

## Chapter 5

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# The file as hypertext

## Documents, files and the many worlds of the paper state

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### Introduction: The gravitational pull of paper

Paper is everywhere in courtrooms. Files upon files sit on clerks' desks. Massive filing cabinets occupy much of the floor space in courts. Reams of paper of different colours and thickness, printers, paper punchers, empty files, balls of string to bind files, pens of various colours and pencils all point to the crucial position that paper occupies. It is as if the very structure and layout of the court is premised around paper and the production and maintenance of files. In most courts throughout India, the digital world stops at the courtroom doors. Paper jealously guards its primary position in the judicial process – it alone can record what happens inside a courtroom.

Allow me to highlight the gravitational power that paper has in the courtroom through an ethnographic vignette from the trial of Mohammed Hanif<sup>1</sup> and his co-accused. I followed Hanif's case for about 14 months as a part of the fieldwork for my doctoral thesis. Hanif and 21 others are accused of setting off explosive devices in Delhi and another western Indian city, Surat. They are being held at the jail in Surat and are 'present' for their trial at Delhi via a video-conferencing facility.

The anti-terror police in Delhi, called the 'Special Cell', claimed that Hanif had gone to a southern city, Manipal, where he met a handler who provided him with the explosives. The police claim that in order to contact this handler, they used a public telephone that was operated by a witness, Anthony. During the course of the investigation, after the police had arrested him, the Special Cell say they took Mohammed Hanif to Manipal where he pointed out the public telephone from where he telephoned his handler. The police then prepared a 'Pointing Out Memo' stating that Hanif had pointed out the public phone. This memo was signed by the

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1 The names of places and persons have been changed to maintain confidentiality.



police officers present that had witnessed Hanif's pointing out of the telephone booth. The Special Cell say they then asked Anthony, the witness, whether he recognised Hanif, who then stated that he recognised Hanif as having made a telephone call from his phone booth. The police then prepared an 'Identification Memo' in which they stated that Anthony had identified Hanif. This too was signed by the police officers present that had witnessed Anthony identifying Hanif.

Four years later Anthony was summoned to the court to identify the person who made the call from his telephone booth. When Anthony appeared before the Delhi trial court it was clear that he did not understand or speak Hindi or Urdu, the languages spoken in Delhi's trial courts. The examination began in a mixture of English and Hindi, which Anthony struggled to understand and to speak, but somehow managed.

In the crowded courtroom, he was 'helped' through his deposition by an officer from the Special Cell who stood extremely close behind Anthony and it was evident to the defence counsel that the officer was whispering the answers to Anthony. Some of the defence counsel kept telling the officer to stand away from Anthony. He stepped away only to move back in several moments later.

Soon the moment came for him to identify the persons who came to his telephone booth and each of the accused appeared on the screen, one after the other. When one particular person came on screen, a police officer closest to Anthony, gently kicked the back of Anthony's leg. Anthony let out a muffled, yet startled cry, and began nodding vigorously. The defence counsel, noticing the kick, began to shout that the police officer was prompting the witness and asked that the judge record that the witness was being prompted. The judge ignored these objections by saying that he did not see anything and merely recorded:

At this stage, Ld. Addl. PP<sup>2</sup> has asked the witness to point out from the screen of the video conferencing as to who out of the six persons visible on the screen was accompanying the police on the aforesaid date, in the year 2008. Thereupon the witness has correctly identified Mohd. Hanif, accused present at No. 4 from the left as visible on the screen of the video conferencing. (Objected to by learned defence counsel on the mode of identification).<sup>3</sup>

The Public Prosecutor then dictated (to the stenographer) the rest of Anthony's deposition. Here Anthony states that the police prepared an

2 Learned Additional Public Prosecutor.

3 The witness statements and other documents of this case are on file with the author. The case number and other document numbers have been withheld to maintain confidentiality.

Identification Memo, which states that he previously identified the accused person during the investigation. Anthony is now authenticating that Identification Memo:

On <date>, police prepared memo when I identified the identity of Mohd. Hanif as the person who had come to my PCO on <date> and made phone call. I identified my signatures on the memo prepared in this regard. Same appear at Point C. The memo is **ExPW 78/F**.

Next came the turn of the defence counsel to cross-examine Anthony. The defence counsel questioned the witness about his ability to read and write English (the language in which the Identification Memo was written in) and his ability to accurately remember the events on the day he identified Mohammed Hanif during the investigation. Anthony, who by this time was sweating nervously, kept looking down at his palms, and it became evident that he had something written on his hands. The defence lawyer suddenly reached over and took hold of Anthony's hand and held it up for all to see, shouting that his answers had not been from memory but from the information written down on his hand. One of the defence lawyers started shouting that he should be immediately taken to the photocopy machine so that his hand could be photocopied and the photocopy of his palm be placed on the court file. Another defence lawyer, intending to intimidate the witness, and making reference to the rule that requires parties to tender only original documents, said 'No photocopy, we need the original. Just cut off his hand and put it on the file'.<sup>4</sup>

The judge tried to calm things down, but kept saying that he could not see anything written down on Anthony's palm. The lawyer who was still holding the witness' hand dragged the witness towards the judge's platform. The prosecutor shouted at the defence lawyers, telling them not to manhandle his witnesses. The witness was taken behind the judge's desk, his sweaty palms held upwards, for the judge to see. The judge merely said, 'I can't read anything written here'.<sup>5</sup> The defence lawyers argued that Anthony had the answers written on his hand and demanded that the judge document in that day's proceeding record that the witness was not deposing from memory, but was referring to information written on his palm. Perhaps because the writing had been sweated away, or because the judge did not want his court file to be marked by such farcical events, the judge merely replied that whatever was written on his palm was not legible and hence he could not record that the witness was reading off answers written on his palm.

4 As recorded in my field notes.

5 As recorded in my field notes.

From this dark comic scene, observe how the proceedings revolve around the file. While it initially occupies a background role, the file slowly emerges as the focal point of the proceedings. The file is the only record of what transpired in court on that date. For something to have happened (the witness having information written down on his palm, for example), it must have been recorded on paper. Observe how the defence lawyers try to get the judge to place that day's events on record. Since the judge refused to provide a record the events in his courtroom, those events – officially – never happened. Even if they were recorded, to have any juridical value, it must be recorded in the file in the proper way ('No photocopy, we need the original [hand]'). The court file itself refers to other documents prepared in advance of the file actually coming into court, including the Identification Memo and the Pointing Out Memo). Even as the world is utilised to contest the contents of the file (the questioning of the witness's memory of events) it is tentatively translated into paper, put through the rigour of form, and that paper itself, in turn, exerts a certain power. It is almost as if the paper and the file exert a gravitational pull over everything and everyone else present in the courtroom.

There is a complicated relationship between the file and the world. What is the nature of this relationship? How do we describe its power over the world? In the first part of this essay I consider some academic modes of accounting for this relationship. In these accounts, the logic of the file is intimately attached to the rise of bureaucratic state, and hence closely tied up with modes or production of juridical truth, discourses of state accountability, and the rule of law. Despite this, the institution of a rule based on paper is rendered unstable as paper could be copied, forged, lost and recontextualised. I argue that these renderings have not paid enough attention to how the world is translated into the file, and in turn, how the file produces the world.

In the sections that follow, I attempt to provide an account of this movement between the file and the world – as world absorbing and world creating. I follow one piece of evidence – a branch of a tree – from Hanif's case and provide an account of how the file is made and, in particular, how Latour's idea of the circulating reference (1999) can help us understand how the world enters the file. Thereafter, I look at how the defence strategy – to create reasonable doubt – involves bringing in more and more of the world into the file. I argue that this strategy of bringing in plausible scenarios into the file, to undermine the prosecution's narrative, not only signals the way in which the world circulates and enters the file, but also allows us to think of the file as speaking against itself. The file emerges as a sort of heterotopic space, which is intimately connected to the world, but in which the world is represented and contested at the same time (Foucault 1986: 24).

In the last and concluding section I look at the implications of under-

standing the file as not only a textual space but as a hypertextual one. The word *hyper*-text implies that something outside or beyond the text is, nevertheless, connected to the text. I offer the term as a way of thinking both about the world that is beyond the file, being brought into the file, and also the world that is produced as a result of the file.

### **What is the relationship between the file and the world?**

Historians of the Indian colonial state have argued that the production of documents and files, containing the various modes of official writing such as records and reports, were central to imparting a civilised form of government. Government by paper established the colonial state's claim to accountability, and hence were an essential feature of the rule of law (Mill 1990, cited in Moir 1993). Further, files for the colonial state were imagined 'photographs – of the ruled for the rulers' (Smith 1985: 154). In this view, the file contained true and accurate representations of society, and that governmental power was derived from an 'accurate knowledge and efficient use of these facts' (ibid.). The production of files entailed the production of knowledge of the people and places allowing the colonial state – in Calcutta or London – to ostensibly know and participate in the rule of distant territories and people.

Crucially, a file is that which determines and is determined by the form of law (Vismann 2008; Raman 2012; Ogborn 2007). The form of law determines the semiotic value of the files and at the same time, the files become the locus through which discourses on the production of juridical truth about the world, accountability and the rule of law, pass through. Others have argued that files are emblems of state power. Whether one looks at the semiotic ideologies of paper (Hull 2012; Vismann 2008), or conceives of the state – reminiscent of Franz Kafka's *In the Penal Colony* (1919/2006) – as a performative writing machine (Gupta 2012), the file symbolises sovereign power. Thus in these various scholarly renderings, files, government reports and other official documents are simultaneously signs of state power, essential to the rule of law, which serve to provide an accurate account of the world in documentary form through their ability to authenticate and produce juridical truth, and more fundamentally, determine the form that the law will take.

Nevertheless, what concerns the producers of state documents and the scholars who study them is their fragility. Whether conceived as determinative of the form of law, as establishing measures of accountability, or as a mode of production of juridical truth, once a state institutes forms of governance through technologies of writing, it simultaneously institutes the possibility of forgery, imitation and the mimetic performances of its power (Das 2004: 227). The state runs the risk that its written utterances may be grafted on to other chains of signification (ibid.: 244) or be recon-

textualised (Hull 2012: 24). Whether it was with the colonial state's anxiety over the 'duplicity of paper', engendered by a 'crisis of attestation' (Raman 2012: 137) or the 'theft or mislaying' (Hull 2012: 23) of files in contemporary Pakistan, or the 'unpredictability' of government paper in revolutionary France (B. Kafka 2012: 9), rhetoric of the stability of a rule based on paper has constantly betrayed its material instability.

### The power of the file

Despite this fragility of the file, or perhaps because of it,<sup>6</sup> the file exerts a power over those who encounter it. What sort of power does the file have and what sort of power does the file enable? One of the phrases that came up several times in the course of my fieldwork was the term '*kagazi case*' or 'the paper case'. It was often uttered both as a form of surprise (that the only evidence that the police could bring was all written down in a file) and as a term of derision (that the 'evidence' in the file was as flimsy as the paper it was printed on). Echoing what Emma Tarlo calls 'paper truths' (2003: 9), the ambivalent term conveys the impression that the case can be easily shredded – just like paper – but as it is written, it has the capacity to become 'true'. Statements from accused persons – like 'I have the paper to prove it', 'What proof? All there was, was paper!' – indicate the range of powers that paper exercises. These statements indicate that file has a power beyond its content – that there is something else about the files, that accounts for their power.

Ben Kafka has criticised some academic treatment of files as merely looking *through* paperwork – at their content – but failed to pause to look *at* files (B. Kafka 2009: 341). He points to the 'psychic life of paper work' and argues that files are indicative of the ways in which we are attached to the sovereign power (B. Kafka 2012: 15). Kafka explores files – their unpredictability, their slippery nature – as a way of understanding the psychic investments that are made in the state, and the slips of the file (so to speak) as ways of accessing the unconscious attachments to nation and state building (B. Kafka 2012: 16). Files themselves exercise no power of their own, but represent what the state means to various actors. Kafka offhandedly dismisses Bruno Latour's argument on the agency exercised by the file by stating:

... no matter how much I learned about the [file's] materiality, I was never going to come around to the argument that things have agency

6 Using ethnographic insights into post-Sikh-riot Delhi, Das argues that the fact that state documents can be copied, forged, and transplanted into different contexts is not a sign of the vulnerability of state power, but rather how state power circulates in communities (2004).

like people do ... Rather ... I am committed to the idea that people are ruled by unconscious processes which is simply not true of even the most 'agentic' of things.

(B. Kafka 2012: 14)

Latour's argument is that the case file draws a constellation of other actors, institutions and the documents they produce and puts them into a format legible – both literarily and discursively – to the court (2010). Latour does not argue that the file has agentic or purposive capacity like that of a human. Instead he argues that the file draws together documents from different sources, which may have otherwise not come to be arranged together, and the people who encounter the file constantly act and react in relation to the file, and in this sense the file seems to act (Latour 2010: 77). Elsewhere, Latour argues that 'if action is limited a priori to what "intentional" "meaningful" humans do' then nothing apart from humans could be said to act (2005: 45). He therefore describes an actor as 'anything that does modify a state of affairs by making a difference' (Latour 2005: 71).

Elaborating on Latour's argument, Matthew Hull, writing about bureaucratic practices in contemporary Pakistan, argues that 'documents engage (or do not engage) with people places and things to make other bureaucratic objects' (Hull 2012: 5). Further, in accounting for the power of documents, he argues that 'graphic artefacts' of the bureaucracy are simultaneously constituted and constitutive of broader associations of people, places and other things (Hull 2012: 18). He argues that the circulation of documents creates associations of people regardless of organisational structures and formal bureaucratic practices, and by drawing other materials and things into the realm of state power. This account of the file goes some way in accounting for the power of the file. However, the power of the file lies not simply in its hubristic ability to provide an accurate picture of the world, or in the fact that it organises things around itself, but also in its ability to create multiple worlds.

In his short story *Tlön, Uqbar, Orbis Tertius*, Jorge Luis Borges chances upon the *First Encyclopaedia of Tlön Vol. XI*. This encyclopaedia provides an account of the philosophy, language and history of a hitherto undiscovered world. Borges is now holding a 'vast and methodical fragment of an unknown plant's entire history. ... And all of it articulated, coherent, with no visible doctrinal intent or tone of parody' (Borges 1964: 23). Years later, Borges discovers that the encyclopaedia was an elaborate hoax, produced by generations of scholars acting in secret. The encyclopaedia was patronised by an ascetic millionaire who left them his mountains of wealth on one condition: 'The work will make no pact with the impostor Jesus Christ' (ibid.: 31). The millionaire 'did not believe in God, but he wanted to demonstrate to this non-existent God that mortal man was capable of conceiving a world' (ibid.: 31). Soon objects from this fantastic world



intrude into the real world: a metallic case engraved with the alphabets of Tlön; a cone the size of a die but of intolerable weight, images of divinity in certain regions of Tlön. Soon Tlön begins to disintegrate this world. Schools begin teaching the language of Tlön, with English, French and Spanish disappearing from the globe. The encyclopaedia not only describes Tlön, but also begins to literally *produce* Tlön in our world.

The power of the file lies precisely in this power to produce one world to replace another. One of the common refrains I heard during my field-work was ‘The police made me sign blank sheets of paper’, indicating that the police themselves wrote the confession on these signed blank pages. The fear here is not merely that the police have produced a false confession, but that the ‘confession’ might become ‘true’. The file therefore not only attempts to mirror the world, but actively produces it. In this sense, the file occupies what Foucault would call a heterotopic space (1986). In the world produced by the file, ‘real sites...are simultaneously represented, contested and inverted’ (Foucault 1986: 24). Like the mirror, the file is absolutely connected with all that it organises around itself, but at the same time is ‘absolutely unreal’ since the world that it produces is located nowhere (*ibid.*). Similarly, while the file is intimately attached to the world that surrounds it, it not only provides a picture of the world, but at the very same time contests, and upends the world by producing another.

In the next sections I will attempt to show how the file not only pulls the world into it, but in doing so, produces not just one, but multiple heterotopic worlds.

### **The making of the file**

The paper lives of a case in Delhi are governed by a several Rules, Laws, Codes and Manuals: Punjab Police Rules, still in force today, promulgated under the Indian Police Act of 1861, the Delhi High Court Rules, 1967, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. These various laws prescribe the paperwork that the police and the courts must undertake in their daily lives, including the form to be filled out when conducting an arrest, the maintenance of records of First Information Reports, Daily Diaries which record the movements of a police officer in that station, how witness testimony is to be recorded, and how court records are to be maintained. The idea behind these documentary rules is that police actions ought to be accountable to the judiciary and that the judicial record of the lower courts ought to be legible to higher courts.

Each file maps the progress of a case. Let’s take the example of Hanif’s case and his alleged conspirators. The bomb blast first takes documentary form in the guise of an entry in the Daily Diary of the Police Station in Gole Market. As the name suggests, this diary records certain events that happen in the jurisdiction of that police station, including the commission of



serious offences. The DD (as the 'Daily Diary' is known in police parlance) is recorded on carbon paper (so that there are duplicates of every entry) and are recorded by the designated Station House Officer. According to this DD entry No. 15/A dated 14.10.2008:

At about 7:17 in the evening ... Lt Constable Geeta <badge no.> gave information that a strong explosion had taken place in the M.C.D. Market, Gole Market.

The DD records that the copy of the entry was then being sent with Constable Suraj Chand to Sub Inspector Mahinder, who was posted at a police booth near a temple close to the spot where the blasts were reported.

The next document that records the occurrence of the bomb blast is another document called a Rukka,<sup>7</sup> which was prepared by Sub Inspector Mahinder, and is sent to the police station, which in turn results in the registration of the First Information Report (FIR). A copy of the FIR is then sent back to Sub Inspector Mahipal and all subsequent paperwork that results from the investigation must bear the FIR's number: 176/2008. In this FIR No. 176/2008 PS Gole Market, the Sub Inspector Mahinder is figured as the complainant and he details what happens after he received the copy of the DD entry from Constable Suraj Chand. He says when he reached the spot he found a number of people 'in injured condition', who were shifted to hospitals with help from the public. Soon police vans, ambulances and fire brigade vehicles arrived on the scene. Sub Inspector Mahinder also said he saw one auto-rickshaw with license plate number ending 1438 that was in a badly damaged condition with a part of it hanging from a nearby pipal tree. He says he saw a damaged fuel cylinder from this auto-rickshaw. He further says that he saw several other damaged vehicles and lists their license plate numbers. There were spots of blood on the ground around the blast site, and nearby shops and their goods were badly damaged. The FIR then records that investigation should proceed for offences under sections of the Indian Penal Code, 1860 (attempt to murder, causing hurt, waging war against the State), the Explosive Substances Act, 1908 (causing an explosion, likely to endanger life, attempt to cause an explosion, possession of explosives) and the Unlawful Activities

7 A Rukka is a report written by the police officer at the site of the incident to the local police station detailing the incident and requesting any further action. A carbon copy of the Rukka is prepared and the original Rukka is sent to the local police station with a police officer. At the police station, the duty officer on reading the Rukka, registers a First Information Report in the FIR Register. The Duty Officer then makes an endorsement on the Rukka stating what action has been taken.

Prevention Act, 1967 (membership of an unlawful association, punishment for unlawful activities).

At this stage, there is a split in the paper avatars of the bomb blast between the court file and the police file. When the police register an FIR, they send it to a magistrate to be authenticated. A copy of the complaint is kept on the Magistrate's files and the authenticated original is sent back for investigation (to ensure that the police make no additions later on to the FIR). The court file now only consists of a few pages of the FIR. If the police make an arrest, the court file reflects this in the form of an Arrest Memo and Applications for Remand made by the police. This file will also contain the order by the Magistrate, allowing or refusing remand. Over the course of the following weeks, the police may make applications asking the court for permission to take voice, handwriting, and body tissue samples or ask for further time to interrogate the accused. These applications are made in writing and kept on the court file. If the accused has a lawyer, often the court will ask the defence for their replies to these applications, which will be placed on this file, as will the Magistrate's final decision on them. The court file, slowly, yet surely, expands in girth.

In parallel, the police maintain a case diary, which must be periodically presented to the Magistrate for the latter to monitor the investigation. They also compile their own records documenting the progress of their investigation. We have already encountered two of these documents: the Pointing Out Memo and the Identification Memo. Let's meet a third: the 'Seizure Memo.'

Returning to the scene of the bomb blast near Gole Market, let's follow one particular part of the scene – the pipal tree. The police claim that by this time, the area had been cordoned off to 'preserve' the scene. The investigation has now been handed over to a senior officer, Inspector Akash Thakur. Recall that Sub-Inspector Mahinder had seen an auto-rickshaw that was badly damaged and parts of it had been thrown into a nearby pipal tree. The parts of the auto-rickshaw, the branch in which parts of it are lodged, what appear to be pieces of shrapnel, ball bearings, blood samples, pieces of burnt cloth are all seized by the police. The various things that are seized are rendered into documentary form by a Seizure Memo, which describes the article seized, and is signed by the police officer seizing it and by one police witness.

Let's look at the Seizure Memo of the tree branch (see Figure 5.1). At the head of the memo is the FIR number to indicate in which case this seizure is being made. The Memo is titled '*Fard Magbooji* (seizure memo) Big Wooden Piece of Pipal Tree'.

The memo is then signed by the officer making the seizure, Sub Inspector Rakesh Kumar Singh and is witnessed by his superior officer Inspector Akash Thakur. Similar Seizure Memos are prepared for the damaged TSR (official parlance for an auto-rickshaw), the blood samples,

Case FIR No 176/08 dt. 14/10/2008 u/s 307, 323, 121 IPC, 3,4,5 Explosive Substances Act 1908 & 10, 12, 13, Unlawful Activities (Prevention) Act, 1967, PS Gole Market New Delhi

Seizure Memo Big Wooden Piece of Pipal Tree

Below mentioned witness states that just after the bomb blast occurred on of <name of road> in between shops no. 33 and 34, near the MCD market, Gole Market, New Delhi, Expert teams immediately came to the scene. After they had taken samples and performed certain tests, it was noticed that there was a pipal tree standing where the blast had taken place. A side portion of the TSR with registration no. ending 1438 was lodged on a branch of that tree. A portion of the branch of 1.5 feet length and 16 inch diameter was taken. In order for the piece of the branch to be tested for IED traces, it was put into a polly bag. The polly bag was placed in a pulanda and sealed with the seal AT and the details of FIR No. \_\_\_ was written on it and the article was seized vide this memo and the article was sent to MHC(M).

What is stated above is true.

Witness

-signed-

SI Rakesh Kumar Singh

PS. Gole Market

New Delhi

-signed

Akash Thakur

Sub Inspector Investigation

PS Gole Market

New Delhi

14/10/2008

Figure 5.1 Seizure Memo of a tree branch of a pipal tree, Gole Market New Delhi

ball bearings, shrapnel and other things seized from the scene of the blast. Each item is packaged most often in a cloth bag called a *pulanda*, and then sealed with wax and stamped with the seal that bears the initials of the investigating officer, in this instance A.T.

Every step, every movement that the seized articles subsequently take are rendered into paper. After their seizure, the branch and other articles are deposited in an evidence storeroom, called the *malkhana* or the MHC(M), which again registers the details of the articles deposited. When the materials are taken to the Central Forensic Science Laboratory for analysis, here again there is a register describing what has been transferred. At serial number 14 of this list is the piece of the tree:

One transparent Poly pouch containing one wooden piece having one metal piece sealed with the seal of A.T. and marked as L.

After a certain period of time the police will file the final report, more commonly known as the chargesheet, before the Magistrate's court. Now

the parts of the police's file will merge with the court's file. This chargesheet contains the brief facts of the prosecution's case, the offences with which they want to charge the accused, the list of all witnesses, their testimony as told to the police, and all documentary evidence relied upon by the police, including memos that document the seizure of certain evidence, the results of a search by the police, the interrogation of witnesses, along with many other papers that document the activities of the police. At this stage, the court file dramatically expands in girth and weight, with the chargesheet often running into volumes of hundreds of pages each.

After the proceedings before the Magistrate have concluded,<sup>8</sup> the trial commences before a Sessions Court, or in Hanif's case, before the Additional Sessions Judge, Mr Navin Kumar. During the course of the trial, the prosecution must present all physical evidence seized during the course of the trial. The police must prove first, that the material was collected and seized in the manner they said it was, second, that the police in no way tampered with the evidence, and third, that the subsequent forensic analysis of the evidence was competent and accurate. But the court cannot rely on these documents in reaching a judgment, and can only rely on things said in court that have been duly recorded by it in evidence. As a result, the police's file must be translated by the court into its own file.

In order to prove that the branch, the blown up auto-rickshaw (and other things) were seized by the police in the manner that they said it was seized, Sub Inspector Rakesh Kumar Singh is summoned to court to depose<sup>9</sup> to this effect. He is witness number 143. He first states the time and

8 After the police file the chargesheet (under Section 173 of the Code of Criminal Procedure, 1973) in the Magistrate's court, the Magistrate must go through the chargesheet to ascertain that a clear case is made out against the accused and if there is such a case, the Magistrate is said to take cognisance of the case (under section 190 of the Code of Criminal Procedure, 1973). After the Magistrate takes cognisance of the case, the process of scrutiny of documents begins. During this process, each of the accused persons is given a copy of the chargesheet and all supporting documents, and under Section 207 of the Code of Criminal Procedure, the Magistrate must ensure that all the documents filed by the police are handed over to the accused and that these copies are legible. In the case of terror offences (which are triable by a superior court, the Court of Sessions) after all copies have been supplied to the accused, the Magistrate is said to commit the case to the Court of Sessions for trial.

9 What happens in an examination-in-chief and a cross examination is this: the lawyer (the prosecutor in the case of a prosecution witness or the defence lawyer in the case of a defence witness) or judge first asks a question to the witness, the witness replies. The concerned lawyers and/or the judge will then dictate to the stenographer the answer of the witness. A similar process happens during the cross examination of the witness. The witness examination-in-chief and his cross examination are not (usually) recorded in a question an answer format but in the form of a narrative, despite the fact Section 276 of the Code of Criminal Procedure states:

manner in which he reached the blast site and what he saw (the area cordoned off, bomb disposal squad and special security guards present). His deposition then says the following:

At the spot, we also noticed many vehicles including cars, motorcycles, rickshaw lying damaged. We could see blood stains scattered at places. We also noticed a TSR (official parlance for an auto-rickshaw), in severely damaged condition lying under a pipal tree on the side of <...> road leading to <...> road. A portion of the TSR was seen hanging from the said tree. On seeing the TSR, one could say that the bomb had been planted in the said TSR. We could easily see signs of splinters on the cylinder of the TSR. The TSR was having registration no. ending 1438.

The police witness then describes seizing our piece of wood from the spot:

From the spot, we also collected one piece of wood with an iron piece embedded in it. Also from the spot, we picked up two plastic pieces. These were turned into separate parcels and sealed with the seal bearing impression of A.T. i.e. of Inspector Akash Thakur. These were then seized vide memo **ExPW143/F**.

So here we see first the that facts – the fact that he noticed a part of the rickshaw on the branch, the fact that he seized the branch, the fact that he prepared a memo documenting that he seized the branch – are inserted into the court’s record. But this is not enough, as at this point all the Sub Inspector has managed to tentatively establish is that he has prepared the Seizure Memos. The material that he says he seized must be presented in court, as the court must be shown the material to prove their existence. The fact that they physically exist must, in turn, be recorded in the court file. Hence at a later point in the deposition (after he has tendered all the seizure memos in evidence) the Sub Inspector states that he can identify the material that he has seized. At this point, the representative from the

#### **276. Record in trial before Court of Session**

- (1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open Court or, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.
- (2) Such evidence shall ordinarily be taken down in the form of question and answer; but the presiding Judge may, in his discretion, take down or cause to be taken down, the whole or any part of such evidence in the form of a narrative.
- (3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record.

police evidence depository, (in unofficial court parlance known as the *malkhana* and officially known as the MHC(M)) presents the various articles associated with this case number. The court record then reads:

At this stage, representative of the MHC(M) from PS Gole Market has produced in court one parcel bearing particulars of the case FIR No. 176/08 and bearing seals of FSL CBI. It is opened and one piece of wood is taken out of it and shown to the witness. Who states that this piece of wood is of the pipal tree as a part of the TSR registration no. ending 1438 was found lying embedded in it and this part had to be cut off from the said tree. This piece of wood is **Ex143/4**.

Here we see how the piece of wood has travelled from being part of a tree, to being first rendered into documentary form by the Seizure Memo, to being sent to the *malkhana* where it is again registered, to being sent to the Forensic Science Laboratory, where again it leaves a documentary trace, to its actual physical presence in court, to once again being transformed into a document by this last excerpt.

Latour gives us the concept of a ‘circulating reference’ by which he describes how scientific practices ‘pack the world into words’ (1999: 24). Latour considers the ‘old settlement’ on the relation between language and the world – where the chasm between the two domains was only connected through a ‘risky correspondence’ (ibid.). Instead, Latour, by giving us the idea of the circulating reference, suggests that there was never a gap in the first place, but the constant, chain-like, translation of the material world into language, where material objects are turned into objects of study. Similarly, the piece of wood simultaneously exists of itself, but nevertheless is transformed through these documentary forms – from the branch of the tree to evidence of a bomb blast. The piece of wood has several documentary iterations and in turn each one of these documentary iterations leaves a trace on the court record.

### The file contests itself

In her book on files, Cornelia Vismann argues that files did not merely record what was in the world, but gained the power to determine what the world is (2008). She argues that the Latin maxim – *quod non est in actis, non est in mundo* (‘what is not in the file is not in the world’) that comes up in literary and judicial texts referring to the written foundation for Roman court proceedings – summarises the performative operation of the law in constructing reality. According to this idea, reality is what is found in file, and if the file and the world do not coincide, it is up to the world to prove that something not on file indeed exists. Files in this picture are not merely recording devices, but ‘protocols of reality that consume everything

outside the law' (ibid.: 56). Since the law only believes what itself has written down, 'the world, does not have a dissenting voice; it has to bow to file performances' (ibid.: 56). I like Vismann's idea of a world-consuming file – to an extent. I hope to show in this section that while the court file does determine reality, the world is drawn to the file and enters the file in unpredictable ways. The file is not only what determines the world, but the world enters the file, as if to cause the file to undermine the world that it itself has created.

Let us return to the courtroom where the Sub Inspector is now to be cross-examined by a defence lawyer. The defence lawyer's strategy is two pronged. First, since it would be pointless to contest that a bomb blast had in fact taken place, it is aimed at contesting the claim that the items were seized in the manner stated by the police officer. Take for example:

It is correct that the area where the occurrence took place is a public case (sic) where there are many shops. It is correct that I did not join anyone from the public during the investigation conducted by me at the spot.

Here the defence is asking if there were any non-police witnesses who could independently verify that the search and seizure actually did take place. The underlying logic behind this line of questioning is this: If there were independent public witnesses who were around the blast site, why were they not made to officially witness the seizure? The answer must be: because the seizure was not conducted in the manner stated by the police.

The defence then tries to suggest that the memos could not have been written, and the parcels could not have been prepared, because the police officer did not have any of the requisite materials with him:

At the time I left the police station for the spot, I was empty handed. The material used in preparing parcels at the spot was requisition by me through my staff (sic). But I do not know as to from where my staff had arranged the same.

This point is made more directly later on when the transcript states: 'It is wrong to suggest that the entire writing work was done at the police station and not at the spot'.

The second aim of the defence is to suggest that the police manufactured the memos and conducted a partial seizure only to implicate her client. Take for example, the following excerpt:

In addition to the above referred TSR, one or two other vehicles had suffered severe damage while other vehicles were partially damaged. I did not taken (sic) any steps as to who were the owners of these other



vehicles which suffered damages. I also did not collect any certificates of registrations of other vehicles which suffered damage.

By suggesting that the police did not seize the other vehicles severely damaged in the blast, the defence is trying to create doubt as to which vehicle contained the explosive. The defence further is attempting to suggest that the police came up with the 'explosives in the auto-rickshaw' theory as a preconceived plan to implicate the accused. Pushing this argument further, the defence then questions the police officer's expertise or ability to state that the explosion had taken place in the auto-rickshaw:

I am a graduate in Economics. However, during in service training, I have learnt to assess explosives. It is wrong to suggest that I have no such expertise even in service training. It is wrong to suggest that I had no expertise to say that "on seeing the TSR, one could say that bomb had been planted in the said TSR." It is wrong to suggest that no part of the said TSR was found embedded in the tree as stated by me in chief examination. It is wrong to suggest that evidence was introduced falsely to show that bomb had been planted in the said TSR with a view to falsely implicated the accused persons.

Defence lawyers will often speak of their strategy more generally as creating or teasing out 'contradictions' in the prosecution witness's testimony, which consists of not only contradicting and contesting the prosecution's version of events as seen above, but as if almost to make the prosecution's narrative to speak against itself. As Tarlo suggests, this ability to create contradictions within the file, to make it undermine itself is allowed only because the regime of paper truths:

... highlight the ever present gap between what is implicitly known and what is officially recorded, a gap open to both negotiation and exploitation as people's experiences ... make clear.

(Tarlo 2003: 9)

In the case of the cross examination, as we can see above, the defence lawyer repeatedly inserts things that could have plausibly happened in the world – the lack of public witnesses, the other damaged cars, the lack of knowledge of explosives – in order to bring the police officer's testimony into question. But in order to do so, she has to bring it on record. This alternative, plausible, world is inserted into the court file in order to create reasonable doubt into what was recorded by the file just some moments before. In this way, the court's record, and the world it creates, is made to speak against itself.

## Conclusion: The hypertextual file

Look at the facsimile of a page from the court's transcript of SI Rakesh Kumar Singh's testimony (Figure 5.2).

The parts of the page that are in bold text refer to other physical items, like pieces of the rickshaw or to other documents such as the seizure memo prepared by the police. One way of thinking of this page is to look at the court file as exerting a gravitational force that draws disparate things into it. But as we saw earlier, the world is drawn into the file, and appears to enter the file, and the bold text marks the points at which the world has entered the court's file. The bold text refers to something that is outside this page. If you are reading this on a computer you might be tempted to hover your cursor over the bold portion to see where or to what they link to. What we could have here is not merely text, but hypertext, with each bold phrase linking the page you are reading to something outside of it. Each one of these phrases not only represents where the world has entered the court file, but also is a new fulcrum around which the case can be read. The multiplication of these bold phrases, these hyperlinks, means not only that the world has entered the file in different ways, but also that the world the file is creating may not be singular. Instead, in making the file speak against itself, the defence strategy – to create reasonable doubt – is to make the worlds that the file creates speak against each other.

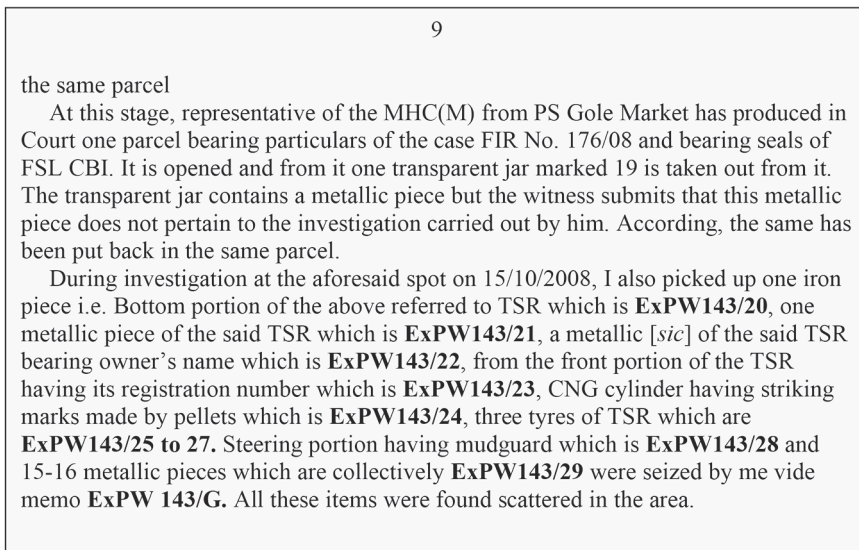


Figure 5.2 Facsimile of a page from the court's transcript of SI Rakesh Kumar Singh's testimony

In his fictional short story *The Garden of Forking Paths* Borges (1941/1998) describes the mysterious legacy of Ts'ui Pen, an illustrious ancestor of the protagonist of this story, Yu Tsun. Ts'ui Pen had retired as the governor of a province to do two things: to write a vast and complicated novel and to construct an equally vast and intricate maze, one in which 'all men would lose their way'. When Ts'ui Pen died, there was no labyrinth and the drafts of the novel were 'contradictory jumble of irresolute drafts' (ibid.: 82). A scholar of Ts'ui Pen's legacy, Stephen Albert unravels this mystery when he reads Ts'ui Pen's will, where it says 'I leave to the various futures (not to all) my garden of forking paths' (ibid.: 82). And this, for Albert was the key to understanding Ts'ui Pen's legacy. Albert says:

In all fictional works, each time a man is confronted with several alternatives, he chooses one and eliminates the others; in the fiction of Ts'ui Pen, he chooses – simultaneously – all of them. He creates, in this way, diverse futures, diverse times, which themselves also proliferate and fork. ... In the work of Ts'ui Pen, all possible outcomes occur; each one is the point of departure for other forkings. Sometimes, the paths of this labyrinth converge: for example, you arrive at this house, but in one of the possible pasts you are my enemy, in another, my friend.  
(Borges 1941/1998: 83)

The concept that Borges described here – in several layers of the story, but most directly in the combination book and maze – is that a novel can be read in multiple ways, a 'hypertext novel' as argued by media theorist Nick Montfort (2003). Borges, according to Montfort was describing a theory of the universe based upon the structure of such a novel, a universe in which everything that is possible does indeed occur in some branch of reality.

Similarly, can we conceive of the court file as a hypertextual space? In the limited universes created by the file, does everything that is possible occur in particular readings of the file? We have seen how the world is drawn to the file and enters it, causing the file to speak against itself. In the file several worlds are created: one world may counter another, a second world may contest reality. Each time the world enter the files, the file itself creates another world. Each point at which the world enters the file is itself a point of departure for other forkings, a new fulcrum around which the file may be read. The file is not only an archive of the world, but produces several counter-archives. Files yield worlds that could not be foreseen, their meaning in a flux, like Borges' novel, producing several worlds, all at the same time.

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