

## On Making Legal Emergency: Law Office at its Most Expeditious

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**Key words:** law office, emergency, temporality, technology

**Abstract:** This essay examines manufacture of a legally-relevant symbolic object, "emergency." The examination is carried out in the phenomenological key. For the initial theoretical orientation I take HUSSERL's critique of mathematization of the life-world. Thereby I show that emergency can be conceived of as a temporal mode of constitution. With the help of workplace studies, I export phenomenological insights into a social scientific sphere. From this perspective, legal emergency comes about as a vehicle that assists in minimizing, mechanizing, transforming and reconstituting a life-world original (client's narrative) into a law-specific temporal event grounded in legal discourse and its materialities. Thus understood, the law office becomes comparable to a laboratory whose business is epistemic enculturation. In my analysis of the legal emergency as "becoming," I employ data-based materials collected during extensive fieldwork in a law firm in the United States. I conclude by further theorizing social consequences of legal emergency with Gilles DELEUZE, who locates law at the juncture of materials (discourse) and forces (actions).

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## 1. Introduction

*"In the human world not everything evolves.  
Some things are just made"*

(Charles DARWIN, The Origin of Species)

I would like to begin by remaking DARWIN's quote into a question: *What is the thing that does not evolve but can be made?* The direction of this question guides me into a specific experience that I had while doing fieldwork in a small law firm in Delton, South Dakota.<sup>1</sup> That day, I was sitting in the office of Jack Dorman, the attorney who I had come to shadow, observing him at work: talking to clients, court clerks, prosecutors, his partners and secretaries; preparing cases: reading

1 My ethnography in South Dakota was carried out within the framework of the Emmy-Noether Project "Comparative Microsociology of Criminal Proceedings." For more information about the project, see <http://www.law-in-action.de/>.

through the files, researching legal statutes, making notes, organizing paper-work.<sup>2</sup> Then, at some point, Sabrina, Jack's secretary came in with a message slip in her hands, saying: "Ray Kintz just called. His wife gave him some kind of trouble last night. He asked you to call him back ASAP."<sup>3</sup> Jack nodded and took the note. At the same time as he was dialing Ray's number, he was telling me: "I've got Ray custody for both of his kids. This doesn't happen very often. He is a good man. He works two jobs, owns his own business. His wife, she ..." Jack did not finish,—Ray picked up the phone. Unfortunately, the speakerphone was off, so I could hear only Jack's own questions and summaries: "when did it happen exactly?, what did she say?, and the children, did they volunteer their story, or did you ask them yourself? Okay, this is good." After twenty minutes or so of questioning, Jack said, "I will call the Social Services, and then we need to speak to the judge. I want to hear what she to say about all this." [1]

The call to the social services took about seven minutes. Jack introduced the purpose of his call: the client's distress; then, he began to ask questions about the mother of the children monitored by the services. The call to the judge followed without interruption; she was there. Jack proceeded to tell her that there was an unhappy turn in the state of custody with his client, that there were too many instances of visitation rules having been broken by the mother and that his client felt that action had to be taken, so Jack was going to write an Affidavit asking that the violator be punished. "Is there a chance that the Affidavit be considered today?" From Jack's following statements I gathered that before committing to a straight answer, the judge wanted to know the details of the last instance, namely if there were witnesses and how close to each other were the instances of violation. It turned out that the mother told one of the children that his mother threatened to kill herself if they continued to live with their father. She also did not return the children on time, making Jack's client wait for several hours. She did this on several occasions. Ten minutes into the call, Jack said, "Okay, I will inform my client." Then, to me: "I have to take care of this thing right now. It's an emergency." He picked up the phone again and gave Ray a brief summary of the conversation with the judge as well as the course of actions: "we are going to write an Affidavit now. Quickly. If I need you, where can I reach you?" [2]

What struck me as odd at the time was the ambiguous status of the stated emergency. The ambiguity materialized in both the fact that Jack had to accept someone else's narrative as a candidate for emergency first, but also that he could name emergency as "emergency" only after it got situated in the pre-legal realm with the call to the social services and then in the legal sphere, after a conversation with the legal figure of the judge. As if an emergency could be unclear and needed definition. As if it could belong to anyone else besides Ray. Most strikingly, as if it were some kind of a product to be manufactured. The manufacturing metaphor strongly imposed itself in what followed after the phone exchange: as soon as Jack hung up the phone, the state of affairs in the office changed. The routine shifted from "the-business-as-usual" to "the business at

2 The names of all my informants have been changed to protect their anonymity.

3 Quotation marks designate direct speech as it was taken from my notes. Indirect speech reflects summarized accounts on the basis of the notes; I present it in the text as unmarked.

hand." The term "emergency" began to obviate itself in a variety of actions, such as putting the task of managing the production of the Affidavit ahead of other, previously scheduled tasks, engaging previously non-engaged labor and methods. At the same time, these "extra" ways did not surprise me; on the contrary, they came about as precisely routine: the degree of the unspoken understanding about what it meant to manage an emergency indicated that they had been retained, that perhaps I had witnessed them in use before but, somehow, haven't noticed them interacting in such a concerted union: the attorney, the secretaries, the supporting implements, all contributing toward doing something the attorney named "emergency." In sum, it appeared that, once named, the emergency made life in the office cease its "natural" course of events by instituting a new regime for making them and, at the same time, by having itself being made, albeit tacitly and opaquely. [3]

The experience of the law office emergency came in stark conflict with the ordinary experience of emergency that suspends the routine and alters our perception of the event-in-becoming in a radical fashion. For example, in the case of a life-threatening accident, whether witnessed or participated, we stop attending to the business as usual, as it ceases to concern us. In this case, priority is given to the immediate matters grounded in the social world, or the involved self. This kind of emergency captures us and holds us hostage. The legal emergency clearly lacks this impact. By extension, the law office emergency also differs from the ways an emergency is handled by emergency workers, such as medical personnel and the police. Granted, those in the business of managing emergencies also engage a certain well-built and tested mechanics that put select actions, resources, transfers and exchanges on display, so, generally speaking, their work is reminiscent of the attorney's doing an emergency. However, the coincidence of an accident with its handling by emergency services separates a legal emergency from an accident instigated emergency. It is only in anecdotes that the attorney is the first person at the site of an accident. The ambulance-chasing attorney is as much of a folk figure as the image of an accident-chasing ambulance. [4]

The activities that preceded and followed the announced emergency in the context of the law firm produced the impression that, unlike ambulance services and the police, who respond to the emergency in order to *eliminate* it, the attorney seemed to have undertaken the client's emergency in order to *create* something else. Driven by this purpose, the matters prompted by the emergency got detached from the place of their occurrence, dissected, examined, reassembled in a new guise and then set out for re-textualization.<sup>4</sup> In the process, the reported problematic actions—the client's complaint—acquired a new symbolic status that spawned the legal action proper, that is, the request to restrict visitation. At the same time, nowhere in the produced documents will we find a mention of emergency. If I were limited in my observations to the examination of the final texts I would have never been capable of telling that what I had witnessed prior to their production was an emergency. In contrast to the

4 For more on textualization of utterances, see RAFFEL (1979), ATKINSON (1995), and SCHEFFER (2006, [in this issue](#)).

accident-instigated emergency, the legal emergency made its appearance in the couloirs of the attorney's office as something else. These differential observations reveal a certain duality in the object of this investigation. On the one hand, emergency appeared as the product and the process of practices, activities, and actions. This emergency was observable and, in its end products, tangible. On the other hand, emergency was engaged as a mode for producing these tangibles. This emergency could not sustain itself as itself; an internal product of case-making, it exposed itself only as a possibility for legal action materialized. As soon as such a possibility materialized, emergency in itself vanished in the legal archive.<sup>5</sup> This dual structure of legal emergency (emergency as a mode of production and emergency as a phenomenon in itself) leaves me with a question: *Can I access this kind of duality and, if yes, then how?* [5]

There are several methodological perspectives that can accommodate my inquiry. The ethnomethodological and conversation analytic (EM/CA) perspectives alert us to the possibility of indexical meaningfulness, that is, a local contextual achievement that may or may not coincide with neither the ordinary, bottom up, nor the organizational, top down, understanding of action. These methods prove effective in examining purposive action, whether it is understood as communication or discourse. The other face of the legal emergency, that of a temporal phenomenon of its own right, can be undertaken from the perspective of traditional phenomenology. In both cases, the researcher assumes the perspective of the SCHUTZean stranger whose membership in both the ordinary and the institutional is compromised by his position, thus making him suspicious of the common-sense knowledge of the participants about what a particular phenomenon means for them; at the same time, he fails to reconcile his observations with the habitual ways of understanding this phenomenon. He then finds himself in the liminal space that allows for what SACKS calls "contrastive analysis," that is a focus on those "taken-for-granted" that created a contrast to either the educated or mundane perspectives. For the participants, emergency is such a taken-for-granted. On a different level of abstraction, it is an ideal entity. For a better understanding of the concept of "ideal entity," which reflects the relation between the empirical and the transcendental, I suggest HUSSERL's critique of mathematization of the world. Its influence on the social constructivist turn in sociology, in general, and EM/CA, in particular, warrants an elaboration. I believe that returning to the original insights, albeit briefly, will help us better understand how the law office may count as an epistemic culture. [6]

## **2. Creating Ideal Entities and Symbolic Objects**

In *The Crisis of European Sciences*, where HUSSERL presents his phenomenological program and method for the last time, he chooses to justify both by pointing out the failed mission of the exact sciences that also contaminated philosophical inquiry. He suggests that the origin of the scientific failure lies in what he calls mathematization of the world that began a long time ago with the invention of arithmetic and Euclidean geometry. At the time,

5 I take the concept of archive in FOUCAULT's sense as "the conditions for reality of statements" (1972, p.127).

mathematization was *direct*, that is, it involved measurable and countable objects such as land and metals. Notions of distance and weight were applied to these objects to determine them *in praesentia*, statically. It took centuries, the advent of the Renaissance, and GALILEO, to re-specify the role of geometry and mathematics. Somehow, at that time, it became both possible and significant to start measuring non-observable objects, such as heat and color, and also to examine solid objects in motion. By applying such notions as temperature and speed, it became possible to determine objects *in absentia*, dynamically. The world became subjected to *indirect* mathematization. [7]

For HUSSERL, the scientist directly responsible for this transition was GALILEO, who suggested that the determinable nature of nature was predicated on two factors: absence and motion. Most importantly, in order to understand this kind of analytical operationalization, one has to move from the order of abstraction to the order of idealization. Once GALILEO arrived at the idea of ideality as an operation that "originated" in universal causality, he "purified" the geometry of rational praxis, or, rather, subsumed what was left of the intuited experience under the guidance of limit-shapes. In HUSSERL's words, striving for exactness, GALILEO saw a possibility of resolving the problem of indeterminacy in the manner of a world horizon. Since it is within this horizon that all objects are given, including ideal ones, ideal bodies have the capacity to appear as material bodies. Looked at from the perspective formed by ideal bodies, "the world can be thought of in advance as nature, and nature as an ideality" (HUSSERL, 1970, p.127). [8]

With ideal bodies standing for actual bodies, actual bodies that lacked perfection could be perfected in ideality indirectly. As soon as the art of measuring ceased to be attached to the ground it was designed to measure, the ground itself lost its constitutive force. This is how an experience of the life-world was turned into a hypothesizing inquiry. However, the division between a scientific inquiry as the only legitimate mode of objective experience and real experience was not the only evil instigated by GALILEO. According to HUSSERL, the actual sedimentation of the life-world occurred when the ideal forms seeped back into the life-world. This reversal created "paradoxical interrelationships of the 'objectively true world' and the 'life-world' making the manner of being for both enigmatic" (HUSSERL, 1970, p.131). This is why it is insufficient to simply show how the members themselves understood what they put to use. More important for the making of legal emergency is the contrastive relation of the ordinary and the legal realms. A phenomenological investigation of this relation can be done in several registers (static, genetic, and generative) and feature two directions (progressive and regressive). [9]

Traditionally, HUSSERL's phenomenological method is understood in terms of three periods: static (early period), genetic (middle), and generative (late). Static analysis focuses on the description of phenomena in the state of rest. This is how one describes a mug, or a chair. A more evolved and involved analysis of time is designed to show how a phenomenon is constituted over time for one's consciousness. Unlike these two strands, generative phenomenology has an entirely different place of origin. Connected to anthropology rather than exact

sciences or psychology, generative phenomenology originates in the social realm. It is called generative because it investigates communal life as it is constituted by multiple generations. It therefore focuses on "geo-historical subjectivity" and includes such constitutive dimensions as "rituals, social habits, language, landscape, traditions, stories, myths, and so forth that have been handed down through the generations" (HUSSERL, 1970, p.581). The two movements, regressive and progressive, accompany the analyses. The progressive analysis begins with the most abstract features of a phenomenon and proceeds to the most concrete ones. The regressive analysis begins with the most concrete and proceeds toward the most abstract (that is, in itself, most concrete) via descriptive, analytic, and interpretative stages.<sup>6</sup> [10]

Given the dual structure of the legal emergency, I engage all three registers and move in the regressive fashion, starting with the most concrete, that is, the empirical side of the legal emergency. At this stage, the key emphasis should fall on the physical conditions that allow for multiple institutional transformations of some everyday "stuff" that obviate the manufacturing machinery that makes this process possible. For this, I want to consider laboratory studies. By being phenomenologically orientated, laboratory studies pose no analytical contradiction to phenomenology. By taking HUSSERL's critique of mathematization literally, they narrow its phenomenological focus by zeroing in on the social creation of *scientific* objects from life-world objects. Unlike other phenomenology-based human methodologies, such as EM/CA, they therefore seem to be better equipped for analyzing and theorizing the relationship between the natural and the institutional orders. Here, I understand "natural" in the phenomenological wake as everything ordinary, everyday, unproblematic, in other words, all that permits "the encounters with fellow men and artifacts to be ordered into multiple meaning-contexts" (SCHUTZ, 1967, p.169). As a meaning-context in its own right, the institutional sphere is adjacent to the ordinary as a secondary qualifier, namely, a social practice that defines the social order of its own origin in the same way a point of elevation defines the terrain. Like the physical discontinuity of terrain (mountains, riverbeds, islands), elevations in the social world create independent fields, such as law and science. The similarity between law and science lies in the same operations that condition transformation of natural objects into field objects. [11]

According to Karin KNORR CETINA (1999), these operations are: a) partiality; b) re-location; and c) re-temporalization. Although CETINA does not reference HUSSERL directly, curiously, her first illustration comes from astronomy. Let us take the Hubble telescope that floats in outer space for an example. An embodiment of epistemological cut-off, the telescope hangs at the point where sciences have become capable of detaching themselves from their own instruments. By doing so, they created a phenomenal field absolutely of their own. And it is there within thus pre-separated fields that sciences "search for their

6 For the definitions for and the relationships among the three kinds of phenomenological analyses, see STEINBOCK (1995). Although my analyses follow his distinction, they deviate as to the kind of phenomenology they pursue. During my analyses, in its background stands Gilles DELEUZE, who is foregrounded in the final section of this essay during the discussion of what legal emergency means for law.

treasures". CETINA identifies three types of objects that can be found through these procedures, that is, created in those fields: "in the first case, objects in the laboratory are staged real-world phenomena; in the second, they are processed partial versions of these phenomena; in the third, they are signatures of the events of interest to science" (CETINA, 1999, p.33). Discovering/creating these objects means detaching, miniaturizing and re-socializing the life-world. The advantage of observing scientific laboratories in this respect is two-fold: on the one hand, the researcher sees how scientists are turned into methods; on the other hand, she becomes exposed to the process of turning methods into fields of inquiry. If the distinction between the natural and social orders holds, as it does for CETINA, when encountering the natural order, the social order becomes reconfigured laboratorization. This new order is neither social nor natural but experimental. [12]

I would like to take the case presented in the beginning of this presentation as indicative of the process of laboratorization. I suggest that similarly to academic labs, the law office is in the business of creating legal epistemology. Understanding law office as a laboratory is hardly a stretch. For one, CLADDERS (1995) argues that an art museum is a lab for experimental aesthetics. He writes: "The museum as a place for art does not make it possible to be renewed by means that don't originate from art itself" (CLADDERS, 1995, p.118). In a co-extensive argument, BUREN (1995) shows that the artist's studio is a laboratory par excellence, for it is there, in a private place that the work originates. It is thus a transitional place for generating objects bound to the subsequent museumization. In his study of the culture and evolution of natural history museums, ASMA (2001) compares the museum to a lab whose business is displaying static approximations of real world prototypes: stuffed animals, animal parts, shells, etc. In the museum natural objects are made unnatural by standing to represent a certain social order (e.g., evolution). Bruno LATOUR (2004) directly compares a legal setting to a scientific laboratory. According to him, the similarity is pertinent because "both domains emphasize the virtues of a disinterested and unprejudiced approach, based on distance and precision; in both domains the participants speak esoteric languages, and they reason in carefully cultivated modes ..." (LATOUR, 2004, p.24). Finally, while investigating document production in the law office, SUCHMAN (2000) finds a remarkable similarity between the objective practice of coding in the law office and the scientific procedure of formulating. Both sets of procedures seek out transferability of one matter into another. Both "show the mutual constitution of knowledges and artifacts in [technology-assisted] practices" (SUCHMAN, 2000, p.43). [13]

Under these circumstances, laboratorization of the natural order must meet the basic criteria of: a) pragmatically re-ordering of the pre-ordered space and time; b) technology-assisted practices; c) divided and dividing labor; and d) transpositional relations. The last criterion can materialize by employing either the model of diffusion or the model of translation (LATOUR, 1987, pp.132-144). By meeting these criteria, the law office qualifies to be viewed as a lab that experiments with and produces symbolic objects. Most importantly, it seems to be

driven by the same purpose: detach, alter, and contextualize some kind of a life-world original. Below I would like to illustrate this transformation. For the original I propose that we accept a set of actions that constituted an emergency in the first instance, for the client. In its narrative form, these actions were submitted for being experimented upon under the assumed purpose of producing a series of differentiating actions and their corresponding objects. After an engagement of various simultaneously deployed activities assisted by respective technology, the client's emergency evolved into an act-object, the request for legal action. Given in the mode of emergency, legal action can be traced in a stage-wise fashion, first with an investigation of its static parameters, then through reconstructing its genetic evolution, and finally by identifying its generative capacity. At the end of this analysis, we obtain a sense of the legal emergency as a mode of production. An investigation of the other, transcendental, side of the phenomenon will form a stage of its own, which will require a separate theoretic. Following this design, I wish to begin my analysis in the static register with a description of the resources available for the production of legal emergency. The description intends to expose specific physical conditions that provide for "the ordered properties of work activities" (BUTTON & SHARROCK, 2000, p.48). [14]

### 3. Law Firm as Space for Situated Action

The schematic view of the law firm shows how its space is partitioned as to its *pragma*, turning it into a house for mechanized labor. Its heart and sanctuary is the Attorney's office that features various technological implements (Figure 1). In addition to the telephone, in his daily practice, the attorney employs the pen and the notepad, the dictaphone, the hard-wired computer, and the intercom. On the credenza next to the desk, there lie codes and other reference materials. Inside the credenza one finds a photo camera, a video camera, and a tape recorder. On the desk, there is space assigned for paperwork, files, and calendars. The chair on the attorney's left next to the phone is reserved for the clients. Jack's office door opens into the common space where the secretaries work (Figure 2).



Figure 1: Attorney's office (author's photograph)



Figure 2: Secretary's space (author's photograph) [15]

In addition to computers, telephones, intercoms, fax machines, transcription machines, and printers, the hall where the secretaries sit contains various office stationaries (some of which are entirely for the use by the secretaries—the message pad, for example), and, finally, file-cabinets. [16]

Adjacent is the supplies room with the tape-writer, supplies, and the copying machine (Figure 3). Other facilities include a coffee station, a conference room, a library, and a waiting room adjacent to the stairs.



Figure 3: Supplies rooms (author's photograph)



Figure 4: Waiting room (author's photograph) [17]

Each space is a locus for meaningful actions. According to HEATH and LUFF (2000), "the use of [...] various tools designed to facilitate work [...] relies upon practices and reasoning through which personnel produce their own actions and make sense of the conduct of their colleagues" (p.119). Similarly to laboratory experimentation, these actions are locally stipulated, but also observable and repeatable. They are situated within an apparatus that, in itself, is bound together by various technological implements and that, in turn, binds respective technology specific actions in such a way as to allow for a series of those actions to be understood as a specific activity, faxing. Moreover, the overlaps and intersections between otherwise clearly delineated spaces, mediated by communication and body traffic make it possible to understand an activity within an activity; their crossing also connotes meaningful actions. Bringing such a crossing into relief, putting it as a discursive object on the agenda for the participants, so to speak, means to focus on the crossing, that is, emergency or any other such liminal object. For example, a legal document is never fully made at the place of its birth. From the beginning, it is destined to travel and, while traveling, to alter both its shape and its purpose, as it happened to the narrative of the client who called Jack with a complaint. First a complaint, it became material shaped by various textual conventions of law into provisional texts, which were dictated, read, transcribed, written, edited, printed, faxed and re-faxed, and finally made into an Affidavit, which was copied and mailed to all the parties involved. For all these shapings the emergency lends itself as a mode, as a crossing that can only become visible through the expeditious accord of the members themselves. From this perspective, the office space is a site for transformations, which can only take place if the activities that make these transformations possible merge into each other without any apparent difficulty. [18]

In the next section, I would like to investigate the transformational dynamics. For that, I will need to switch the analytical gear from the static to genetic analysis. The need for the switch is stipulated by the limitations of the static analysis, which

is incapable of disclosing temporal paths of evolving objects. Only when the evolution itself is arrested, caught in motion, as it were, can one trace its path to the beginning and to the end. This objective, which is never fully realizable, requires that the focus fell on the engagement, whose parameters differ radically from those of the statically positioned machinery. Case-specific, the genetic analysis traces out the development of a phenomenon-in-context; it hunts down temporal objects, which it finds in finite temporal fields. The finite nature of such objects is therefore observable as a succession of transformative moves that come to define an event and, in turn, become defined in the end-product. In the next section, I would like to reproduce the event of making a legal emergency. The event engages human communication, activities, and mechanized labor toward turning the previously described call from Ray to Jack on June 16, 2004 into a legally meaningful action.<sup>7</sup> [19]

#### **4. Emergency Unrolling: The Call**

The client's call came at 9:50. It took the attorney approximately 20 minutes to complete it. While asking the client numerous questions during the telephonic exchange, the attorney was making copious notes. The notes recorded the attorney's procedure-directed and case-motivated inquiry that led to a necessary reduction of the client's descriptions to relevant, for the legal environment, formulations. In his study of institutional discourse, DREW singled out formulation, or "a device through which the practice is mobilized by the participants in a given interaction" as the key alteration of the kind (DREW, 2003, p.296). By themselves, legal formulations are sufficient to produce a legal action but not a legal emergency. In order for the emergency to be created, it must be situated for the emergency mode that, in turn, must be deemed fit to the actions described. The fit is determined by the link to other providers of legal or about-legal service. Therefore, after the conversation with the client, the attorney made two more phone calls to Social Services, which is in charge of the client's case. Social Services functions as the supervising agency for the judicial decisions that concern custody and other family matters. [20]

The crux of his conversation with Social Services can be described as doubling, that is, corroborating the client's story that has been taken from the ordinary realm with the one that either has been already institutionally coded or will be coded. "We need the professional opinion; the client is always biased and emotional," shared Jack in an interview. Removing the emotional content for coding is necessary. While talking to the case managers, the attorney made more notes. After obtaining a somewhat tentative confirmation of the client's concerns, Jack called the judge. The purpose of that call was to determine what shape the client's actions would assume; in other words, if they should count as an emergency or if they will have to take the regular route. For the client's actions, to the judge, the attorney presented his formulations largely on the basis of the notes taken. After conversing with the judge for about ten minutes, the attorney obtained a tentative approval: the judge agreed to consider the Affidavit upon

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<sup>7</sup> I observed the event in full. It is also recoded in part by audio and video equipment.

reception and probably that very day. With this news, the attorney called the client back and outlined the course of action: "We will write an Affidavit and see if we can make her act on it." I take this statement as the first indication that the fit between the emergency and the mode of its execution was established. At this stage, the production of legal emergency became conditioned on two other factors: a) translatability of the narrated actions into a legal action and b) appropriate mode for this action. The mode opened after the conversation with the judge who committed herself to considering the Affidavit. [21]

The last phone call was to the client. The attorney explained what the Affidavit intended to accomplish:

"... we can reduce her visitations and may be able to even stop them, but that will be difficult to do. Judges prefer mothers to fathers. Unless the mother is a convicted felon, or she is a violent chronically unemployed alcoholic, the judge would grant her some access no matter what." [22]

The conversation ended with Jack asking his client where he was going to be, for his signature was essential for the Affidavit. The client said that he would stay at work, but had to leave for a field assignment in an hour. Immediately after he got off the phone with the client, at 10:40, the attorney called the intercom and asked one of his secretaries to put on hold everything she was doing and get ready for transcribing. The emergency was set out for production. [23]

The production proper began with the attorney's dictating. I am not considering the client's first telephonic interaction with the secretary that generated the materials for transformation to be the original point of production, for, at that point, the key producer, Jack, was not engaged yet. I call dictating production proper because it is through that activity that the oral interaction was to be translated into a text that would be properly formatted for circulation in the judicial environment later. Circulation requires codification. One can accomplish this task in two ways: subjective and objective. Subjective coding reveals the singularity of the case; the format and the ways of presenting the case show the universality of legal procedure. Objective coding is geared to the general legal public, or those who are in a position of reading and evaluating the attorney's work. All the documents that end up feeding the production cycle in this case are coded objectively, albeit to a various degree. I will elaborate on coding in the next section. [24]

With numerous stops and goes, Jack was done dictating at 10:50. As soon as he finished, he paged Secretary II, Jessica, and asked her to take the tape, transcribe it and bring it over to him for proofing. In the meantime, Jack turned to his computer and began to enter new information into his electronic notepad (Figure 5). I followed the secretary. She sat down behind her own computer, brought out the Affidavit template, put the micro-cassette in the transcription machine and began to transcribe (Figure 6). It took her twenty-five minutes to finish the dictation. Jack considered her rate of transcribing too slow for the situation and came over into the secretary's space once in a display of

impatience. In the meantime, he was working on two other documents that would end up constituting the working trio: Bill; Letter to the Client; and the Affidavit.



Figure 5: Attorney writing (author's photograph)



Figure 6: Secretary transcribing (author's photograph)



Figure 7: Proofreading (author's photograph)



Figure 8: Redoing the Affidavit (author's photograph) [25]

He finished one and printed it out shortly before Jessica printed out a copy of the Affidavit. The printout is a letter that was intended to accompany the Affidavit and the document that was still in production, the bill. At 11:20, Jess brought the Affidavit to the attorney. He asked Jessica to stay and examined it in her presence. He made three or four marks in the document with his pen, then handed the Affidavit back to Jessica and asked her to finish it up and then bring it to him again for another proof-reading (Figure 7). In the meantime, he finished the other document, a letter to the client. The letter to the client has a typical—for Jack—presentational format: it opens with the mention of the last action taken, the state of the case (cost attached) follows, the prospects for the case, and a formal invitation to communicate close the letter grafting his communication onto a temporal continuum of past, present, and future. The bill is as significant, and I will comment on it later. [26]

At 11:30, Jack received the final version of the Affidavit. He instructed Sabrina, or Secretary I, to call the client to make sure that he was still at work and could provide the signature. She intercommed almost immediately to confirm that Ray was standing by. Then the Attorney gave her the Affidavit to fax to the client. A minute later, the secretary returned. It turned out that she noticed a misspelling and wanted to know if she needed to redo the whole thing (Figure 8). "Of course," said Jack. Sabrina rushed back to her desk. The time was approaching 11:40. The client called again saying that he needed to go. Jack told him to wait for two more minutes. Five minutes later, the Affidavit was printed and faxed. The attorney told Sabrina to call the client to see if he got it. He got it. He said that he would fax it back. Five minutes later the signed Affidavit arrived. Jack checked the signature, the date, then gave the Affidavit to Jessica to copy and to deliver it to the State Court across the street. Sabrina took the three documents (attorney's bill, letter to the client, and Affidavit), made a copy of them and set aside the original for sending to the client, while filing the copy. Secretary II returned twenty minutes later with a stamped slip from the clerk's office. The time on the slip was 12:11. The emergency as a temporal object was made. [27]

From the genetic perspective, the emergency was made in the course of successive actions that engaged the pre-connected spaces via technological implements and body traffic. At each point of connection during these activities the object being connected underwent a transformation, the end result being several text products. The central text in this batch is the Affidavit in Support of Motion to Restrict Visitation. One can say that what has been described above is the process whereby the legal emergency produced a legal action from a non-legal matter, the client's complaint. At various stages in the process, the matter was being shaped slowly but surely, acquiring the status of objective knowledge while simultaneously being turned into a certain kind of ideality, a reasonable and necessary entity. The actualization of this entity was made possible in the mode of emergency. Next, I would like to locate this mode in the textual field, and thereby analyze the form and the content of several excerpts cut out from the documents produced during the emergency. However, in order to show the phenomenon of legal emergency for us, we need to perform another shift of the analytical gear, this time to the generative perspective. [28]

## **5. Emergency in Discourse: Textualization**

The generative extension of the phenomenological analysis deals with "accounts of a 'genesis' that is genetically impossible to know, but generatively possible to experience in the generative density of a tradition" (STEINBOCK, 1995, p.219). We find the accounts of genesis, that is, temporal objects, in the textual fields, for example, the legal field, which traditionally perpetuates itself via texts. These texts code past, present, and future actions in the manner intrinsic to the legal domain. As with other discursive products, in legal texts, temporalities are indicated by grammatical tenses. However, it would be a mistake to assume that one can detect a mode of givenness in the discursive markers of past, present, or future actions. Moreover, as FOUCAULT has amply demonstrated, the latter prove to be deceptive guides: the referential domain of discourse is first and

foremost self-referential. In order to serve its singular purpose, the already made product must be disconnected from the mode(s) of its production, or those generative forces that provoke it into being. At the same time, the forces themselves are not entirely hidden: the institutional activities must leave a trace of the modes of their making on the materialities produced in their wake so that their future use is ensured. These traces can be investigated as temporal vectors. The directions of these vectors come across as purpose; therefore, driven by its purpose, upon its completion, each document shows this purpose, which implicates the mode of its production. Equally, if not more important, are the relations between and among texts. Those provide a holistic view of emergency, ensuring, at the same time, that in itself, it remained invisible. To test this thesis empirically, let us examine all the three documents made in the wake of the emergency. I begin with the time slip, which lists chargeable and thus legitimate—from the provider's perspective—activities in the office.

Client [Name]	Hours	Amount
6/4/2004 Lon conf w/client at 730-1258, discuss his complaints on the matter, LDC to and from Sheri and Diane Mogley, TC to DSS and SF DSS and make Report, LDC to J. McMuren on the case on the matter, sch. Appt. on the case.	0.80	120.00

Table 1: Attorney's bill [29]

As can be seen from this excerpt, the slot for the day of the emergency shows no such thing. In reference to the activity performed for the client, the attorney has only a coded description: "Lon conf w/client, discuss his complaints on the matter." For the time spent on the whole matter the attorney puts down 0.8 of an hour and charges 120 dollars for that. According to the slip, fifty minutes of handling the emergency include several long distance telephone conversations. The rest of the activities, including the making of the documents, are gratis. The attorney did not charge for either re-does or the hand-delivered Affidavit. The client's initiative defined as "complaints" is the only visible reason for the attorney's actions. If we now look for the temporal vector through the document's purpose, we will find out that this purpose is multiple: from the perspective of the attorney and the client, the bill is produced to collect upon the work done; hence, the emphasis on the past. As an accompanying text, the bill is also an objective coder. It reduces the volume of actions as well as their duration to the attorney-performed actions, thus minimizing the realm of legal activities in the office to those of the primary legal figure. When it comes to the emergency, it becomes reduced to the monetary measure, which points to the economy of law. [30]

The next document, Letter to the Client, mentions no emergency either. Its content refers to the bill and the Affidavit, the tasks at hand, the price tag, the client's prospects, and the hopeful note:

"Find enclosed herewith the Affidavit that I want you to sign and return to me. I am also enclosing herewith your bill. I believe that the last bill I sent to you sometime subsequent to the depositions in January. In light of our conversation, I would anticipate a knock down, drag out visitation fight with [name of spouse] that is going to run between \$1,500-\$2,000 over and above what is now owed. You need to put together that money. Hopefully, we can get social services to stop visitation. If that happens, you will save a vast bulk of this bill. If you have any questions, please give me a call" (Correspondence, 6/16/2004). [31]

The purpose of the letter to the client is again diffused. On the one hand, it is written to inform the client about the state of his case. In doing so, it connects the most recent action with the past actions presented in the bill and proceeds to outline two prospective courses of actions given from the economic standpoint. Thus, not only the past of the attorney's actions becomes subjected to the monetary measure but also the future. We might also say that the purpose of the letter is relational. Despite the alleged primacy of the economy in the relations between the client and the attorney, the attorney and the client share more than an economic base. Their contractual obligations to each other extend into the ethical realm. The Letter to the Client is a product of this realm: the attorney is obligated to inform the client about his position in relation to the legal circumstances of his case. Both literally and figuratively, correspondence between the two views and intentions must be maintained, and it is the attorney's responsibility to do so. [32]

The relation between the bill and the letter to the client can be defined as that of temporal closure. The emphasis on the future puts the letter to the client on the temporal trajectory opposite to that of the bill. The measurable past and the measurable future close on the Affidavit in the manner of brackets, making it appear to come out between what the bill designates as the attorney's time which, properly speaking, belongs to the past and the prospects for the case, a futural category. Free from manifest emergency themselves, the letter to the client and the bill set the boundaries for the attorney's activities as standard, that is, measurable, priceable. The fact that those activities have been expedited means nothing. In order to count as legal emergency they must be legally situated, that is, they must be in the order of things. In this order, held together by the relational network, expedition means compression; by minimizing the distance between the activities, the law office necessarily eliminates the trace of the need for compression. It is in this order then that the Affidavit is manufactured. [33]

Since the Affidavit is the only document designated for the court, it is least likely to refer to emergency. On the contrary, for the legal realm that privileges a natural course of action, one should expect that an aberration be presented as naturally-occurring. At the same time, the action must justify or restate its own existence. The Affiant's "request to the Court to restrict the visitation rights of his spouse" must be justified legally. So, the reasons for the request must be stated

on legal grounds. In the next paragraph the request is detailed in terms of the mundane reason first, which is given summarily:

"That the parties hereto are the parents of three (3) minor children, Karen, age 13, James, age 9, and Molly, age 8, whose physical and legal custody has been vested with your Affiant since 1999. That since that time, the parties hereto have visitation scheduled per [name of State] Visitation Guidelines. That there have been numerous incidents of the Defendant violating the visitation order, particularly with respect to the GENERAL RULES which prohibit parents from speaking negatively about one another and discouraging such conduct by relatives. Further, [name of spouse] has repeatedly quizzed the children about the behavior occurring in your Affiant's home. Myers has repeatedly criticized your Affiant in front of the children. In spite of repeated requests by your affiant for [name of spouse] to cease such conduct, she continues the same." [34]

The second and third pages of the Affidavit expand this excerpt and therefore ways of legal reasoning; there are three instances of alleged violations listed. One concerns the extension of visitation on May 31, another—the previous incident with the car on May 28, a number of different prior incidents are sprinkled for texture as well. The instances are linked by augmenting the theme of impropriety. The benchmark for impropriety is presented as prior legal decisions. Stated lastly is the most current instance of verbal abuse of the client. In their accumulation, the accusations bear the function of reasonable claims. The reasonable is not dry and logical, however. The client's emotions find acknowledgment in the description of the extreme feelings for both parties: the Affiant's "extreme" concern and the children's "extreme" fear. The extreme nature of the event arrives at the intersection of extreme feelings against the other party. The attorney ends with the appeal to ethos: "praying to the court." By gathering logos, pathos, and mythos together under the provision of the extreme, the Affidavit gives itself in the tragic mode. It also gives us a glimpse of what the emergency might be in itself. Contained by the past and the future, the emergency is none other but the Extreme. I will return to the consequences of this definition after a brief summary of the preceding section. [35]

## 6. Summary

Summing the above analyses up, I wish to make two points. One concerns the general properties of the legal emergency; the other addresses the analyzed event. First, from the static point of view, it appears that emergency in the legal context is predicated on the concerted actions of the professionals in the law office, starting with the Attorney and ending with him. In assistance to him are support personnel and various mechanical implements that archive communication and participate in the production of different text-documents. Among the conditions that lead to the manufacture of legal emergency as an act of its own: a) an accumulation of some previously occurred legally relevant actions (in this case, client's narrative); b) possibility for a transposition of these actions into the legal sphere (in this case, judge's commitment); c) availability of the means of production and labor, including the client. [36]

From this configuration, emergency appears to constitute a temporal act-object that orients the participants to the making of "the request for a legal action," that is, a relational restriction. Meaning that the reported actions that preceded the emergency were not just heard, reformulated, communicated, legitimized, and repeated, as specific activities bound into several written texts ready to be redistributed for action, but that at each production stage they were acted out in a specific temporal mode, that of legal emergency. It was emergency then that bonded the operations of detachment, minimization, and partitioning into the whole of epistemic enculturation, without being present by itself as itself, however. Like a fantastic monster, the symbolic object of the legal emergency surfaced from the order of its own production and then submerged again until its next sighting, leaving us only a faint designator, the Extreme. It is on the strength of this sighting that we can proceed with a theoretic for legal emergency as a phenomenon in its own right. The initial theoretization already began in the analytical section, which, through such terms as "force," "temporal vector," "surface effect," and some others conveyed implicit references to Gilles DELEUZE's phenomenology of virtuality. In the last section of this essay I suggest to explicate this implication. I believe that doing so might help us better understand the consequentiality of emergency for law. [37]

## 7. The Law of Emergency: A Deleuzian Theoretic

I have chosen Gilles DELEUZE for my theoretic for two reasons. First comes the connection between time and law, which is stated explicitly in *Difference and Repetition*: repetition is impossible for law and its subjects because... the law is what "unites the change of the water and the permanence of the river" (DELEUZE, 1994, p.2). In other words, for DELEUZE, law is paradoxical in its relation to time. Law's tendency to temporal paradoxes is also explored by DERRIDA, who claims that by striving to achieve permanence law cannot fail to disturb the flow of time, creating ripples and vortexes and other surface effects. The significance of this statement lies in the apparent clash between law's universality and singularity, between the law of the rule and the law of the case. It is the force of this temporal clash then that creates ripples called events whose entire historicity depends on largely a-historical forces which are deployed to generate them. As an institution without grounding "the law is transcendent and theological, and so always to come, always promised; because it is immanent, finite, and so already past" (DERRIDA, 1990, p.993). From this standpoint, the appearance and the non-appearance of the legal emergency at the same time is paradoxical and therefore suitable for law and possible. [38]

The second reason for selecting DELEUZE lies in his post-KANTian turn to transcendental empiricism, whose preferred object is a body without organs, or the relational structure that unites the material and immaterial. For DELEUZE, this relational structure is formed by the effects that surpass both the matter and the conditions for its shaping. These effects are not bodies but properly speaking "incorporeal" entities. They are not physical properties but rather logical attributes. We cannot say that they exist but rather, as DELEUZE puts it, they subsist or inhere because by and in themselves "they are the results of actions

and passions" (DELEUZE, 1990, p.7). Discourse is also an incorporeal entity. It transcends both language and the subject, that is, the matter and the conditions for its shaping.<sup>8</sup> This position grants discourse with a special relation to time: although not on the physical, it creates time on the social plane. The act of creation is selective, but certain social environments, including law, are privileged. It is therefore in the business of producing temporal objects of all kinds. This view allows us to suggest that the discourse produced in the legal sphere has a different kind of temporality: referring first to law, it only specifies its current referent in order to show itself, not to designate the referent. [39]

Thus conceived objects are located at the boundary "between things and propositions" (DELEUZE, 1990, p.11). The things—such as the office technological network and the actions of its operators—that carry out the task of making propositions are connected by the invisible thread called time. At some point, it shows itself in an object of its own, legal emergency, as it did in the case analyzed above. Driven by the force of law, emergency disturbs the surface of things, albeit for a short time, as action, and in disguise, as text. It is then that "the most concealed becomes the most manifest. All the old paradoxes of becoming must again take shape in a new youthfulness—transmutation" (DELEUZE, 1990, p.10). Most importantly, for DELEUZE, this appearance of law is paradoxical as it lies in its refusal of depth in favor of displaying events at the surface, and a deployment of language along this limit, or surface. DELEUZE calls the surface "faint incorporeal mist which escapes from bodies" (DELEUZE, 1990, p.12). The surface is weaved by interdependent reversals and flats, allowing for alterations of all kinds, encouraging translations. As the above analyses have shown, emergency, once in action, as a producer of forceful effects, becomes a vehicle for these transmutations. One can say that it temporalizes law, while making it present itself as materiality: all ideality returns to the surface, according to DELEUZE. At the same time, as a temporality, emergency came out to effect, but not to remain in effect. The significance of this process may not be immediately visible empirically: dealing with a single case on the level of a small private law firm does not ascribe much significance to the emergency as a way to make a document. It is a different matter on the level of community, however, where the legal emergency may resurface as the Extreme in Special Acts by Special Tribunals and Emergency Committees convened at the times of a social crisis. It may also show as the Extreme during Judicial and Parliamentary Hearings, signifying its capacity to institute a different social structure, showing law's capacity to create "the same on the basis of the different" (DELEUZE, 1994, p.41). [40]

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<sup>8</sup> In this view, one can clearly see the influence of FOUCAULT as DELEUZE's attention is drawn to foldings, or "the independent status of the relation to oneself" (DELEUZE, 1988, p.83).

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