent search. However, the geographic location, the number of detainees, and the number of drugs or money would simply change at each hearing.

Another common crime with similar statements is self-service store robberies, where a security guard would see someone with merchandise hidden in their clothes, follow them and stop them exactly two meters away from the exit. The guard would then ask to see the merchandise or a receipt for it. The subject would then admit to the crime and voluntarily hand over the merchandise.

During the pre-trial hearing, the case file is subjected to a series of practices that constitute and are constituted by tendencies towards efficacy. One of the most recurrent practices takes place between the public prosecutor and the judge in presenting and filing the information regarding the detention. At this stage, the public prosecutor presents the facts of an alleged criminal act, as well as of the detainee's probable participation in the crime. In presenting the case, oral skill is required, since the entire argument must be rendered without written references or preestablished scripts. In other words, the public prosecutor must do this without reading from or looking at the case file.

Based on public prosecutors' narratives, this tends to pose certain difficulties, primarily due to their excessive workload, making it inconvenient to quickly memorize the elements that pertain to each alleged crime. To counteract this, short sentences are used like flashcards with keywords to stimulate their memory. However, this strategy has led some judges to show certain misgivings arising from an interpretation of orality as not including reading of any kind. Therefore, this type of strategy tends to make judges call them out and ask them not to do it, leading to reprimands or possible sanctions like being expelled from the hearing.

For public prosecutors, the growing wave of sanctions for ineffectiveness in orality results from insufficient —and sometimes nonexistent— training. Therefore, without training to effectively help judicial operators, a series of formulas are established so that operators can fulfill this requirement. The example par excellence of these formulas is found in the statement of facts related to crimes against public health, mainly drug-related ones. These narrations provide very regular and similar details of the actions and activities of police agents who notice very similar, almost identical, behaviors of subjects involved in a possibly criminal incident and that lead to an arrest. The statements are simply adjusted to spatial and temporal elements, the number of subjects involved, and the drugs being sold.

Given such obstacles, we find other tactics of efficacy used by public prosecutors when faced with such events. Although these tactics are put into practice and displayed directly during the hearing, they are planned, orchestrated, and often implemented in different places and times, thus establishing the official police report as discussed above. This seamless flow between the report and the case file connects them so closely that intervention in one means intervention in the other.

A good example is found in the vastly similar drug-dealing statements, which serve to facilitate memorization, recitation, and communication. Thus, these uniform accounts fulfill the purpose of efficacy in communication as the similarities are established in the consistency found in the of the main elements contained in the police report, which had been collaboratively agreed upon by public prosecutors and police officers. However, this procedure is used in various types of crimes, producing shared and repeated narratives that constitute patterns of reporting the crime in a way that will be accepted by judges so that the proceedings can continue.

From the accounts of public defenders, they are clearly aware of these practices, but they agree that this practice responds to a demand for efficacy in the prosecutors' work as well as a way to ease the public prosecutors' excessive workload. Judges are also aware of this situation, as it generally results in the judges' acceptance to continue with the legal proceedings that end in a sentence, whether suspended or not, which means meeting the public prosecutors' goals. Another approach to this fact is Sudnow's<sup>17</sup> as seen in his analysis of Normal Crimes.

## 6. *Institutional and External Agents*

In this conflict, there is an essential difference between the work of a private defender and a public defender, which arises from the expert ability to detect such outstanding elements and to establish preliminary agreements with pub-

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<sup>17</sup> David Sudnow, *Normal crimes: Sociological features of the penal code in a public defender office*, 12 (3) SOCIAL PROBLEMS 255 (1965).

lic prosecutors. Private defenders happen to be less experienced in discovering these features by paying attention to less important elements. According to the information obtained in the interviews with defenders, judges, and prosecutors, private attorneys' inefficiency is the result of a lack of preparation, training, and understanding of the regulations and the rules of efficiency inside the institution. To a certain extent, this points to an informal complicity between agents to attain efficacy so as to fulfill the internal institutional goals of which private defenders are not part, thus excluding certain agents who are not affiliated with the public justice apparatus.

Thus, it is possible to assume the existence of a judicial field that requires inside knowledge of the existing rules within these groups in order to belong. Separation between these groups manifests itself not only in consistent failures during hearings but also in the dismissal of the agents themselves. As mentioned above, hearings follow the rules of participation established, produced, and reproduced by institutional agents, as also occurs when presenting evidence. Despite the law requiring that each legal action be grounded in law and fact, the rules in the field pose obstacles to these actions, creating certain patterns and daily routines that cannot be avoided, a fact supported by ethnomethodological studies and conversational analysis, specifically regarding membership categorization analysis.<sup>18</sup>

### *7. Judges and Knowledge*

Efficacy-oriented attitudes are not exclusively related to the agents on the opposite sides of the proceedings (public prosecutors and defenders) but are also found in the court itself. Technology in the form of smartphones and an internal chat group is used in each courtroom as a way for the agents involved and judges to coordinate their actions. Such devices are the means that determine the forms of integration between agents.

According to some public prosecutors and public defenders, judges sometimes base their decisions on case law unknown to them at the time but uncovered and shared by assistants outside the courtroom via the chat group. Thus, the legal intellectual capital in the judge's argument for a ruling comes from external agents who use these devices (internet, chat groups, smartphones) to promptly provide the judge with legal knowledge. This, however, is not permitted to other agents, as they are forbidden to read from the case files, as mentioned above. It can therefore be noted that access to legal knowledge is in turn limited by the subjective position of the agents in terms of legal capital. Judges therefore have tools, tactics, and practices that facilitate their work but hinder and create further challenges for other agents.

The allocation of legal capital also determines the distribution of the availability of objects. However, it is impossible to think of legal capital in a tran-

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<sup>18</sup> STEPHEN HESTER & PETER EGLIN, *CULTURE IN ACTION* (Int. Inst. for Ethnomethodology and Conversation Analysis & U. Press of America, 1997).



scendental sense as it is built up in the practices themselves and legitimized in the layers of everyday practices. Some cases may be noted in the agents' adopting practices aligned with institutionalized procedural schemes. Some judges, for example, consent to allowing some legal agents to leaf through the case file when orally informing them of the developments in the proceedings. Another noteworthy point in the interviews is that there seems to be a differentiation and hierarchical bias among judicial operators in terms of how other agents perceive the amount of their legal capital.

### 8. *Arrest*

From the above, the absence of the detainees in the operative social framework of pre-trial hearing practices becomes clear. The role of the detainees is objective insofar as they are not part of the legal practices, that exclude the detainees from the operations and are simply viewed as being on the receiving end of judges' decisions. Their participation in the hearings is minimal, since in their rare appearances it is only to present a version of the facts rarely put in context. Judges reach a decision based on the statements made by defenders and prosecutors, without considering the accounts of the detainees. There does not seem to be any relationship between agents' practices and goals and the "administration of justice", which agents claim is the essential goal of their work.

The agents' main objective is to fulfill their duty by closing proceedings and following the orders of the authorities. This, in turn, arises from a daily problem faced by various public servants, who, regardless of their particular role in the process: detainees and their family members or friends want to be treated individually, while public servants must act according to the universalities of their practice.<sup>19</sup> In the actual process, it turns out to be inoperable to establish even a few particularities of each fact. Therefore, agents, in an attempt to streamline the entire process, choose to resort to familiar strategies and tactics.

These examples demonstrate the inner workings of the notions of "efficacy" and "effectiveness" in shaping the proceedings and are intimately linked to having to solve everyday problems along the process in keeping with the agents' subjective position in the allotment of legal capital. However, within all the agents' accounts, a decisive factor stands out when establishing the various practices: their workload. Understaffing and a growing number of probable crimes lead to a more cases that need to be investigated, more hearings to be attended, more arguments to be prepared and more specific facts to be learned. Therefore, the imperative need to expedite proceedings that lead to the dismissal of detainees from judicial practices and disregarding rules are the effects of an excessive workload.

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<sup>19</sup> Arturo Díaz, *Burócratas frente a la inseguridad: miedos y (des)protección desde el Estado*, 32 (63) ALTERIDADES 39 (2022).

In addition, the need for discretion regarding agents' accounts in the interviews stems from a fear of punishment. Failure to comply with orders and revealing inside information about what happens inside institutions usually results in dismissal or punishment. For this reason, agents prefer to look for alternative ways out, regardless of whether they are legally compliant or not, rather than face problems at their workplaces.

## VI. CONCLUSIONS: POST TEXT

One might conclude that the concept of “efficacy” renders corruption invisible. However, efficacy should be considered as a result-oriented, as a way of shaping practices that may or may not constitute corruption. Corruption is understood as a crime directly related to the abuse of power for the purpose of obtaining benefits linked to immediate socio-spatial contexts, in terms of motivation and effects.<sup>20</sup> Confusion may arise from the similarity between the two behaviors. In conceptual terms, corruption seems to involve aiming to obtain a particular benefit unconnected to institutional motives.

Efficacy refers to an abuse and departure from legal practices to attain institutional benefits. Although these two concepts may overlap at different times, there is a fine line differentiating them. Efficacy comes into play when different bureaucratic and institutional conditions surrounding the agents, such as the working environment, authorities' orders, and workloads, hinder them from fulfilling their goals, from the most personal ones —like finishing work, so they can go home— to the most institutional ones —like directives, plans, programs, and socio-political statistics—. The difference lies in the fact that while corruption puts personal benefit first, efficacy places completing the work first.

Efficacy appears to be what greases the cogs of legal institutions, which could be further analyzed to eradicate the gaps that might encourage corruption. Rather than analyzing a perfect setting for institutional dynamics aligned with ideal regulations, it is necessary to address the dialectical model that arises from the technocognitive and reflexive relationships of institutional dynamics, thus permitting us to have a better understanding of their strategies of administration, organization, and internal productivity. This could be a starting point to formally and structurally reorganize judicial institutions, as well as the legal systems. Taking into account their real dynamics could improve internal results, as well as those proposed by the immediate policy-related constraints.

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<sup>20</sup> Rosalía Lastra & Suhail Montaña, *Corrupción: delito o condición humana*, 61 REVISTA GESTIÓN Y ESTRATEGIA 63 (2022).