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FRANK IACOBUCCI

A Tribute to My Friend, Professor Robert A. Burt

“Please call me Bo.” With those words, spoken some twenty years ago, I was invited into what turned out to be the beginning of a beautiful friendship, with no apologies to Humphrey Bogart and Claude Rains in *Casablanca*.

Our friendship, between an Italo-Canadian originally from British Columbia and an American Jew from Maryland, grew into one of special significance for each of us, both professionally and personally. For our meeting each other, I thank the Yale Global Constitutionalism Seminar and Deans Kronman, Koh, and Post, as well as Professors Paul Gewirtz, Owen Fiss, Bruce Ackerman, Jed Rubenfeld, Judith Resnik, and all others who have inspired, organized, and led what has become the English-speaking world’s leading gathering on constitutional issues.

Despite different national, ethnic, religious, geographic, and educational backgrounds, I was amazed at how much Bo and I had in common, obviously through the connection of the law, but I believe more importantly through our similar values—and maybe similar imperfections in our makeup, which drew us closer for collective self-defense! Of course, Bo and I were greatly fortunate to have our spouses Linda and Nancy a part of our circle, as they made up for some of those imperfections and significantly increased the average intelligence of our group.

Bo Burt was so extraordinary that, in these few minutes, I cannot adequately give an accurate portrait of him, or even summarize all that I feel and admire about him. As a result, what I have are some reflections that I have chosen from a treasure chest of rich memories that I shall cherish forever. If I repeat in some ways what others have said, I apologize. (As you may know, Canadians are well known for two things: hockey and apologies. So that is my required apology.) The truth is, it was difficult to prepare these remarks, and I find it even more difficult to deliver them.

AUTHOR. Senior Counsel, Torys LLP; Retired Justice, Supreme Court of Canada.

Throughout the years of the Constitutionalism Seminar, Bo and I had many contacts on various issues, many of which were coming before me as a judge but were also central to Bo's many interests. Our contact and relationship increased considerably when he suggested that we co-teach an intensive course on topics in U.S. and Canadian constitutional law. I jumped at the opportunity, but as I was retired from the bench and had not taught regularly for some years, I was somewhat apprehensive.

Now we all know there are sayings about situations in which you get to know someone better, such as travelling or living with him or her. (Learning what the person does with the toothpaste cap comes to mind.) I would add co-teaching to the list of experiences that provide a closer understanding of someone. I certainly got to know how good Bo really was through co-teaching. Lucid, learned, and committed to teaching and his students, he spun his magic not just on our students but also on me. I believe the seminar was successful—that is not an arrogant self-assessment because the credit for its success goes to Bo. Of course, he said that the success was due to the remarkable students at the Yale Law School. And there is no doubt about the quality of the superb students Yale attracts and for which Yale is rightly famous and envied. From my experience, it is easy to see that there is not a great intellectual gap between those who are in front of the Yale classroom and those in the student audience—arguably the narrowest gap of any law school in the world.

To mention a small example of the outstanding talent of the students, a few years ago Bo taught a first-year small group in constitutional law, having not taught the basic course for a number of years. Again he asked me to participate. It was amazing, if not unheard of, that Bo inserted our comparative course materials into the first year after the students had only five or six weeks of studying law. However, the students handled the challenge with ease.

All this is to say that the teaching collaboration with Bo made for one of the most exciting and enjoyable experiences I have had in more than fifty-five years in the law. For that I owe Bo a psychic debt that is priceless and irrepayable.

In order to describe Bo as teacher or scholar accurately I believe we must begin with the human being. He was blessed with a most impressive intellect; an insatiable appetite for knowledge and understanding; a gift for communicating and writing; a moral and principled compass that, if patentable, would be a best seller; a fascination with the human condition; and a passion for justice. Of course I leave out much when one thinks, for example, of his work ethic that is reminiscent of those who are brought up as though the Great Depression was still going on, or his balance of confidence in his ability, which was tempered by humility and modesty for his many accomplishments and contributions to many causes and social initiatives that others have spoken about.

I wish to refer to the manuscript Bo was working on just prior to his passing. The title he chose was *Our Constitutional Ideal*; his first draft, which he sent to me in late July, had *With Liberty and Justice for All* as its title. Bo admitted he had taken on a huge challenge because of his concern over the variety of perspectives he discussed, including American social history, psychoanalytic premises of legal regulation, idiosyncratic readings of legal texts, classical philosophy, and so on, sprinkled with personal life experiences that I encouraged because they were chosen to illuminate his analysis and normative proposals. He was very sensitive with respect to the inclusion of his personal accounts because Bo never wanted his work to be about him but rather about his mission for the betterment of society through law and justice.

In typical candour, when Bo sent me his draft he wrote: "I'd love to hear your response to all this, but if you choose to read it, you must be full frank, that is highly critical if that's where you are led. See you soon."

Unfortunately, we never saw each other again. But fortunately, after I read the manuscript, we had a long, exciting, and stimulating conversation about his draft, which I shall never forget. The conversation was his last gift to me since he died some ten days later.

Like so much of his scholarship, the manuscript demonstrates Bo's eclectic interests and understanding of subjects beyond the narrow confines of laws as rules. And here we come to Bo's legal transformation and persona, which he writes about in the first chapter of his manuscript. Bo studied law initially at Oxford, and states two years later he couldn't understand why he did so, saying and I quote:

The subject seemed artificial to me, finger exercises in which real people were converted into lifeless puppets who were rational and 'reasonable' or were required to act and think reasonably by exerting will power, though everyone I knew (especially including myself) was struggling with confusion, irrationality, unreasonableness.

Those sentiments changed, Bo continues, when he enrolled at the Yale Law School in September 1962, and found a different conception of law from perhaps a surprising source: the course in family law. Bo discusses the aims of the course and praises its eminent instructors Joseph Goldstein and Jay Katz, and in a most elegant passage describes not only the beginning of a different approach to understanding and studying law but also the goal of his manuscript:

I found a beginning path toward a richer, more deeply rooted and humane reading of law in those [family law] materials—a path I have followed for more than 50 years in my career as a lawyer and law teacher. My goal in this book is to describe this path—to set out the

social, psychological and morally principled premises which I have come to understand as the predicates for a conception of law that aims toward the cultivation of empathy between people in social conflict with one another.

Bo's study at Yale also triggered a profound passion for the Yale Law School which grew over the years. Bo was initially inspired by Goldstein, a lawyer, political scientist, and lay psychoanalyst, and Katz, a psychiatrist and psychoanalyst. They kept asking Bo and his fellow students the same question many times about a claim for financial support by a wife in the context of the state marriage law; that question was: What's going on here?

That question was one that Bo asked in his teaching and research in so many fields of human interaction. That question took Bo on his amazing journey into psychiatry, psychology, neuroscience, medical science, health law, philosophy, history, religion, and ethics. And he was not a superficial sojourner—he studied and invested heavily in what, for him, were cognate disciplines to the law to get a better understanding of “what's going on” and the impact on the individual and society.

Bo's book manuscript in short is a triumphant valedictory of his extraordinary efforts through his scholarship and teaching to gain a richer, fuller understanding of the law and the role of legal actors in our society.

Bo left us far too soon. He was snatched from us, and we mourn our loss. But like you, I celebrate his friendship. I find solace and grace in my huge bundle of memories, and I thank him profoundly for his inspiration to me and countless others. And most importantly, as John Donne reminds us: unlike everything else, only love has no decay, so my love for Bo lives on.

And when I think of his professional career and his example and legacy that also will go on, a story comes to mind. I heard this story decades ago, when Nancy and I were living in New York and attending Plymouth Church of the Pilgrims in Brooklyn Heights, this being the Church of Henry Ward Beecher, the great abolitionist of the nineteenth century. I mention that because Bo would have appreciated the provenance of my hearing this story. In his sermon, our then-Minister told us about three workers and a passerby. The passerby asked one worker what he was doing, and he replied he was making five dollars a day. The passerby asked a second worker the same question, and he answered, “I'm cutting stone.” Finally, the passerby asked the third worker, who responded: “I'm building a cathedral.” Bo Burt was building a magnificent cathedral, which was a quest for justice for all through a constant search for an increased understanding of the human and other issues involved and of the consequences for individuals and society. What a noble mission, what a noble life, what a noble man.