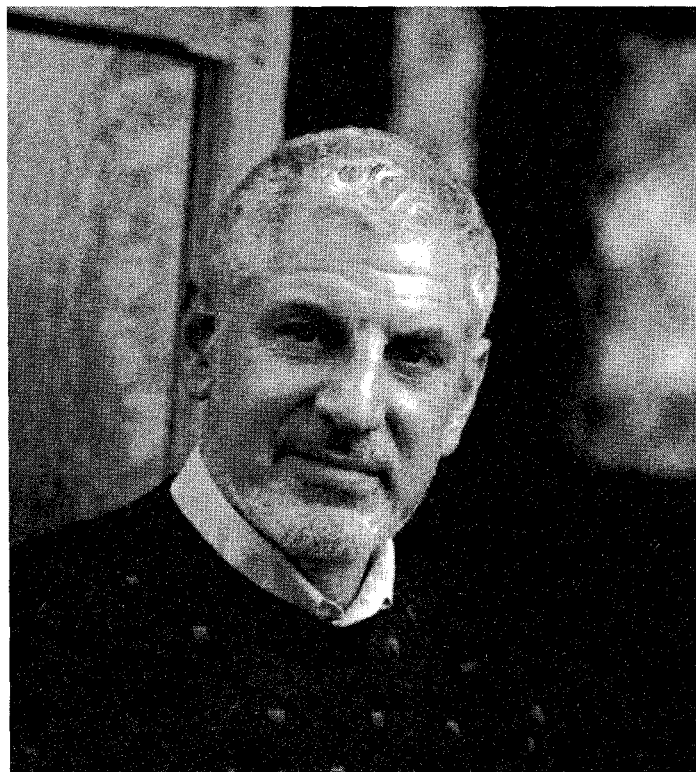




## TRIBUTES

### In Memoriam: Robert A. Burt



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Robert A. Burt was a member of the Yale Law School Class of 1964, a Note and Comment Editor for Volume 73 of the *Yale Law Journal*, and a member of the Yale faculty for thirty-nine years. To honor Professor Burt, the *Journal* is proud to print this collection of Tributes to his life, career, and legacy. Unless otherwise noted, each Tribute is adapted from remarks delivered at Professor Burt's memorial service, held at the Yale Law School on November 1, 2015.

# THE YALE LAW JOURNAL

ANTHONY T. KRONMAN

## Two Dreams

The week after Bo died, I dreamt about him twice. The first dream was very short. The second was longer and picked up where the first one left off. I can't recall ever having had two continuous dreams of this kind before. But I felt a tremendous excitement when the second dream began. That's because the first dream was the start of a conversation with Bo and I had another question I was desperate to ask. Describing one's dreams in public carries obvious risks. But I know that Bo, of all people, would have wanted me to go on.

The first dream, as I say, was a short one. I was standing in a room with some other people. I looked over and there was Bo. He seemed tired as one might after a long trip. He was covered with a fine white dust. I remember thinking, "He must have been walking on a long, dry road." "Are you back?" I asked, and Bo replied, "Only for a while." And that was it.

In my second dream, I was in the same room and Bo was there again, but this time the dream lasted long enough for me to get an answer to the question I was burning to ask. I wanted Bo to tell me what it's like to be dead. He looked at me and said, "You wouldn't believe how many people are there." He seemed surprised to have discovered this, but not disheartened. If anything, he looked pleased to have found so many companions in death. After I woke I reflected that perhaps this was because Bo had already met some with whom he could continue the conversation that was for him the highest if always imperfect expression of life. And that made me think of Socrates's concluding speech in Plato's *Apology*, which Bo and I had taught years before and discussed countless times since. After being sentenced to death, Socrates remained strangely calm. How could a man facing death be so serene? Sensing the anxiety especially of his friends, Socrates explained that if death isn't a dreamless sleep (which wouldn't be so bad, he said, after the tempests of life), then all his predecessors—all the great thinkers and poets of the past—would

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be there waiting for him and what joy it would be to ask *them* the questions that had gotten him into such trouble while he was alive! The astonishment with which Bo reported his discovery that so many people were already dead made me think, on waking, that in my dream Bo had become Socrates himself, which to those of us who knew and loved him will not seem an implausible confusion.

But that wasn't all. I had one last question to ask and Bo's answer caused me to laugh so loudly that I woke myself up, which I also don't remember ever happening before. I asked Bo if God was among the dead. Was He there too in the land of the un-living? Now that is a very serious question. Bo looked at me and his eyes grew wide with astonishment and he said, "Yes He is, God is there too, and the most amazing thing is, He turns out to be a pudgy twenty-six-year-old kid from Israel. Who would have guessed?" And then Bo was gone and I'd shaken myself awake with laughter.

More than my other colleagues and friends—or perhaps I should say more openly and with less embarrassment, for we are all, in some way and at some level, concerned with these things—Bo was preoccupied with death and God. He wrote a book about each. But in truth everything he wrote on every topic reflected his preoccupation with these two. This gave his writing and teaching a theological cast that made Bo a very special citizen of that small but resolutely secular republic we call the Yale Law School, to which he was devoted heart and soul.

I want first to say a word about Bo's preoccupation with death.

Bo was not afraid of death, or at least no more afraid of it than you or I. But it was always on his mind because he understood that it is death that gives life its urgency and depth. Everything we do means what it does and has the value it possesses only because it unfolds in a mortal frame which, could it be erased, would drain our lives of all their point and purpose. Keeping death in mind was for Bo the only way of keeping life in mind and of properly honoring the dumbfounding fact that we are in the world at all, for a time, surrounded by others like ourselves with whom we can converse about our strange condition and perhaps, if we are lucky enough to have interlocutors like Bo, to come to see how strange it is, like the prisoners in Plato's Cave whose journey to the truth begins with the discovery that the shadow-life they have been living, in a thoughtless stupor, is as baffling and wonderful as anything can be. Socrates calls this discovery a "turning about of the soul." Bo's fearless insistence on the death-in-life that shadows and hallows even those moments that seem furthest removed from mortal concerns made him a Socrates among us—affectionate, interested, devoted to his friends and colleagues and students and to the worldly business of our School, yet in Nietzsche's words, "ten thousand feet beyond man and time." Bo's preoccupation with death reminded us of how serious life is. Will we be more likely to forget this now that he is gone?

I want next to say something about Bo's devotion to the idea of conversation. This wasn't explicit in the content of my dreams, like the ideas of death and God. But it was exemplified by their conversational form. Nothing was more important to Bo than the give and take of talking. For him talk was, in a manner of speaking, the middle term between death and God. Or to change the image, it was the hinge on which his thinking about these other topics turned.

Talk may seem a weak word to describe a high ideal unless we understand it in the sense of Freud's "talking cure." This was the original inspiration for Bo's vision of the nature of the encounter between two human beings who have suspended the ordinary demands of life, and the asymmetries of power that always attend them, for the sake of an inquiry into their common condition as thinking, speaking, fearing, hoping, loving, needing, and mortal beings. Conversations of this sort are the rarest thing on earth. Yet only they can illuminate, even for a moment, the true circumstances of our existence as the distracted cave dwellers that Plato describes. They create the only space in which we ever discover the real extent of our freedom and manage to sustain, for however short a time, the honesty to face the shocking fact that we are dying. That we can only do this in the company of another whose predicament is the same as ours, is the root of the spirit of solidarity that alone makes such honesty possible. In this sense, the liberating power of talk, as Bo understood it, is essentially egalitarian, and its perennial enemy is the brutal assertion, by one of those involved, of a superior power to command or confine the other, for every such demand obliterates the space of that elemental conversation in which the truth about us comes to light. Bo was not a fool. He knew perfectly well that the maintenance of our human world depends in countless ways on the exercise of unequal power. But he insisted that these "realities" be measured against and tempered by the ideal of a conversation among equals from whose vantage point we are able, briefly at least, to survey this world itself and the strange but exalted condition of those living in it—to see what we are accustomed to call our humanity, but rarely pause to examine or admire. It was by this ideal that Bo first measured the relation between doctor and patient, then that of judge to litigant, and finally, in his last book, the relation of man to God.

Which brings me back to my dream.

Those who say that God is dead, and mean by this that we ought to dismiss all talk of eternity and salvation as childish prattle, express a view distant from Bo's own. Bo did not believe in an afterlife in the conventional sense. He did not believe in a heaven beyond the world. But he did believe that there is more to the world than we shall ever know and more in one another than we shall ever love as well as we might. The knowledge that this is so defined, for Bo, the

horizon of all human striving—one we can never reach yet without which our finite pursuits would have a lesser value for us and perhaps none at all.

For Bo there is no God opposed to man, with whom we shall come face to face at the end of days. But there is a divinity in our humanity and an eternity in our peculiar way of dying—anxiously, yet mindful of truths and moved by loves that time cannot erase or corrupt. The belief that this is so is the heart of Bo's humanistic theology. It is a theology as remote, on the one side, from the conversation-stopping idea of an all-powerful God who dictates our affairs from afar, as it is on the other from the shallow belief that we could excise all talk of God from our human conversations and still be who we are. It is the theology that underwrites the one fundamental moral injunction that Bo repeated over and over again. "Don't interrupt the conversation. Let it continue. Let it go on forever, though none of us can pursue it forever, because only 'forever' would be long enough to reach the end we human talkers seek."

In his last book on the tribulations of Job, Bo holds the God of Abraham to this humanistic ideal. To some, perhaps, this will seem a reduction—a lowering of God to our level. But I see it in a different light. I see the conversation that Bo imagines between Job and God as the final and highest expression of his conception of the divinity that is in us already—as an elevation of the human being, not, of course, to a position of omnipotence, but to one of enhanced responsibility for the kind of talk that alone has the power to put us in touch with the seriousness of life, which springs from the fact that there is more to life than life itself can contain.

I think this is what Bo meant when he told me, at the end of my second dream, that God was there too, in the land of the dead, and that He turned out to be just a pudgy kid from Israel. He said this not to belittle God but (I thought, on waking) to humanize him instead. "God is just like us!" That is what Bo was telling me. Or rather, "We pudgy kids, with our fleshy and mortal infirmities, we're all just like God! We're divine already—as much and as little as any God can be." When Bo left me for the last time, at the end of my second dream, I felt with absolute assurance that he wanted me to know that he had found a God with whom he could talk as an equal, forever, in a heaven that looks just like earth—because it is the earth, uninterrupted. I feel confident that this was the meaning of my dream because it was the message of Bo's life.

Do we hear it? Can we keep it? Are we fully awake to the life of our great-hearted friend?

# THE YALE LAW JOURNAL

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.

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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.

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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

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**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."<sup>1</sup>

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:

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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.<sup>2</sup>

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.

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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>].

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## BIBLIOGRAPHY

### Collected Works of Robert A. Burt

#### BOOKS

IN THE WHIRLWIND: GOD AND HUMANITY IN CONFLICT (2012)

DEATH IS THAT MAN TAKING NAMES: INTERSECTIONS OF AMERICAN MEDICINE, LAW, AND CULTURE (2002)

THE CONSTITUTION IN CONFLICT (1992) (Honorable Mention for 1993 Scribes (American Society of Writers on Legal Subjects) Book Award; translated into Spanish)

TWO JEWISH JUSTICES: OUTCASTS IN THE PROMISED LAND (1988)

TAKING CARE OF STRANGERS: THE RULE OF LAW IN DOCTOR-PATIENT RELATIONS (1979)

STANDARDS RELATING TO ABUSE AND NEGLECT (1977) (with Michael Wald)

#### JOURNALS

*God's Gift and Mindfulness of the Ethical Dimensions as Human Response: Response to Rabbi Dr. Barry Freundel*, 3 J.L. PHIL. & CULTURE 417 (2009)

*Doctors vs. Lawyers: The Perils of Perfectionism*, 53 ST. LOUIS U. L.J. 1177 (2009)

*Constitutional Constraints on the Regulation of Cloning*, 9 YALE J. HEALTH POL'Y & ETHICS 495 (2009)

*Invitation to the Dance: Lessons from Susan Sontag's Death*, 39 HASTINGS CENT. REP. 38 (2009)

*Review Dialogue: A Conversation Between Robert A. Burt and Elyn R. Saks on The Center Cannot Hold: My Journey Through Madness*, 65 AM. IMAGO 309 (2008)

*Overruling Dred Scott: The Case for Same-Sex Marriage*, 17 WIDENER L.J. 73 (2007)

*The Ethics of Unilateral "Do Not Resuscitate" Orders: The Role of "Informed Assent,"* 132 CHEST 248 (2007) (with J. Randall Curtis)

- Law's Effect on the Quality of End-of-Life Care: Lessons from the Schiavo Case*, 34 CRITICAL CARE MED. S348 (2006)
- The Uses of Psychoanalysis in Law: The Force of Jay Katz's Example*, 6 YALE J. HEALTH POL'Y & ETHICS 401 (2006)
- Family Conflict and Family Privacy: The Constitutional Violation in Terri Schiavo's Death*, 22 CONST. COMMENT. 427 (2005)
- An Obligation to Students*, 1 OPENING ARGUMENT 1 (2005)
- Robert Cover's Passion*, 17 YALE J.L. & HUMAN. 1 (2005)
- On Gnats, Camels and Payment to Research Subjects: A Commentary*, 9 J. MED. & L. 25 (2005)
- Moral Offenses and Same Sex Relations: Revisiting the Hart-Devlin Debate*, 1 J.L. 70 (2004)
- The Law Professors vs. the Military: Why We Are Suing*, 67 YALE ALUMNI MAG. 22 (2004)
- The Truth About Owen Fiss*, 58 U. MIAMI L. REV. 83 (2003)
- Inside the Cruzan Case*, 17 MED. HUMAN. REV. 46 (2003)
- Resolving Disputes Between Clinicians and Family About "Futility" of Treatment*, 27 SEMINARS PERINATOLOGY 502 (2003)
- Why Are Critical Care Clinicians So Powerfully Distressed by Family Demands for Futile Care?*, 18 J. CRITICAL CARE 22 (2003) (with J. Randall Curtis)
- Reality TV: From Public Autopsies to What?*, 130 COMMONWEAL 11 (2003)
- Liberals' Labors Lost*, 2 LEGAL AFF. 55 (2003)
- The Medical Futility Debate: Patient Choice, Physician Obligation, and End-of-Life Care*, 5 J. PALLIATIVE MED. 249 (2002)
- Misguided Guidelines*, 6 PSYCHOL. PUB. POL'Y & L. 382 (2000)
- The Limitations of Protocols for End-of-Life Care*, 45 RESPIRATORY CARE 1523 (2000)
- Wrong Tomorrow, Wrong Yesterday, but Not Today: On Sliding into Evil with Zeal but Without Understanding*, 5 ROGER WILLIAMS U. L. REV. 19 (1999)
- Self-Determination and the Wrongfulness of Death*, 2 J. HEALTH CARE L. & POL'Y 177 (1999)
- Reconciling with Injustice*, 4 GRAVEN IMAGES 106 (1998)
- Assessing Oregon's Physician-Assisted Suicide Law: Through a Glass, Darkly*, 1 J. PALLIATIVE MED. 313 (1998)
- Los Riesgos del Suicidio con Ayuda Médica: Primeras Lecciones Desde la Experiencia Americana*, 9 ISONOMÍA 103 (1998) (It.)
- Disorder in the Court: Physician-Assisted Suicide and the Constitution*, 82 MINN. L. REV. 965 (1998)

COLLECTED WORKS OF ROBERT A. BURT

- Confronting Death: Who Chooses? Who Controls? A Dialogue Between Dax Cowart and Robert Burt*, 28 HASTINGS CENT. REP. 14 (1998)
- The Supreme Court Speaks—Not Assisted Suicide but a Constitutional Right to Palliative Care*, 337 NEW ENG. J. MED. 1234 (1997)
- Rationality and Injustice in Physician-Assisted Suicide*, 19 W. NEW ENG. L. REV. 353 (1997)
- Metodología y Metáforo en el Derecho Constitucional*, 6 ISONOMÍA 31 (1997) (It.)
- The Suppressed Legacy of Nuremberg*, 26 HASTINGS CENT. REP. 30 (1996)
- Comments on James Oakes, "The Compromising Expedient,"* 17 CARDOZO L. REV. 2057 (1996)
- Constitutionalizing Physician-Assisted Suicide: Will Lightning Strike Thrice?*, 35 DUQ. L. REV. 159 (1996)
- Palliative Medicine: Providing Care When Cure Is Not Possible*, 51 GERIATRICS 33 (1996) (with R. Butler, K. Foley, J. Morris & S. Morrison)
- Alex Bickel's Law School and Ours*, 104 YALE L.J. 1853 (1995)
- Judges, Behavioral Scientists, and the Demands of Humanity*, 143 U. PA. L. REV. 179 (1994)
- Confronting Holocausts: Remarks on Spielberg's Schindler's List*, YALE L. REP. 13 (1994)
- Brown's Reflection*, 103 YALE L.J. 1483 (1994)
- Cruelty, Hypocrisy, and the Rehabilitative Ideal in Corrections*, 16 INT'L J.L. & PSYCHIATRY 359 (1993)
- Independencia Judicial y Democracia Constitucional: Lecciones de la Experiencia Norteamericana*, 1 REVISTA DERECHO Y HUMANIDADES 15 (1992) (Chile)
- Precedent and Authority in Antonin Scalia's Jurisprudence*, 12 CARDOZO L. REV. 1685 (1991)
- Loving Big Brother: Comments on Seidman, Police Interrogation, and the Fifth Amendment*, 2 YALE J.L. & HUMAN. 181 (1990)
- Inventing Judicial Review: Israel and America*, 10 CARDOZO L. REV. 2013 (1989)
- Uncertainty and Medical Authority in the World of Jay Katz*, 16 LAW MED. & HEALTH CARE 190 (1988)
- Privacy and Contraception in the American and Irish Constitutions*, 7 ST. LOUIS U. PUB. L. REV. 287 (1988)
- Disorder in the Court: The Death Penalty and the Constitution*, 85 MICH. L. REV. 1741 (1987)
- Withholding Nutrition and Mistrusting Nurturance: The Vocabulary of In re Conroy*, 2 ISSUES L. & MED. 317 (1987)
- What Frank Allen Teaches*, 85 MICH. L. REV. 391 (1986)



- The Treatment of Handicapped Newborns: Is There a Role for Law?*, 1 ISSUES L. & MED. 279 (1986)
- Coercive Freedom: A Response to Professor Chambers*, 18 MICH. J.L. REFORM 829-34 (1985)
- Commentary on Schelling's "Enforcing Rules on Oneself,"* 1 J.L. ECON. & ORG. 381 (1985)
- What Was Wrong with Dred Scott, What's Right About Brown*, 42 WASH. & LEE L. REV. 1 (1985)
- The Ideal of Community in the Work of the President's Commission*, 6 CARDOZO L. REV. 267 (1984)
- Coercion and Communal Morality: A Response*, 9 J. HEALTH POL. POL'Y & L. 323 (1984)
- Constitutional Law and the Teaching of the Parables*, 93 YALE L.J. 455 (1984)
- Experts, Custody Disputes, and Legal Fantasies*, 14 PSYCHIATRIC HOSP. 140 (1983)
- Conflict and Trust Between Attorney and Client*, 69 GEO. L.J. 1015 (1981)
- The Elusive Role of "Neutral Observer" in Human Investigations*, 2 IRB: REV. HUM. SUBJECTS RES. 9 (1980)
- The Constitution of the Family*, 1979 SUP. CT. REV. 329
- The Limits of Law in Regulating Health Care Decisions*, 7 HASTINGS CENT. REP. 29 (1977)
- Children's Rights on Entering Therapeutic Institutions*, 134 AM. J. PSYCHIATRY 153 (1977) (with Derek Miller)
- Why Physicians Should Decide Cases Like Karen Quinlan's*, 2 FAM. MED. REP. 14 (1976)
- Developing Constitutional Rights of, in, and for Children*, 39 LAW & CONTEMP. PROBS. 118 (1975)
- Why We Should Keep Prisoners from the Doctors: Reflections on the Detroit Psychosurgery Case*, 5 HASTINGS CENT. REP. 25 (1975)
- Sterilization, State Action and the Concept of Consent*, 1975 LAW & PSYCHOL. REV. 57 (with Monroe Price)
- Of Mad Dogs and Scientists: The Perils of the "Criminal-Insane,"* 123 U. PA. L. REV. 258 (1974)
- Adolescents and the Law*, 8 PSYCHIATRIC SPECTATOR 12 (1973)
- At the Present Time Experimental Neurosurgery Cannot Be Performed on Involuntarily Confined Mental Patients*, 18 LAW QUADRANGLE NOTES 9 (1973) (with Francis Allen)
- A Proposal for the Abolition of the Incompetency Plea*, 40 U. CHI. L. REV. 66 (1972) (with Norval Morris)
- Forcing Protection on Children and Their Parents*, 69 MICH. L. REV. 1259 (1971)
- Protecting Children from Their Families and Themselves: State Laws and the Constitution*, 1 J. YOUTH & ADOLESCENCE 91 (1972)
- Miranda and Title II: A Morganatic Marriage*, 1969 SUP. CT. REV. 81

**BOOK CHAPTERS**

- Seeing the Hollow*, in *LAW TOUCHED OUR HEARTS: A GENERATION REMEMBERS BROWN V. BOARD OF EDUCATION* 67 (Mildred W. Robinson & Richard J. Bonnie eds., 2008)
- Comentario Sobre la Obligación de Erradicar la Pobreza*, in *DERECHO Y POBREZA* (SELA 2005), at 45 (Roberto Saba ed., 2006)
- The End of Autonomy*, in *IMPROVING END OF LIFE CARE: WHY HAS IS BEEN SO DIFFICULT?*, at 59 (Bruce Jennings, Gregory Kaebnick & Thomas Murray eds., 2005)
- On the Bench: The Jewish Justices*, in *JEWS IN AMERICAN POLITICS* 65 (L. Sandy Maisel & Ira N. Forman eds., 2001)
- Supremacía Judicial, Impotencia Judicial y Rule of Law en Tiempos de Crisis*, in *ESTADO DE DERECHO Y DEMOCRACIA* (SELA 2000), at 297 (Roberto Saba ed., 2001)
- Promises To Keep, Miles To Go: Mental Health Law Since 1972*, in *THE EVOLUTION OF MENTAL HEALTH LAW* 11 (Lynda E. Frost & Richard J. Bonnie eds., 2001)
- Roe v. Wade as a Counter-Revolutionary Manifesto: A Retrospective View*, in *NEW DIMENSIONS IN BIOETHICS: SCIENCE, ETHICS AND THE FORMULATION OF PUBLIC POLICY* 155 (Arthur W. Galston & Emily G. Shurr eds., 2001)
- Louis Brandeis, Stephen Wise, Felix Frankfurter*, in *LES JUIFS ET LE XXE SIÈCLE: DICTIONNAIRE CRITIQUE* 540 (Élie Barnavi & Saul Friedländer eds., 2000)
- Desarrollo Constitucional de Derechos de, sobre y para Menores, La Constitución de la Familia, y El Tratamiento de Menores sin el Consentimiento de los Padres*, in *DERECHO, INFANCIA Y FAMILIA* 13, 37, 189 (Mary Beloff ed., 2000)
- Desarrollando Derechos Constitucionales de, en y para los Niños*, in *DERECHO Y GRUPOS DESAVENTAJADOS* 169 (Roberto Gargarella ed., 1999)
- Where Do We Go from Here?*, in *THE DEFINITION OF DEATH: CONTEMPORARY CONTROVERSIES* 332 (Stuart Youngner, Robert Arnold & Renie Schapiro eds., 1999)
- Choosing Death: For Oneself/ For Others*, in *PATIENT'S RIGHTS: INFORMED CONSENT, ACCESS AND EQUALITY* 63 (Lotta Westerhall & Charles Phillips eds., 1994)
- Democracy, Equality, and the Death Penalty*, in *THE RULE OF LAW: NOMOS XXXVI*, at 80 (Ian Shapiro ed., 1994)
- Judicial Independence and Constitutional Democracy: Lessons from the U.S. Experience*, in *TRANSITION TO DEMOCRACY IN LATIN AMERICA: THE ROLE OF THE JUDICIARY* 287 (Irwin Stotzky ed., 1993)
- Legal and Ethical Aspects of Interventions*, in *GENETIC VARIATION AND NUTRITION* 266 (A.P. Simopoulos & B. Childs eds., 1990)

- Raíces Historicas de la Revision Judicial: Fuerzas Socioculturales Subyacentes al Poder Judicial*, in CONSTITUCION Y DESARROLLO SOCIAL 51 (1988)
- Retardation, Legal Rights and the Communal Ideal*, in THE LEGAL RIGHTS OF CITIZENS WITH MENTAL RETARDATION 32 (L. Kane, P. Brown & J. Cohen eds., 1988)
- Autism and the Law: "To Secure These Rights . . ."*, in HANDBOOK OF AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS 718 (D.J. Cohen & A.M. Donnellan eds., 1987)
- Constitutional Rights of Handicapped People and the Teaching of the Parables*, in ON MORAL MEDICINE: THEOLOGICAL PERSPECTIVES IN MEDICAL ETHICS 582 (S. Lammers & A. Verhey eds., 1987)
- Family and the Constitution, Mental Illness and the Constitution, and Mental Retardation and the Constitution*, in ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 686, 1247, 1249 (L. Levy ed., 1986)
- Legal Reform and Aging: Current Issues, Troubling Trends*, in WHAT DOES IT MEAN TO GROW OLD? REFLECTIONS FROM THE HUMANITIES 99 (T. Cole & S. Gadow eds., 1986)
- Authorizing Death for Anomalous Newborns: Ten Years Later*, in GENETICS AND THE LAW III, at 259 (A. Milunsky & G. Annas eds., 1985)
- Pennhurst: A Parable*, in IN THE INTERESTS OF CHILDREN: ADVOCACY, LAW REFORM AND PUBLIC POLICY 265 (R. Mnookin ed., 1985)
- The Burger Court and the Family*, in THE BURGER COURT: THE COUNTER-REVOLUTION THAT WASN'T 92 (V. Blasi ed., 1983)
- Treating Children Without Parental Consent*, in TROUBLING PROBLEMS IN MEDICAL ETHICS 101 (M. Basson et al. eds., 1981)
- Immunizing Physicians by Law*, in DILEMMAS OF DYING: POLICIES AND PROCEDURES FOR DECISIONS NOT TO TREAT 143 (C. Wong & J. Swazey eds., 1981)
- Children as Victims*, in CHILDREN'S RIGHTS: CONTEMPORARY PERSPECTIVES 37 (P. Vardin & I. Brody eds., 1979)
- Law as Supervising and/or Supporting the Family*, in THE FAMILY: SETTING PRIORITIES 331 (T. Brazelton & V. Vaughan eds., 1979)
- Informed Consent in Mental Health*, in ENCYCLOPEDIA OF BIOETHICS 762 (W. Reich ed., 1978)
- On Children's Rights and Therapeutic Institutions*, in 5 ADOLESCENT PSYCHIATRY: DEVELOPMENTAL CLINICAL STUDIES 39 (S. Feinstein & P. Giovacchini eds., 1977) (with Derek Miller)
- Helping Suspect Groups To Disappear*, in PSYCHOLOGY AND THE LAW 33 (G. Bermant, C. Nemeth & N. Vidmar eds., 1976)
- Developing Constitutional Rights of, in, and for Children*, in PURSUING JUSTICE FOR THE CHILD 225 (M. Rosenheim ed., 1976)

## COLLECTED WORKS OF ROBERT A. BURT

- Authorizing Death for Anomalous Newborns*, in GENETICS AND THE LAW 435 (A. Milunsky & G. Annas eds., 1975)
- Judicial Action To Aid the Retarded*, in 2 ISSUES IN THE CLASSIFICATION OF CHILDREN 293 (N. Hobbs ed., 1975)
- Beyond the Right to Habilitation*, in THE MENTALLY RETARDED CITIZEN AND THE LAW 417 (M. Kindred et al. eds., 1976)
- Nonconsensual Medical Procedures and the Right to Privacy*, in THE MENTALLY RETARDED CITIZEN AND THE LAW 93 (M. Kindred et al. eds., 1976)
- The Therapeutic Use and Abuse of State Power over Adolescents*, in CURRENT ISSUES IN ADOLESCENT PSYCHIATRY (J. Schooler ed., 1973)
- Eighth Amendment Rights in Mental Institutions and Rights of the Mentally Handicapped in Criminal Proceedings*, in LEGAL RIGHTS OF THE MENTALLY HANDICAPPED 735 (B. Ennis & P. Friedman eds., 1973)
- Legal Restrictions on Sexual and Familial Relations of Mental Retardates – Old Laws, New Guises*, in HUMAN SEXUALITY AND THE MENTALLY RETARDED 206 (F. de la Cruz & G. LaVeck eds., 1973), reprinted in MENTAL RETARDATION: SOCIAL AND EDUCATIONAL PERSPECTIVES 130 (C. Drew, M. Hardman & H. Bluhm eds., 1977)

## BOOK REVIEWS

- Singing Death's Praises*, 18 MED. HUMAN. REV. 46 (2004) (reviewing LINDA HUTCHEON & MICHAEL HUTCHEON, OPERA: THE ART OF DYING (2004))
- Review of* JOCELYN DOWNIE, DYING JUSTICE: A CASE FOR DECRIMINALIZING EUTHANASIA AND ASSISTED SUICIDE IN CANADA, 352 NEW ENG. J. MED. 1501 (2005)
- Review of* PHYSICIAN ASSISTED SUICIDE: EXPANDING THE DEBATE (M. Battin, R. Rhodes & A. Silvers eds., 1998), 339 NEW ENG. J. MED. 1563 (1998)
- Review of* TONI MARIE MASSARO, CONSTITUTIONAL LITERACY: A CORE CURRICULUM FOR A MULTICULTURAL NATION (1993), 4 ON COMMON GROUND 21 (1995)
- Building on Our Differences*, 6 MED. HUMAN. REV. 9 (1992) (reviewing MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW (1990))
- Review of* BRANDEIS AND AMERICA (Nelson L. Dawson ed., 1989), FILSON CLUB HIST. Q. 88 (1991)
- Quarreling with Job*, 4 MED. HUMAN. REV. 17 (1990) (reviewing LONNIE D. KLIEVER ED., DAX'S CASE: ESSAYS IN MEDICAL ETHICS AND HUMAN MEANING (1989))
- Review of* MILNER S. BALL, LYING DOWN TOGETHER: LAW, METAPHOR AND THEOLOGY (1985), 43 THEOLOGY TODAY 451 (1986)

- To Praise Willowbrook and To Bury It*, 15 HASTINGS CENT. REP. 26 (1985) (reviewing DAVID J. & SHEILA M. ROTHMAN, *THE WILLOWBROOK WARS* (1984))
- Review of FRANKLIN E. ZIMRING, *THE CHANGING LEGAL WORLD OF ADOLESCENCE* (1982), 33 J. LEGAL EDUC. 722 (1983)
- The Power of Illegitimate Masters*, 11 HASTINGS CENT. REP. 21 (1981) (reviewing RICHARD SENNETT, *AUTHORITY* (1993))
- The New Segregationists*, WASH. POST, Jan. 17, 1981, at F5 (reviewing DERRICK BELL ED., *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* (1980))
- Review of ALAN STONE, *MENTAL HEALTH AND THE LAW: A SYSTEM IN TRANSITION* (1976), 46 AM. J. ORTHOPSYCHIATRY 367 (1976)
- Review of THOMAS SZASZ, *THE MANUFACTURE OF MADNESS* (1970), 16 CONTEMP. PSYCHOL. 631 (1971)

#### PERIODICAL ARTICLES

- A Poor Ruling by the Supreme Court*, CHRON. HIGHER EDUC., May 19, 2006, at B18
- The Fight over Controlling Death—A Misplaced Debate*, AGING TODAY, Jan.-Feb. 1996, at 10
- Editorial, *Death Made Too Easy*, N.Y. TIMES, Nov. 15, 1994, at A19
- Letter, *On Abortion, Judge Ginsburg Backs Democracy*, N.Y. TIMES, June 25, 1993, at A30
- Why Bush Should Name a Liberal Democrat to the Supreme Court*, HARTFORD COURANT, Oct. 6, 1991, at B1
- Into Israeli Darkness, the Judges Shine a Beacon of Light*, HARTFORD COURANT, Apr. 24, 1988, at B1
- In the Matter of Baby M: Court Stumbles by Raising Specter of Criminality*, 121 N.J. L.J. 319 (1988)
- The Legacy of the Bork Debate*, HARTFORD COURANT, Nov. 1, 1987, at C1
- Two Jewish Justices: Outcasts or Assimilated Insiders*, 58 WOMEN'S LEAGUE OUTLOOK 6, 29 (1987)
- Bork's Ideology: A Valid Issue*, HARTFORD COURANT, Aug. 23, 1987, at B3
- The Baby M Contract: Is It Enforceable?*, 119 N.J. L.J. 328 (1987)

#### OTHERS

- Introduction to* CONNIE ZUCKERMAN, *END-OF-LIFE CARE AND HOSPITAL LEGAL COUNSEL* (1999)  
(with Christine K. Cassel)
- Remarks at the Yale Law Sch.: Carlos Santiago Nino, 1943-93 (1995)
- Remarks on the Opening of City U. of N.Y. Law Sch.: *The Creation of a Law School* (1983)

COLLECTED WORKS OF ROBERT A. BURT

Videotape: *Stranger in a Family* (Yale Media Design Studio & Connecticut Public Television  
1982)

*Testimony on the Presidential Impoundment Power*, Before the H. Comm. on Rules, 93rd Cong. 359  
(1973)

ADMISSION AND DISCHARGE PROCESSES IN VETERANS ADMINISTRATION PSYCHIATRIC HOSPITALS:  
REPORT TO THE CHAIRMAN OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES  
(1972)