

TRIBUTES

L' CHAIM, BURT!

SY MOSKOWITZ*

I am deeply grateful to the editors of the Law Review for this opportunity to publish some thoughts and feelings about my mentor and friend of more than 35 years, Burt Wechsler. My life has been deeply touched by his idealism, his willingness to work indefatigably for those ideals, his willingness to take risks, his creativity and his wisdom. As the consummate teacher, he taught me, and I am sure countless others, lessons we continue to learn today.

For those unfamiliar with Burt's personal story, I can provide a brief sketch of his life. He was born in 1924, son of a Romanian immigrant who settled in the newly-created city of Gary, Indiana. Gary was a part of a vast new twentieth century industrial complex—steel mills, oil refineries, cement plants, shipping by water, rail and land—that became the heart of Northwest Indiana. The workforce for this complex were immigrants from Eastern Europe, blacks from the rural South and Hispanics. Burt graduated from the University of Michigan and served in the United States Navy in World War II. Following his graduation from Harvard Law School, he worked at a large law firm in Chicago before returning home to establish his own practice in Gary. Burt's specialty was wills and trusts, and by all accounts he was extremely skilled and successful in this highly technical and arcane field.

His academic career began as an adjunct professor at the Valparaiso University School of Law where he taught Estate and Gift Taxation and Estate Planning for many years. The conflict between his work and his deeply held political and social views led him to

* Professor of Law, *Valparaiso University School of Law*. J.D., *Harvard Law School*; B.A., *Columbia University*.

abandon a lucrative law practice and begin teaching law full time at Valpo in 1967. In 1973, he moved to Washington D.C. as one of the founders of the newly-created, innovative Antioch School of Law, the country's first "clinical" law school. Burt taught at Antioch for five years. During that time he helped organize the first law school union in the United States. In 1978, he moved to the Washington College of Law, American University, where he taught courses in Constitutional Law, First Amendment, and Federal Courts for the next 20 years. During that time he was voted "Outstanding Teacher" no fewer than 13 times and selected as the outstanding teacher in the University as a whole. He became Professor Emeritus in 1998 and lives now in the Washington D.C. area.

Burt's commitment to equality and to freedom, as well as his inexhaustible energy and leadership qualities, have been evident throughout his life. As a young man in the 1940s, he was an organizer for the third-party Henry Wallace campaign for President and worked to desegregate schools, beaches and other public facilities in his hometown. He represented local trade unionists called before the House Un-American Activities Committee during the dark days of McCarthyism. As a pro bono lawyer for the local Calumet Chapter of the ACLU in the 1950s and '60s, he represented clients resisting censorship of movies, fighting racial segregation, and he defended the right to use the streets and parks in the Civil Rights struggle. In 1963, he led a group from Northwest Indiana to the famous March on Washington and later went to Mississippi as part of a legal team supporting the Civil Rights movement there. Included in that group of lawyers were legendary legal figures such as Tony Amsterdam, George Crockett, Jack Greenberg, Arthur Kinoy, Bill Kunstler, and others. I hasten to add that throughout his life Burt's work would not have been possible without the support of his wife Fredi, and his daughters, Shonna and Maia.

Burt's leadership resulted from the force of his personality, the brilliance of his analysis, the strength of his convictions and his willingness to work more hours and do more things than any of us asked of ourselves or had any right to ask of him. He was most alive in the role of the community activist—whether planning to wrest political control of Gary from an entrenched and self-profiting political machine, supporting strikers, or battling racism. Where firemen, steelworkers, welfare workers, welfare mothers, or peace activists were walking picket lines and demonstrating, Burt was among them. He was a key political strategist and speechwriter in the successful campaign to elect Richard Gordon Hatcher as Mayor of

Gary in 1967. Hatcher was the first black mayor of a major American city, and his election revealed possibilities and unleashed forces that are still transforming American politics today.

The law school was an enormously important place for Burt in each university where he taught. Distinct from most of at least my colleagues, he defined his role as a member of overlapping communities: students, teaching colleagues, workers, and others. Those relationships and communities included every person in the law school. For Burt, each person was equal to every other person. His concern for fairness was just as great for a cleaning person as for teaching colleagues. He loathed hierarchical organization and the pretense that accompany title, class and other artificial distinctions. In the classroom his mantra was “here, every student is a teacher: every teacher a student.” Burt truly wanted everyone—students, faculty, secretaries—to call him not Professor Wechsler, but simply Burt. They usually did. He invariably called others generic names like “lefty” or “sister.” These were greetings of warmth and love from his mouth.

Burt’s pedagogic technique was never didactic, but was instead an opportunity for relationship with others. His academic standards were lofty and rigid, but even classes of a hundred or more students were actually seminar-like dialogues between Burt and individual students. As Benjamin Ladner, American University President, noted upon Burt’s retirement in the spring of 1998:

You are a person with strong and deeply held beliefs who nevertheless is regularly cited by students from the opposite end of the political spectrum as the professor most open to dialogue and discussion in the classroom. You have prodded our community on the important issues of the day—but with an attitude that demonstrates your love for the community even when its actions are disappointing.¹

In and out of the classroom—and it was outside the classroom that much of his teaching took place—Burt radiated a generosity, a spirit, a warmth, and a boundless acceptance that made it plain that whether your views agreed with his or not, he was your friend and on your side.

He was an extraordinary role model and counselor for countless students and others; his door was always open. Burt was the first, and still the only, faculty member I have known who used file cabinets to cache food for everyone who cared to walk in and help themselves to

1. Statement of Benjamin Ladner bestowing Emeritus status, April 19, 1998.

dried fruit, nuts and other physical and spiritual sustenance. His office was open whether he was present or not.

As a young colleague at the Valpo Law School in the early '70s, I was awed by Burt's prodigious preparation for class. His office was filled with dozens of extra large black looseleaves with abstracts of cases to be taught, commentary on those cases, contemporary newspaper articles reporting on events reflecting legal issues in his courses. I was privileged to inherit a few of those notebooks when Burt moved on to Washington. I still treasure them.

Although he hated law school exams, he was a master at writing questions which truly tested students' mastery of the material and their analytic abilities. He worked for weeks, even months, evaluating students' answers. Burt wrote extensive comments in their bluebooks, trying to make the law school examination process an educational experience. He actually invited students to talk with him about their answers and grades. Most law faculty I have known would prefer to face lions in the Coliseum than to follow Burt's lead on exams and grading. When I would protest that his grading took too much time from other academic pursuits, Burt would simply rejoin, "There's nothing more important than teaching students."

A scholar's choice of research tells us much about his or her values. Burt chose to research and write about matters of the deepest concern to him. Justice was the passion that informed his scholarship. In the academy we are tempted to shape ourselves to the dominant values around us, but for Burt the law and legal scholarship were means of challenging and changing an unjust world. His article, *Federal Courts, State Criminal Law and the First Amendment*,² was a response to the Supreme Court's disastrous decision in *Younger v. Harris*.³ The majority opinion in *Younger* boldly proclaimed that federal equity was not available to enjoin state criminal proceedings that threatened violation of constitutional rights, if proceedings were already underway. Burt believed the case was a body blow to civil rights and civil liberties—so it was and so it is today—and set out to demonstrate that *Younger* was wrong. His article is 166 pages long and has 718 footnotes. Burt found and analyzed hundreds of decisions in which federal courts had issued injunctions enjoining state criminal proceedings in the period between 1888 and 1971, albeit typically in the service of corporate and property rights until the modern era of Fourteenth Amendment jurisprudence. To be

2. 49 N.Y.U.L. REV. 740 (1974).

3. 401 U.S. 37 (1971).

sure, *Younger's* version of "*Our Federalism*"⁴ has grown stronger, even expanded, in the past 31 years. Check Burt's research and decide for yourself if this interpretation of federalism is anything more than a newly produced quicksand of policy choices by a Supreme Court increasingly hostile to civil rights enforcement.

Burt's view of the law is that although it has often been used as a means of solidifying an inequitable status quo, it can be a transforming, catalytic agent to bring about a society with greater justice. His commitment to the First Amendment undergirds a vision of law as a moral force—a means of educating society. But as painstaking (dare I say obsessive?) as he was in his scholarship, Burt was far more interested in the uses to which knowledge can be put.

Burt knew that we cannot make sense of our present quandaries without historical perspective, and a clear-eyed analysis of how we have come to our present state. His analysis of black disenfranchisement in the South in the 1890s and early 1900s, a portion of which is published in this issue of the Law Review, reveals the enlarging cancer of racism—Burt always called it "American Apartheid"—that choked progressive politics in the South for decades. This chapter is but a small part of a much larger book of Burt's on the fall and rise of 42 U.S.C. § 1983, the chief weapon of Civil Rights enforcement.

Burt believed in the transformative powers of the First Amendment. But he knew that freedom of speech, press, and other rights can not flourish in a system of vast disparities of wealth and power. He understood that tolerance and art and choice wither where people are hungry, ill-housed, without economic or political power, despairing of not only their own futures but of also their children's futures. He challenged students to make a difference in their own communities. His closing comment to his classes was always "Defend the First Amendment; if not you, who?"

Those of us privileged to have him as part of our lives know that he has made us better than we thought we could be. Langston Hughes, the great African-American poet, summed up Burt's career far better than I can in his poem, "Dusk."

Wandering in the dusk,
Sometimes
You get lost in the dusk-
And sometimes not.
Beating your fists

4. 401 U.S. at 744-45.

Against the wall,
You break your bones
Against the wall –
But sometimes not.
Walls have been known
To fall,
Dusk, turn to dawn,
And chains be gone!
So friends, let us lift a glass and offer a toast—
Here's to you, Burt, L'Chaim!