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A Tribute to Burt Wechsler

A TRIBUTE TO BURT WESCHLER

DANIEL PALMER^{*}

I could not be more pleased to hear that a portion of Burt's work on the history of the protection of civil rights in the United States is to be published in the *American University Law Review*. That said, I must also say to you Burt, Lefty Louie, it's about time! Truthfully, knowing that this work, this book, was one of the true loves of your life, Burt, I didn't think you'd actually bring it to conclusion. True love is hard to find, hard to keep, and harder to let go.

Burt is my mentor, my inspiration, and my friend. I took every class he taught while I was at the Washington College of Law. I interned for him at least twice. And, when I could find no way to continue earning credit for working for Burt, I went to work for him. And, when I graduated and moved on from law school in every other sense, I continued to return to Burt and his book—every Saturday morning for years.

Saturday mornings—ahh, the memories. As I fondly remember it, Burt was consistently late and I was consistently sniffing (an allergy thing). We did not ever get right down to work. Burt would arrive excited about some new tidbit of information, some new insight, or some happening at WCL that he'd be worked up about. We'd yammer about that for a while, often more than a while, then get right down to it. I'd pull out the research materials and my notes and Burt would pull out his micro-sized tape recorder. We'd begin going through the materials and generally, before we'd gone far, we'd come across something exciting—well, interesting to me and exciting to Burt, and then the tape recording would begin: extensive quotation, pointed analysis, and lengthy instructions to the secretary (who later would transcribe the tape) about where to insert this material into

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which files and which documents. Did I say lengthy? No new information or analysis ever got filed in only one place. Anyway, then it was off to lunch, then nap time, then maybe a bit more work or maybe not, and we'd end another not-so-productive, but usually wonderful day.

I was devoted to Burt, to the joy we both had working on his project, and to the importance of the work that he was doing with civil rights. Burt's work, his book, was not intended as some academic exercise required to maintain professor-ness or some such thing. This work was and is meant to awaken readers to the fragility of American civil rights, to remind us that it was not very long ago, forty and fifty years ago, when Americans did not have a recognized, Constitutional right to assemble, and when blacks and poor whites in many states, particularly in the South, were not allowed to vote. I worked with Burt investigating the disfranchisement of blacks that followed the end of post-Civil War reconstruction. We read the minutes of the Alabama Constitutional Convention of 1901 and discovered, as Burt suspected, that the intent of the majority at that convention was to disfranchise the poor whites right along with the blacks, and then use the race card (as well as deception and ballot box stuffing) to get the new Constitution ratified. We read about one black man in Alabama, Jackson Giles, whose right to vote was erased by the new Constitution, who challenged this act of the state in federal court. And, we read about one white Supreme Court Justice, Oliver Wendell Holmes, who told Mr. Giles that there was nothing that the federal court or the federal government could or would do to return to him or to his black or white brothers their right to vote.

Burt considered many, many titles for his book, but the one that always appeared back at the top of the list was, "The Fall and Rise of Section 1983:???" The "fall," as noted, was the refusal by the Court to enforce the Fourteenth Amendment to the U.S. Constitution, as it was empowered to do pursuant to title 42, section 1983 of the United States Code, to preserve for blacks and poor whites the right to vote. The "rise," when the federal courts finally began to employ section 1983 to protect civil rights, did not come until almost half a century after Mr. Holmes told Mr. Giles, "No." Unfortunately, during my years in law school and over the years since then, the Burger/Rehnquist court has renewed the historic unwillingness of the federal judiciary to acknowledge the protections of civil rights afforded by the U.S. Constitution and its amendments. Burt used to say he'd need to change the book's title to, "The Fall, the Rise, and the Fall" The protection by our government of our most

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cherished rights is not a certainty, as American history, recent and not so recent, tells us.

So, Burt, I love you for opening my eyes, for showing me truth that I did not see without your guidance. With your words on our lips and your spirit in our hearts, I and the many others who have been educated and inspired by you will carry on the fight.