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In one of the seminal works of philosophy, THUS SPOKE ZARATHUSTRA, Friedrich Nietzsche writes:

By many ways, in many ways, I reached my truth: it was not on one ladder that I climbed to the height where my eye roams over my distance. And it was only reluctantly that I ever inquired about the way: that always offended my taste. I preferred to question and to try out the ways themselves.1

I think perhaps most aptly this brief quote sums up so much of the best of philosophy, particularly of those philosophers with whom our own cultural moment resonates – Nietzsche, Sartre, Kierkegaard, Heidegger, Rousseau, and, as well, I think it captures with a degree of thoughtful lucidity, the quality of Patrick Gudridge’s analysis in Paper Tectonics.2 If I have read Gudridge correctly, that analysis centers upon a constantly evolving, shifting, and complex working between the laws and order we have instituted, both as a society and as individuals, in an effort to understand the relationships into which we enter and participate. These mechanisms include statutory interpretation, codification of legal principles, the rules and regulations that govern the interpretation of contracts, and, indeed, our social and legal lives. As Gudridge eloquently writes, in commenting upon the eponymous BARTLEBY, THE SCRIVENER, and which will later coalesce with an examination of the novelist Thomas Bernhard’s CORRECTION:

What ought we to conclude?

* This article is dedicated to Patti Alleva, Gregory Gordon, and William P. Johnson – all individuals who live a wisdom beyond technique.

I owe a special debt of gratitude to Michael McGinniss who with his usual careful and insightful eye read through this article and provided generous commentary. Larry Woiwode is owed a debt of gratitude for first introducing me to the idea of a lawyer as the restorer of narrative – when some years back I was just setting out on my present path. As always, Peter Hays continues to be a trusted reader of all things I write, wherever they end up. Matt Barber, Articles Editor of the JOURNAL OF LAW AND INTERDISCIPLINARY STUDIES provided thoughtful suggestions, for which I am appreciative. And finally, Mark Rabinovitch who has provided trusted friendship and insight, and who knows the value of the written word and its work as life.

1 FRIEDRICH NIETZSCHE, THUS SPOKE ZARATHUSTRA, IN THE PORTABLE NIETZSCHE 307 (Walter Kaufmann ed. & trans., 1982).
(a) It is more important to be a subject of – to figure in – legal documents than to be a maker of such documents. This is what the narrator finally realizes. He gives up asserting his law office authority – his own status within the office – and becomes instead his own client. Law is applied reflexively to regulate the process of its own production. People become paper. . . .

But what causes that production, regulation, and consumption of legal documents? And what instinctively drives our social order to a documentary existence? I think that Gudridge amply illuminates these issues in his marvelous study Paper Tectonics, and it is something that I wish to return to at the conclusion of my reply to his article. But chiefly I wish to focus on legal documents, their creators, their life as a documentary creation, and the interpretive methodologies that we use to understand them. In this way I hope to take a slightly Nietzschean approach in climbing my own ladder to get to what I hope is some essence of truth about the larger issues that Gudridge is addressing.

I. LAW IS PAPER AND PEOPLE ARE PAPER

In discussing BARTLEBY, Gudridge seizes upon a remarkable insight: that in attempting to navigate an absurd situation – the lawyer trying to evict Bartleby (and who in the end is himself evicted), the making of legal documents, and their contents – the expression “people become paper” is apropos. So much of our daily life is consumed by paper, and the identities we fashion exist in those coded instruments of text. That electronic readers, or other devices for reformulating the text into a different medium seem to be the cause célèbre of the day, does not alter this analysis in my view. The lives we live and exist are ones documented by paper, and so it is right that so much of Gudridge’s analysis focuses on paper as a critical element of legal existence. The law, of course, is paper. Lots of paper. From endless tomes filled with arcane legal codes, laws, and principles to histories of legal decisions, with vast legal knowledge stretching back to the dawn of our legal civilization – the law is one codified in a paper life.

But what happens to our existence when it is reduced to paper? I offer the following divergence: individuals lose themselves in a legal-paper world, whereas they are restored in a literary one. What the lawyer, toiling away with mountains of documents loses in the process – the individual, the client, the context for the legal problem – the novelist restores and resurrects, as the prime focus for what life is about – namely life. And so I think, in some ways, the law lives on the haunted fringes of always being at risk of losing itself, and so must constantly find ways to order the information, the knowledge, and the ideas in a way that seeks to preserve the subject matter of what it is addressing – without annihilating the entire history in the process. In his rather exhaustive analysis of legal perspectives, which are attempts to codify the methodologies with which we seek to understand law and the life of a work of litigation, I think that Gudridge has it right. He suggests, “[w]e might imagine, therefore, a legal seismics. Instead of understanding legal theory as a search for order taking the form of settled

\[Id. \text{ at 26 (emphasis added).}\]
understandings, doctrine, neutral principle, integrity, base-and-superstructure, etc. – it may make more sense to try to gauge instability.\textsuperscript{4}

Instability is the root of the law. For all of the order, logic, and framing of the mess of human emotions and issues that it attempts to make clear, it conceals the documentary mass upon which it is built – and what, if anything, does all of that paper mean? It means that the lawyer must bring order to this paper and present it meaningfully to the social order – the court, a jury, and fellow lawyers. Creating this work of litigation or transaction requires the lawyer to engage the task of sorting through this paper, to blend the dimensions of human flesh with legal flesh – and all at the risk of losing the literary origins that give paper its life.\textsuperscript{5} Something of this ordering is, I think, what drives the literary executor in \textit{Correction} to recognize that his task is one of ordering, but not of editing. Gudridge cites to the novel:

So what we have here are in fact hundreds, or thousands, of fragments which Roithamer left to me, but which I shall not edit, because I have no right to edit them, anyway no one has a right, no matter who is editing what, he never has a right to do it . . . I shall not commit this editorial crime . . . I shall put Roithamer’s papers in \textit{order}, \textit{sift} them, then possibly pass them on to his publisher . . . \textsuperscript{6}

Gudridge illuminates this reaction on the part of the literary executor, noting that “[t]his passage is strikingly jurisprudential. ‘[R]ight relation’ becomes ‘right to edit,’ or rather ‘no right’ – ‘this editorial crime.’”\textsuperscript{7}

Therein lies the danger. That the flesh and blood that is the human becomes subsumed within the “documentary substrate” – to borrow Gudridge’s term – and risks becoming lost forever. An existential crisis, and a legal one. I sense an objection to this last phrase – how can editing be a crime? Especially a legally oriented one? Judges expect properly framed briefs that succinctly describe the factual matter of the case, and that have nicely laid foundations for attaching those facts to principles of law; fellow lawyers admire well-written, finely honed pieces of writing, especially those that appear in publications and law journals; law students crave the well-written opinion that elegantly lays down the legal principles and analysis, so that the universe of abstraction and application come together in a single moment of unitary beauty – why is editing a crime? Because the risk of editing comes with the risk of deciding the wrong case, for the wrong client, and that is a disservice to anyone interested in the field of law, and has drastic implications for our social order.

\section*{II. The Litigation and Its Narrator}

\textsuperscript{4} \textit{Id.} at 40 (\textit{Citing} \textit{Thomas Bernhard, Correction} 127-30 (Sophie Wilkins trans., Univ. of Chicago Press 1990) (1979)).

\textsuperscript{5} \textit{Compare} Gudridge, at 32 (“As a result, ‘sorting’ and ‘sifting’ à la Bernhard’s narrator in \textit{Correction} is now not a matter of documents but of ideas”).

\textsuperscript{6} \textit{Id.} at 29.

\textsuperscript{7} \textit{Id.}
In his magnum opus *Either/Or*, the Danish philosopher Søren Kierkegaard articulates several dominant ways in which to live one’s life. The life of the Aesthete, characterized by easy pleasure, seduction, and an understanding of others as tools for the advancement of one’s own ego; the life of the ethical individual, who understands the tools of social order, morality, values, and ethics to be a way to mediate with others and through others so as to find one’s own identity by way of otherness; and which, if one follows the ethical successfully, merges into something of the infinite, a religious understanding of one’s own being. But Kierkegaard only addresses this final stage, in my view, in a conclusory fashion at the close of *Either/Or*, and that viewpoint of his philosophy is better found in his other works. Without, however, drifting too much into this marvelous philosophical work, its opening and framing of itself is fascinating, and has implications for understanding editing, and our documentary lives.

At the opening of the work we find that a certain individual has made a purchase of an escritoire, and which when he gets it home and finally opens it, is revealed to contain bundles of papers. Kierkegaard’s fictional editor, Victor Eremita, of these works writes, “Here to my great amazement, I found a mass of papers, the papers that constitute the contents of the present publication.” Thus, the purchaser of this desk discovers that he is also the possessor of a documentary substrate of his own – the work of these two individuals, the papers of “A” and “B.” The papers of A belong to an Aesthete, a seducer, and the papers of B belong to a Judge Wilhelm, and as Eremita notes:

> Then I tried to organize the papers in the best manner. With B’s papers it was rather easy to do. One letter presupposes the other . . . .
> Organizing A’s papers was not so easy. Therefore I have let chance fix the order—that is, I have let them remain in the order in which I found them, without being able to decide whether this order has chronological value or ideal significance.

In some ways how predictable is it that the life of the Judge, and his literary productions should be so logically, and chronologically ordered – whereas those of the poet could be ordered in an almost unlimited fashion. But that ordering, that structure, and what it represents is key for grasping who these individuals are, and the value of their literary life and the significance it has for us in the present moment. And I think that is why the literary executor (like Kierkegaard’s Eremita) of Roithamer’s papers in *Correction* struggles with an impossible task – editing for publication, and instead resigns himself to ordering the life that he is left to sort and understand, and ultimately to give posterity to.

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8 Søren Kierkegaard, *Either/Or: A Fragment of Life* (Howard V. Hong & Edna H. Hong ed. & trans., 1987) (1843). I note as well that the full title of *Either/Or* includes the appendage “A Fragment of Life.” Many people pass over this aspect of the work’s title, but I think it also helps to understand that documentary aspect of what makes a life whole, and the ways in which we attempt to capture them, and give them meaning. As well, I think a fruitful analysis of the role of the literary executor of Roithamer’s papers, from Correction, and Kierkegaard’s work, could be done on this exact line of inquiry.

9 *Id.* at 7.
But what does this suggest about editing? And especially legal editing? I suggested earlier that such editing is fraught with the possibilities for seriously damaging the integrity of the entire legal system – and worse, with failing clients, lawyers, and everyone in a seriously existential way. This is because the law with its paper existence, and the stories which it grapples with – whether it be a prisoner seeking habeas review, a civil litigation seeking relief from, or enforcement of, an unconscionable contract, or a marital dispute over who bought what, said what, divided what, and is owed what – can become lost in the milieu of the documentary substrate. We have principles of law which calmly, coolly, and collectedly approach these problems; they look back to the clear commands of British jurist Edward Coke, the crisp pronouncements of appellate review, the learned treatises of scholars and professors – but they do so with the instability of a constant shift of paper, and risk their existence on the identity of who was ordering, and in the most significant capacity, editing those papers. Gudridge notes:

Individuals bringing suit or drafting or otherwise acting legally have the opportunity to call into question, to repoliticize, usual patterns. It is clear, for example, that the formalization of litigation has as one of its effects precisely a highlighting, arguably an exaggeration, of triggering circumstances. But more generally, legal instruments may be understood as reopening the question of structure not only to resolve the particular case, but also to assert (or reassert) the relevance of triggering, now reconstitutive concerns.10

If an editor fails in his task, which is to make as clear as possible the intentions and life of the author, then the entire system fails. This is why the work of the editor in EITHER/OR and that of the literary executor in CORRECTION is so challenging, and yet so fundamentally important to the entire system upon which our social order exists – the paper existence which becomes the life of the client, the author, the legal problem, must be edited so as to preserve the core of what it is about. Because if litigations are brought needlessly on false grounds, on improper grounds, on grounds not specifically edited to preserve their very essence – then why have trials at all? Why not simply grind out mechanical responses to any vague category of legal claim, and send petitioners packing back to where it is they came from. But it is easy to lose sight of this possibility when one is toiling beneath stacks of paper – claims, counter-claims, questions of law, questions of facts, letters, invoices, receipts, a poem attached with tape to the back of an envelope a divorcee once wrote to the now divorced other. And yet it is the editor’s task, the lawyer’s task, to enter into this morass of fictions and life and to make coherent sense of it all, to order it and situate it and present it in a way that makes it more real than it originally began. As Gudridge says it in Paper Tectonics, “Sometimes documents are simply records of deals or bargains and complexity is a kind of optical illusion, lying in the transactional juxtaposition of so many desired outcomes sought by so many parties. There is no ‘there there’ independent of the list, no consistency or inconsistency or unity or conflict.”11 I think Gudridge understands the danger of being seduced into an illusion of directive, and of direction, and thus suggests at the close of his analysis that:

10 Gudridge, supra note 2, at 37-38.
11 Id. at 41.
Documents may be at times conceived of as records of engagement. They present themselves – or may be read – as efforts to come to grips with matters not reducible to distributive lists. . . . These documents are not algorithms – steps to resolution. They are instead something like maps of possible emphases: highlightings, sometimes competing and sometimes consistent – without, however, definitive relief . . . .

It is into this system of tension that the litigator enters, as he roots through massive amounts of documents, which are in fact the “records of engagement” of individual lives, mixed, matched, mismatched, and thrown back into the fray of human existence as those individuals attempt to find some relief for their legal problems. This is why a true litigator, one who attempts to find the threads of narration that hold the life of the litigation together, that brings in all of the human elements of need and worry and identity, and merges it into the substance of law, must, in fact, be a novelist, a writer. He must be able to take the morass of engaged documents, self-contradictory as they are, journey in every direction except forward, and find the themes which dominate and contaminate the individual existence, so as to restore the narrative that would otherwise be subsumed beneath the instability of the legal documentary substrate.

III. THE WAY HOME: THE SHIFTING SELF AND OUR LITERARY LIVES

These shifting attributes of law, social order, and the litigator’s need to order and sort them into a readable narrative that can be presented and argued are hardly limited to the world of law. As Tom Stoppard writes in the excellent play THE INVENTION OF LOVE, a work that seeks to understand the sexually repressed figure, poet, and major classical scholar, A.E. Housman:

Textual criticism is a science whose subject is literature, as botany is the science of flowers and zoology of animals and geology of rocks. Flowers, animals and rocks being the work of nature, their sciences are exact sciences, and must answer to the authority of what can be seen and measured. Literature, however, being the work of the human mind with all its frailty and aberration, and of the human fingers which make mistakes, the science of textual criticism must aim for degrees of likelihood, and the only authority it might answer to is an author who has been dead for hundreds or thousands of years. But it is a science none the less, not a sacred mystery. Reason and common sense, a congenial intimacy with the author, a comprehensive familiarity with the language, a knowledge of ancient script for those fallible fingers, concentration, integrity, mother wit and repression of self-will – these are a good start for the textual critic.  

\[12\] *Id.* at 42.
Much like Housman who diligently sought to separate the poet from the man, the classicist from the frailty of sex and desire, the author must find a science to the art, so as to fully and truthfully represent the subject matter of the creation. So too for the lawyer who must learn to exorcise the self-will so common to a good editor, and to instead find the path laid down by the original author – be it legal principle from a hundred, or thousand years ago.

There is also some necessity to having an outside editor to correct errors, to give a kind of authoritative overview to what might otherwise be tainted as one’s own (possibly incorrect) narration of the events. Michael Beard reminds us of this in Hedayat’s Blind Owl as a Western Novel, asking “... what does make a narrative seem real to us? What are the elements that elicit our trust in the fiction? A first-person narrator is always a potential complication; an insane narrator carries the complication toward a kind of limit, ecriture.” Our legal system responds by preferring hierarchies of narration – the authority of lawyers, past case law, statutes, treatises, the interpretive methodologies that have been fashioned over the centuries to narrow and frame the fictions into ones believable by the neutral arbiter or decision-maker. And yet, in our system with fairness and justice at its core, even self-narrations or insane narrations make it to the chambers of judges for adjudication. But the point is there – litigators are narrators and editors, and as such, they are preserving the system by refining the story, the central elements, the legal documents that they must condense, index, refine, and prepare – but without being lost in the documentary substrate themselves, or worse, to substitute a fiction for the real-fiction, that of the world and literary life of the client.

This presupposes, I think, that fiction must in some way be more real than the life we consider to be “real.” And I think that assumption is right. Literature, and the novelists who compose it, must always aspire to reach a heightening of truth by understanding the subject matter of what they write with a deepened wisdom that is both temporal and infinite in its nature. Similarly, the lawyer, in thinking about and in dealing with the client and in the documents that form the litigation – what the subject matter is about – must strive to represent all of that with the clarity of vision, depth, and wisdom that a novelist possesses, in order to do so truthfully, accurately, and meaningfully. Because, at the end of the day our legal system, indeed our entire social order is predicated on just that – meaning.

In one of the best and most tragically beautiful works of fiction, The Sun Also Rises, Ernest Hemingway writes of a group of aesthetic young people enduring the aftermath of what was then the world’s most destructive war, the First World War. One of these individuals is Jake Barnes, a figure wounded physically (he cannot have meaningful sexual intercourse), and psychologically wounded, such to the point that he, and in many ways each of the other characters, is unable to act with any understanding as to the nature and purpose of their lives. Beyond the lyrical art that Hemingway succeeds in so richly producing however, is the subthought, which is present in any serious reader or critic of literature – how does truth become so formed, as Hemingway I think forms it in this work, so as to become more real than reality itself? And in doing so offer

14 Michael Beard, Hedayat’s Blind Owl as a Western Novel 93 (1990).
meaning, hope, and wisdom to each and every one of us? As Peter Hays notes in *The Limping Hero*:

Thus Jake’s personal limitations, as well as the sterility of his world, are symbolized by his emasculation. And to the extent that each of us is unable to achieve our desires, we all are to some extent impotent, limited, and restricted. But Jake, like most of us, adjusts, survives, and finds pleasure and enjoyment where he can; equally important, he learns rules, a code of conduct, by which – even if he cannot always follow them – he must try to live.\(^{15}\)

Hemingway as author enters into the “records of engagement,” the confrontation that is the life we live, and in doing so forms and frames the litigation, the narrative, in such a way that we understand the lives involved, the injuries suffered, and the social order which interprets and understands these fundamental elements of existence so as to find understanding, meaning, and, one hopes, redemption. This is the task of the author. And it is the task of the lawyer. The lawyer, as litigator, in framing the narrative must find understanding and meaning for the client, for the subject matter of the story – and to do so they must be the editor who understands the task as one of ordering and editing with an attention so careful and detailed, that the underlying existential client, the narrative “I” remains intact.

In this respect then, lawyers must, as Anthony Kronman says, have “a wisdom that lies beyond technique – a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess.”\(^{16}\) Despite being fundamental, proper citation or relevant case law or statutory materials will never achieve the wisdom that lawyers as authors must have in order to truly and justly craft the narrative that is the litigation – there must be something more, an understanding that to reach the truth an innumerable variety of patterns exists, and that the bold litigator must have the wisdom to understand what will carry the narrative forward, into the day.

Without drifting too far from Gudridge’s poetic engagement with these topics, the point remains – the documentary substrate, the vision of people as paper, who in fact *become* paper, are all palpably present, and without meaningful methods to understand and frame them, we risk losing ourselves and the whole purpose of our endeavors in the process. But mere recourse to these outside tools of understanding is insufficient, as Gudridge suggests, and I think rightly so. Because the tools with which to find ourselves, and the litigations we craft lie within the boundaries and fringes of perspective. And as Nietzsche presents it, there is never any one method up the ladder in order to find and discover what is necessary to be, and to act. Indeed, as the poet and novelist Larry Woiwode describes it in *Acts*, in discussing a tower he is building with his son on the vast North Dakota landscape:


. . . I sense the exigencies of the community in Acts spread against a background as black as that last early-morning sky, before the idea of seeing my neighbor’s buttes reassume their contours drove me past the bunk where my son lay asleep and on into the tower he and I had built, where I climbed a shaky stepladder into a suffusion of orange light, and then climbed another ladder to the ceiling at the tower’s peak to stare down and see the sun’s first edge emerge in a blinding scorch.\textsuperscript{17}

In one symmetry of verse, Woiwode succeeds in isolating those themes that Gudridge’s article must necessarily respond to – those of community, purpose, vision, endeavor, and meaning. Because at the close of every litigation there must be understanding and closure, and if the litigator has truly and with wisdom and courage understood his calling as editor and author, then the conclusion will always restore and resurrect the individual from a paper existence, and give order, meaning, and life to the paper of the law.

\textsuperscript{17} LARRY WOIWODE, ACTS 60 (1993).