

THE YALE LAW JOURNAL

ANDREW DAVID BURT

Insider, Outsider, Robert A. Burt

My aim here today is to give you a sense of Professor Robert A. Burt—of what he was like as a friend and as a mentor. I'd like to do justice to his role in my life, and in the lives of many others. For Bo, as his friends called him, was my uncle—my father's brother—but he was also so much more than that. He was someone who listened to my ideas, my worries, and my often unpredictable career plans (as with any good Yale Law student), always with deep concern. Always with patience. Always with the same sense of humanity for which Bo was so well known.

How to speak about a relationship, an experience, that can't adequately be placed into words? How to convey to you the sense I had, sitting in the worn, comfortable couch in his office just minutes after my first time being cold-called in Contracts class? How I—shaky and uncertain of my place in the law school—was instantly comforted by his perspective, by his advice?

The truth is that I can't. Ever since Bo died on August 3, swimming in his favorite pond, I have felt the pervading sense that language is inadequate to express my grief as I mourn Bo's passing here today. The Bo that I knew is gone. Words simply cannot do justice to the memories and the legacy he left behind.

And so what I'd like to do instead is to talk about Bo in the context of our family's story. And I'd like to suggest how this story might have shaped aspects of his work and his outlook on the world. For the more I think about Bo, his life, and his work, the more I think about the importance of our shared history.

That story really begins with Bo's grandmother and my great-grandmother, Anna, the moment she stood on American soil for the first time. This was in 1909, on Ellis Island, in the immigrations processing line. She was about fifteen years old. An orphan. She came alone to this country from the Ukraine. She was young, with no prospects, no family here. From the

AUTHOR. Yale Law School, J.D. 2014; Nephew of Robert A. Burt.

government's perspective, she was an undesirable. And so she was rejected, sent back across the ocean she had just traveled.

And yet she persevered.

A few years later, she returned to America, standing in the same customs line on Ellis Island. Still without prospects, but slightly older. The second time she made it through. A few years after that, she married Louis Burt, Bo's grandfather and my great-grandfather, a dirt-poor peddler who sold vegetables on the streets of Philadelphia in a cardboard box, first on his own two feet and later, after much struggle, with the help of a horse and cart. Anna and Louis teetered on the edge of poverty. Louis supported his widowed mother, four siblings, Anna, and himself on the scraps he'd collect selling vegetables. In the evenings, Louis would pour pennies and nickels from that day's labor onto the counter, divvying up the meager proceeds for the next day's food.

Anna's was the life of an outsider. A true outcast. Not at home in Europe. Never truly at home here in the United States. My great-grandparents and their extended family—and soon their children—lived as extremely poor Jews in Philadelphia, without plumbing, without comfort.

This was the world my grandfather, Bo's father, was born into, and the one that helped shape his understanding of this country—and Bo's understanding as well. It was a world in which Jews, by and large, lived near the bottom rungs of society, and in which the struggle wasn't simply to fit in as "Americans"—if even such a thing was possible—but simply to seek economic stability. To own a home. Compared to the type of dreams that are fostered here in the Yale Law School, these were extremely modest ambitions.

And then came Bo.

Bo was the oldest of all of Anna Burt's grandchildren, and the pressures of succeeding, of achieving, and of breaking into American society were high. Growing up in the 1940s and 1950s, Bo was really the first in the family to have the opportunity to perform in this country at the highest level. His acceptance into Princeton in 1956 marked a turning point, one that signaled that the topmost rungs of society were not cut off from Anna Burt's grandchildren.

But Bo's experience at Princeton, and indeed, throughout much of his life, was that of someone forced to contend with his belonging. It was at Princeton where Bo first encountered anti-Semitism; he was excluded from the prestigious eating clubs because he was Jewish. It was at Princeton where Bo took part in the quota system, which restricted the number of Jews that could be admitted to the university (similar quota systems existed at a number of the Ivy League schools at the time).

And what I'd like to suggest is that the role that Bo held as the oldest of Anna's grandchildren helped to shape both his outlook and his intellectual endeavors. As an insider, as a Yale Law School professor for nearly 40 years—

here in this institution that births presidents, Supreme Court justices, and senators—Bo understood the way power works in our society, and he was at home here. And yet he also understood what it meant to be an outsider, deep in his bones.

I believe he learned this from, among others, Anna Burt, the ultimate outcast. The orphan. The fifteen-year-old immigrant. His grandmother.

And so in Bo's scholarship—from his first book, aptly entitled *Taking Care of Strangers*, to his wrestling with authority structures in the Bible, in *Into the Whirlwind*, his last book—what defined Bo's intellectual pursuits was a dedication to the outsider, to the questioning of authority, to seeing the medical profession, for example, through the patient's eyes, and to seeing injustice through the eyes of the oppressed.

I want to suggest that much of Bo's humanity, the kind that all of us saw in his warmth, in his caring, and in his intellect, he learned from the story of his family, of our family.

But I'd also like to suggest a paradox here.

For the fact is that all of us are outsiders. We live in a country defined by successive waves of mass immigration. Our founders were immigrants, many arriving on American shores to flee persecution in the Old World. As Bo himself once wrote, "There is no social role of assimilated insider for anyone [in America]; there is no such reliable, unquestionably secure status in American social life."¹

To focus on outsider status in American society, then, is to perform two simultaneous endeavors. The first is to undertake an exercise in empathy, in looking at the world through the eyes of the overlooked, the forgotten, just as Bo did. But it is also to admit that there really is no such a thing as an insider in American life. That we, as Americans, everyone in this room, are all outsiders. We all hail, in one way or another, from outcasts.

What Bo's example teaches me, then, is the same lesson I learned from him in our countless discussions. It is that to understand our role in American society—as Jews, as Catholics, as atheists, as anything—is also to reaffirm our commitment to equality, to the very tenets underlying our Constitution. Bo took these lessons to heart in his scholarship, in his ideals, and in his teaching.

I'd like to close by highlighting exactly these values, but by using Bo's own words, uttered when, after a 2014 lecture, he was asked what it means to be a professor. In his response you'll hear the same commitment to equality, the same empathy, and the same values that have won him so many friends and devotees around the world. Bo explained:

1. ROBERT A. BURT, TWO JEWISH JUSTICES: OUTCASTS IN THE PROMISED LAND 67 (1988).

If you're a professor, at its heart, it means you're a teacher . . . And the most important quality as a teacher is respect for students and engagement with students, and a basic view that his or her role is to bring you to the other side of the podium. You start with the professor presumably knowing a lot and you knowing a little bit. But the important thing is for the professor, in my view, to say that, by the time we're done here, this status difference between us is gone. . . . We are equals. Maybe you are younger than me. But we are equals.²

Bo lived his life striving towards equality, in the classroom and beyond. And if he could send all of us a message today, I think he'd tell us, with a smirk on his lips and a deep seriousness in his eyes, "We have much work left to do."

Bo, may you rest in peace.

2. Università di Macerata, *Robert A. Burt: Disease, Disruption, and Homosexuality*, YOUTUBE (Feb. 13, 2014), <http://www.youtube.com/watch?v=RAvZLhoMKDo> [<http://perma.cc/W4BQ-48XC>].