

The Clerk

Jason Perry

The year that Burt received his law degree was, according to some, the worst year to receive a law degree since the invention of law schools. Though Burt had attended what was by some measures the fourth most prestigious institution in the country, and though he had graduated only slightly below the top tier of his class, his attempts to secure employment came up painfully short. Burt had expected to land a well-paying position at one of the top national firms during the summer after his second year. Instead, he spent the summer at a small local firm that was best known for suing the producers of in-flight cold remedies. At the end of the summer, the firm declined to offer him a permanent position.

Burt's expectations continued to wither in his third and final year of school. Though he applied to over a hundred federal judges to serve as a clerk—a common stepping stone for recent graduates from the top schools—he received no offers. The only offer he received, in fact, was from an aging judge on the state supreme court in Oklahoma. He accepted.

"I never would have gone to law school if I had known what it would be like," he noted despondently to the judge's secretary one morning. "Not that there are a lot of better possibilities out there. But at least I wouldn't be eighty thousand dollars in debt."

Sheila let loose one of her loud, boisterous laughs. She was a twice-divorced mother of three, and she always listened to Burt's complaints with great amusement. "What else would you have done?"

"I don't know. Maybe I could have been an engineer. Engineering is valuable." Burt gazed out the office window, longingly surveying the largely empty streets of Ardmore. "Is the judge coming in today?"

"I think he's getting ready for his magic show."

Burt frowned. As a hobby, Judge Nuckolls performed magic tricks for the lunchtime guests at a nearby country club. Burt had so far successfully evaded going to one of the performances.

"He's got another show at lunch," Sheila said. She looked at Burt meaningfully. "He sure likes the clerks to come."

"I'd love to," Burt said, glancing at his watch, "but I have to respond to a tech edit from Riya. It's overdue."

In fact, Riya had given Burt the technical edit over two weeks ago. She was the judge's other clerk, an Oklahoma native. Though the opinion Burt wrote

was only seven pages long, Riya's critique somehow filled sixty-eight pages, single-spaced. The tech edit had been sitting in the bottom drawer of Burt's desk, menacing him like a repressed memory.

"I should get to work," Burt yawned, lifting his coffee mug toward Sheila in a vague gesture of camaraderie. On the way back to his office, he peeked in Riya's door.

"Morning, Riya."

She sat hunched over a slew of papers. Though it was only nine o'clock, Riya's black hair had already come loose from its ponytail and now dangled over the documents like stray wires in the aftermath of a tornado. Slowly, she raised her head with the look of someone hearing the first faint taps of a fellow survivor beneath the wreckage.

"Burt! Oh, Burt," she sighed. "This is all too much."

"What?"

"Your case about the Internet reviewers." She brushed back her hair and adjusted her small, perpetually crooked wire-rimmed glasses.

"Oh, right," Burt said. "The Internet screeners."

"Screeners," Riya said. "Exactly."

It was a case filed by a traumatized employee of an Oklahoma corporation that provided screening services for online social networks. Every time a user of one of these sites objected to a piece of content, the objection raised a red flag, and the content was forwarded to the corporation's office in Tulsa. Much of the content was harmless. But some of it was vile beyond belief. The screener who filed the lawsuit had begun suffering panic attacks and throwing up at work. Unfortunately, she had not hired a lawyer, and her filings were virtually unintelligible. Her final motion before the judge dismissed the case was entitled: "Courtesy Motion: For 'Judge' Overbee (ILLEGAL appointed per captioned 401 Okla 776) the Definition of 'Unconstituitonal Bias' in Oklahoma, and YOU."

In his memo, Burt recommended affirming the dismissal. The employee had simply failed to make out a legal case.

"It's just so horrible, though," Riya said. "The things she had to see... I can't even read about it. No one should have to do that for a job. You know, the pictures with—children."

Burt nodded.

"Never knowing when something bad will pop up on the screen. Always having to be vigilant."

"Yes, but she failed to make out a legal claim. The case had to be dismissed."

Riya looked at Burt. "What about a tort claim? Couldn't you say she's arguing she suffered from...intentional infliction of emotional distress? Or something?"

Burt shrugged. "But she didn't say that."

“It just seems wrong.”

“Obviously, it’s not fair.”

Riya nodded slowly and continued to look at Burt. “Doesn’t that bother you? That an employer can do this and not even have to pay the medical bills? It seems like that should be one of the costs of doing business—like safety equipment for construction workers, you know?” She waited. “The employer will just keep doing this. Other screeners will have the same problems.”

“It bothers me as much as anyone else,” Burt sighed. “But it would also bother me if judges started making up claims for plaintiffs whenever they thought something unfair had happened. That would be unfair to the defendants. I think the real issue here is that she didn’t have a lawyer. Why? Because she couldn’t afford one. Maybe the solution is reforming the legal services industry, or finally tackling—” Burt stopped himself. He was regurgitating an argument that he had used once in a civil procedure class. It had gone over well at the time, but he suddenly found that he could no longer tell whether he actually believed what he was saying. He had found himself in a position in the conversation in which it seemed obligatory to offer some argument, and this argument happened to be lying within arm’s reach. For reasons he could not quite understand, his heart sank. “I’m sorry. Do you ever find yourself in the middle of saying something and realize that you have no desire to continue saying it? I often have that feeling lately.”

“Burt, has anyone ever told you that you have a super strange way of talking?”

In fact, many people had told Burt this, especially since his entry into the world of the law. Burt looked at Riya’s bookshelf and thought again of the screeners. He thought of being forced to look at the grisly flotsam of the Internet day in and day out. Anything that occupied a large enough space in human consciousness would probably find itself reflected somewhere in the vast ocean of the web. It was no surprise that scraps of monstrous things occasionally surfaced. But it would be a horrible job to have to look at them. “Anyway,” Burt said, searching for some appropriate way to end the conversation, “setting aside the question of justice, there was no legal argument that the case should go forward. Judge Overbee was right.”

Riya stared at Burt with a faint look of despair. “I guess so.”

When Burt finally reached his office, he closed the door and removed Riya’s sixty-eight page technical edit from the bottom drawer of his desk. Staring at the thick stack of papers with its industrial-width staple, Burt decided to check his e-mail instead.

For the last several days, Burt had been expecting the results of his application to a law firm in New York where one of his father’s college friends was a partner. Burt had flown out to interview at his own expense a few weeks earlier, and the firm had said that they would inform him of their decision once they finished interviewing all the law school students who were applying to be

summer associates. It was Burt's last chance. None of the other firms to which he had applied in the fall had even offered him an interview.

Thankfully, there were no new e-mails. Burt turned off the computer monitor, opened the technical edit, and began scanning Riya's critique with a queasy sense of anticipation. He feared that he had made some fundamental, mortifying error.

As Burt began reading Riya's comments, however, he found no indication of a grand error on his part. Instead, he found that she had provided hundreds of minute stylistic corrections. Each time Burt had included a comma after an opening clause in a sentence, for example, Riya had written:

"Please resolve punctuation error by removing comma."

Riya also seemed to harbor a kind of obsession with reducing the number of words in each sentence to a bare minimum, even when doing so would alter the sentence's meaning. "I believe this last sentence of the paragraph may be condensed somewhat," she wrote. "I suggest deleting 'provided further details of' in this line and inserting 'detailed' to condense this sentence. It would read: 'An August 2002 letter from Droske to Macomber detailed the arrangement.'"

But to "detail" an offer is not the same thing as to "provide *further* details" of it!

A good third of Riya's technical edit was dedicated to criticisms of Burt's application of the rules in "the Bluebook," the legal profession's citation manual. Burt found these criticisms the hardest to bear.

The Bluebook was a foolish exercise in consistency at the cost of sanity, Burt told himself. If the Bluebook were a judge, it would be the kind of judge who sent a man to be hanged for having written a death-row appeal in pencil rather than pen. It had lost all connection with the simple, practical task of providing effective rules for legal citation. It was the ever-expanding midrash of some obscure cult dedicated to the worship of arbitrariness and bad aesthetic decisions. It was intolerable that anyone had to abide by the rules contained in the Bluebook; it was even more intolerable that Burt had failed to abide by them correctly; and it was intolerable above all that Riya had noticed.

Simmering with rage, Burt tossed aside the technical edit and turned back on his computer. As the screen came to life, he saw that a new message had arrived in his Inbox. It was from the New York firm.

It began: "Dear Mr. Festoole: Thank you..."

Burt's heart sank. He clicked on the message.

Not again. How long could this go on?

Before Burt could recover himself, Riya opened his door. "Are you coming?"

"What?"

"The judge's show."

Burt took a deep breath and tried not to show his inner disarray. Never before in his life had he failed at so many things over such a sustained period of time.

“Sure,” he said. “Why not?”

Sitting in the back of Sheila’s station wagon, Burt felt the all too familiar, dull pain of defeat. The cumulative effect of yet another failure was almost unbearable.

They arrived at the country club with only a few minutes to spare, but the dining room remained nearly empty. Burt and the others took seats at a table near the small, elevated stage. After the uniformed wait staff had served them their house salads and chicken breasts with mushroom cream sauce, the lights in the dining room dimmed.

Dressed in a black tuxedo and red bow-tie, and with a waist-length cape over his gaunt shoulders, the judge shuffled onto the stage. He craned his neck toward the audience like a gloomy turtle. The judge nearly always looked morose, but his expression in these first moments, beneath his remaining wisps of white hair, was so disheartening that Burt almost wanted to walk onto the stage and lead the judge away, patting him on the back and whispering that it was going to be alright.

The judge cleared his throat, causing his lapel microphone to produce a brief burst of feedback. “Whoopsy-daisy. Okay. I’m going to start out with a few card tricks. Are there any young people in the audience today?” He peered into the darkness. “Any young people?” He continued peering.

Fearing that he and Riya might be the youngest members of the audience, Burt searched the nearby tables. To his great relief, there was a girl in her early teens who appeared to be eating lunch with her grandparents. Burt gestured enthusiastically toward her.

“You there,” the judge said. “The girl in the marmalade pajamas.”

Burt glanced at the girl. Her outfit was indeed orange. But she was not wearing pajamas.

“Okay,” the judge said as the girl’s grandparents coaxed her onto the stage. Burt clapped with relief, and the rest of the lunch guests joined in on a sporadic basis. “Okay,” the judge said. He took a deck of cards from his pocket and unsteadily shuffled them. “Now this is a deck of cards.”

The girl frowned.

“Now I’m gonna ask you to pick a card.” The judge slowly fanned the cards between his skeletal fingers and held them out. “Pick a card.” After the girl had picked one of the cards, the judge looked at her blankly. “Okay. You picked a card. Now I’m going to shuffle this deck. Or—no. Wait. Give me back the card.” The judge took the card and held it uncertainly. “Now I’m going to look at the card.” The judge glanced at the card. “And now I’m going to put it in my pocket.” The judge slid the card into his suit jacket pocket and began to reshuffle the deck.

“Now I’m going to ask you to pick a second card,” he murmured. “Good. Now look at the second card, and then give it to me and I’m going to look at it. Okay. And now I want you to hold it while I shuffle the deck.” The judge carefully shuffled the deck. “And then I shuffle the deck again.”

The girl glared at her grandparents.

“Now if you would be willing to cut the deck of these shuffled cards, young lady.” After the girl cut the deck, the judge stopped. “No, wait. Before you cut the deck—” The judge stopped and peered unsteadily into the audience. He cleared his throat.

“Young lady, I would like you to put your card back in the deck and pick another one.”

“I already picked two.”

“Mmmm...” The judge hummed ambiguously. “Mmmm...”

The girl cast a piercing expression toward her grandparents. “Whatever.”

After the girl had picked a third card, the judge again asked her to shuffle the deck. Then he cut it. Then he once again froze. “Oh, shoot,” he said. “Oh, shoot, shoot, shoot.”

Burt grimaced, struggling not to look away. He could hear murmuring from the guests at the other tables. One man noisily backed up his chair and began to leave.

The judge looked out toward the audience. His frown deepened. He turned back to the girl. “Would you like to see the card I put in my pocket?”

The girl stared at him. “What?”

“Would you like to see the card?”

“Why?”

When the judge did not answer, the girl shrugged. Then the judge slowly removed the card from his suit jacket pocket and handed it to her. “You can keep it too,” he said. He held out his hand toward the girl. “Ladies and gentleman, a round of applause for my assistant!”

As the judge moved to a disappearing trick involving a jar of pickled eggs, Burt’s mind began to wander. He asked himself why he cared so much about the rejection from the New York firm. Before beginning law school, Burt had thought of lawyers as the criminal litigators on television. He would have felt sorry for those who spent their lives at corporate firms, or contempt for them. He would never have imagined that he would one day want to become one. What had happened?

There was the money, of course. But there was something else too. The glamour of big law’s glamour, the prestige of its prestige. He wanted to be a corporate lawyer because others wanted it. His desire was an involuntary imitation of the desire of his peers. He knew it was an imitation, but he was powerless to resist it.

Burt felt that his soul had been warped since he entered the path of the law. He had somehow ended up consumed with a desire for things that on some higher, better level of himself, he did not care about at all.

On the ride back to the office, Sheila glanced at Burt in the rearview mirror. "Something got your goat?"

"Hm?"

"Something got your goat? You look like you're about to punch out a window."

Burt took a sharp breath, then sighed. "It's nothing." He looked out the window. Then he turned back to the rearview mirror. "I just found out I didn't get another job."

"Aw," Sheila said. "That's too bad."

"Where was it?" Riya asked.

"Another firm in New York. It was kind of my last shot. Maybe," he added. "Not really. Maybe."

In the afternoon, Judge Nuckolls did not return to chambers. Burt sat before his computer and thought of the glad-handers that the firm had probably decided to hire instead of him.

He knew that he was becoming bitter, and that this was an unappealing trait. But this only increased his bitterness. The freedom of Burt's more successful peers from such bitterness, and the fact that they would probably have looked down on his bitterness as somehow pathetic, was to his mind just one more sign of their unearned sense of self-worth. It was easy to be magnanimous when one had already won. Victory wrapped a plush protective cushion around the ego, shielding it from the petty jabs and pinpricks of fortune. An easy magnanimity was just one more luxury that followed from success.

At the end of the day, Sheila invited Burt out for a drink. After Riya declined, as usual, to join them, they headed to Louie's, a honky-tonk two blocks from the courthouse, squeezed between a payday lender and a pawn shop.

"You shouldn't feel too bad," Sheila told him. "All the clerks find something eventually."

"Yeah, I'm sure I will." Burt tried to catch the bartender's attention. "Still. It bothers me, you know? Everything's so much easier when the economy's good. The people who benefitted from it don't realize that. They don't realize that everything just fell into their laps. The rest of my life, people are going to look at my resume, and they're going to think—I'm a better lawyer than this guy. I got a better summer job than he did. I got an offer. I got a big federal clerkship." Burt scoffed. "It's bullshit. It all just fell in their laps, and they think they earned it. It bothers me."

Sheila chuckled and then began to cough. "Nobody said life was gonna be fair, honey."

"I'm not saying I haven't been lucky. I've had a ton of lucky breaks in my life. I didn't grow up in poverty. I went to good schools. My parents were good to me."

"You've got a lot to be thankful for."

"Sure."

"My parents," Sheila said, "my dad was a artillery repairman in the Army. Beat the shit out of my mom. Beat the shit out of us. He was—mean."

"Jesus."

"I remember—"

"It's just," Burt interrupted, "before I forget, it's just that lawyers have this unjustified sense of self-worth. Like they learned a lot just by going to law school or something. I think a high-school student at a one-month camp could learn everything of actual value that you get from three years of law school."

Sheila continued laughing while she waved at someone over Burt's shoulder.

"If it were up to me, by the way," Burt continued, his voice rising above the clamor of a country song, "I'd do away with law school. I'd certainly do away with state bar associations. You know, I took the New York bar last summer. But if I wanted to practice in Oklahoma, I'd have to take the bar exam here all over again, and pay another thousand dollars or two if I needed to study for it, then another five hundred or whatever in yearly dues for the rest of my life. State bar associations are like medieval guilds. They're monopolies. It's totally un-American. The lawyers in every state set up these barriers to entry so that they don't have to compete with all the other unemployed lawyers in all the other states. It's all about screwing consumers and helping themselves. But instead of being ashamed, like they should be, the people running these rackets think they're doing a great public service! It's disgraceful. They're no better than some thug with a gun collecting tolls on a highway in Zimbabwe—"

"Right," Sheila yawned. "I mean, sure."

Burt gestured for the bartender. "I lost the thread. What was I talking about?"

Sheila's gaze snapped back. "What?"

"Oh, I remember! The fucking New York Bar Association. They made me fly out to Albany just to get sworn in! They make every new lawyer in the state fly into Albany to have a ten-minute conversation with a lawyer, with one of their cronies, about how important it is that I keep paying my four hundred dollar bar fees every year to them and how I need to keep going to Continuing Legal Education for a few hours every year. What the fuck? I paid like eight hundred dollars on that trip to Albany. How is that anything but a scam? Why is it necessary for all these thousands of new lawyers every year to spend millions of dollars going to Albany, rather than letting them get sworn in by any judge wherever they are?" Burt glanced over his shoulder to see what Sheila was looking at, but there was only a window with a sunset behind

it. "I can't wait until someone destroys the whole system, just tears the whole fucking thing down."

Sheila continued gazing out the window behind Burt.

"Listen to me." Burt looked down at the bar. "Who cares?" He shook his head. "I don't know what happened to me. I used to be better than this."

Sheila yawned and glanced at her watch. "Time for me to hit the hay."

"I think I'm going to have a nightcap," Burt mumbled.

He arrived at the office late the next morning, his head throbbing. Riya called out to him as he passed by her door.

"Burt! I found it!"

"What?" Burt croaked.

"The employer in your case—they conceded that the employee made a claim! It's in the employer's first answer. They—"

"Huh?"

"The employer's answer to the employee's first complaint says, paragraph seventeen, that the employee's claim for negligence—"

Burt leaned his shoulder against Riya's doorframe and held up a hand, squinting. It slowly dawned on him that Riya was talking about the case with the Internet screener. "No, no, no," Burt said. "You don't survive a motion to dismiss just because the other party says you made a claim. You have to make a claim."

"Not true," Riya said, waving a finger in the air. "I found a bunch of precedents—"

"Whatever. Even if she made out a claim, it doesn't matter. I didn't even go into this in the memo, but if she makes out a claim, the claim ends up being precluded by worker's comp. She's trying to recover in tort for an injury in the course of her employment. So she's screwed anyway. What's the point?"

"You need to include that in the memo."

Burt's back straightened. "Excuse me?"

"If there's an issue about whether she made out a claim, you need to say that. And if there's another issue about whether her claim is barred by worker's compensation, then you need a section for that too. Judge Nuckolls wants us to lay out every potential issue. He made that clear at the orientation."

Burt glared at Riya. "Let's not get into this, okay?"

"Look, Burt, I know you're frustrated about not getting the job—"

"This has nothing to do with that."

"I'm just saying that Sheila told me what you were talking about last night—"

"What?"

"It's okay." Riya smiled gently. "Everyone's having trouble finding jobs these days. Have you thought about interviewing in Oklahoma City? I know there's

a firm there with a really interesting natural gas practice. They're looking for a new associate."

"I do not intend to start my career in Oklahoma."

Riya stared at him. "Then why are you here?"

"Why am I here?" Burt scoffed. "Come on. Why are you here?"

"I want to do family law in Oklahoma. This clerkship is perfect for me. I want to spend my life working for justice for the families here."

"Justice," Burt smiled. "Right. Good luck with that."

When Burt reached his office, he noticed that the red light on his phone was blinking. It could only mean one thing. The judge was the only person in the office who ever used the phones. Burt glanced at his watch and saw that it was already nearly ten thirty. Burt scrambled to the judge's office and knocked on the door.

"You wanted to speak with me?" he asked.

The judge continued reading something on his desk for several long moments, then slowly raised his head. "Yes. Please close the door."

Burt sat in one of the leather chairs in front of the judge's desk and waited again for him to finish reading. It was rare for Burt to enter the judge's office. He was struck once again by the density of magic-themed knick-knacks. A signed headshot of the judge from the old TV show *Night Court* hung behind the desk.

The judge sighed loudly and lifted his eyes to Burt. "I'm very disappointed," he said.

Burt waited.

"I've been spending some time with this technical edit," the judge said. He removed his reading glasses and tapped their edge on the desk. "The critique of your first draft opinion. Frankly, I'm very disappointed. I don't know what else to say. Sixty-eight pages!" The judge leaned back in his leather chair and rubbed his eyes. "Sixty-eight pages of errors in a seven-page opinion."

"Well, they're not all—"

"It's unprecedented. Frankly..." The judge sighed. "We need to have the highest standards, because we set the standards for the rest of the profession. There are no mulligans here."

"If I could say something—"

"Please," the judge said, holding up a hand. He waited, as though Burt might dare to speak. "When an opinion goes out from this chambers to the rest of the court, it has my name on it. In an ideal world, I'd review every document before it heads out the door. And there was a time when I tried to do that. But at this stage in my career, for a variety of reasons, that's no longer feasible. So I rely on my clerks. That's why I said during the orientation that I need you to produce work that *you* would want to own." The judge stared at Burt. "Now, there will be errors. No one's perfect. That's why we have the

technical edits and all the other procedures. But..." The judge lifted up the thick document. "Sixty-eight pages?"

"I'd just like to say—"

"Look. Sometimes students graduate from law school, especially the big-name schools out of state, without the nitty-gritty know-how for a job like this. It's not their fault. It's not about your potential as a lawyer. You have the potential to be a fine lawyer." The judge rubbed his face, then folded his hands and looked squarely at Burt. "But it would be unfair, frankly, to the applicant pool out there right now, if we kept you in this position."

Burt felt the blood draining out of his head.

"Are you firing me?"

"Yes." The judge regarded him without emotion. "I spoke with some of the other judges. I regret to say they are in agreement with me."

The remainder of the judge's words barely penetrated Burt's consciousness. There was something about changing horses in midstream. "Now, I don't want to leave you in the cold out there," the judge said. "You can take a week or two to wrap up your cases. I've got a very close friend in Tulsa that I'm sure could get you an interview, if everything goes well..." At the end of the conversation, the judge stood and held out his hand. Burt shook it.

Then Burt was standing on the sidewalk outside the courthouse, looking up at the overcast sky. Every day, the world seemed to grow more gray. It was as though someone had turned down a knob controlling the color in the world.

Maybe he should become a comedian, Burt thought. Maybe he should become a comedian just like the judge was a magician. Burt already had an idea for a joke.

What do you call it when you spend three years and a hundred thousand dollars to get a degree that only makes your life worse?

What is it called when you gain nothing but lose your soul?

He was still waiting for the punch line.

Jason Perry, a writer living in Tennessee, recently completed his first novel. *If* (Livingston Press, forthcoming), written under the pseudonym Nicholas Bourbaki, takes the form of a Choose Your Own Adventure novel in which the plot and style of the story change as a result of the reader's disastrous choices.