

LESSONS FROM THE FALL:  
A Review of Sol Wachtler's After the Madness: A Judge's Own  
Prison Memoir  
by, Andrea D. Lyon<sup>1</sup>

This book is both better and worse than one would expect. It is the story of Sol Wachtler, formerly Chief of New York State Court of Appeals<sup>2</sup> who had an extramarital affair with a woman for whom he had been appointed executor, and after the breakup had stalked her with letters, phone calls and threats. His fall from power is what fascinates us of course, but that is not what is valuable about this book. It answers an outsider's questions about the prison experience, seems to accurately reflect the dehumanizing aspects of prison, and is a cautionary tale regarding our wholesale warehousing of so much of our population. It's insights into these problems are tremendous, and many of Wachtler's suggestions for change are brilliant. On the whole, however, the book is disappointing.

The book begins with an enticing description of some of his childhood experiences, descriptions of his rise to power and preeminence in the New York judicial system, but it feels like a

---

<sup>1</sup> The author wishes to thank senior University of Michigan law student Amy E. Smith, for her invaluable help in researching and writing this review.

<sup>2</sup> In New York State, the Court of Appeals is the highest court. The position of Chief of that court is one of the most powerful in the state; the Chief of the Court of Appeals for New York is responsible for the administration of the entire court system of the state, not just the Court of Appeals.

tease; it fails to really answer many questions about Sol Wachtler the man, about the true nature of his illness (or even if it was illness as we understand it to be), about his rise to prominence or even the real consequences of his fall. This book should have been either an autobiography (and a complete one), or should have had only introductory remarks about Wachtler's adulterous affair and crime. This would have been a better book had it stuck to what is wonderful about it -- an insight into prison.

In order to understand this book, to measure it's accuracy and to assess its perspective, I read numerous Court of Appeals decisions authored by the former Chief Judge Wachtler both before and after he became the Chief <sup>3</sup>, the federal indictment, spoke with the chief federal prosecutor Michael Chertoff <sup>4</sup>, read many

---

<sup>3</sup> People v. Kates, 428 N.E.2d 852 (N.Y. 1981); People v. Brown, 399 N.E. 2d 51 (N.Y. 1979); People v. Branch, 389 N.E. 2d 467 (N.Y. 1979); People v. Mullin, 362 N.E. 2d 571 (N.Y. 1977); People v. Stewart, 358 N.E. 2d 487 (N.Y. 1976); People v. Torpey, 472 N.E.2d 298 (N.Y. 1984); People v. Thompson, 458 N.E.2d 1228 (N.Y. 1983); People v. Drain, 535 N.E. 2d 630 (N.Y. 1989); People v. Krom, 461 N.E. 2d 276 (N.Y. 1984); People v. Taylor, 552 N.E.2d 131 (N.Y. 1990); People v. Robles, 533 N.E.2d 240 (N.Y. 1988); People v. Catten, 508 N.E. 2d 920 (N.Y. 1987); People v. Wilkins, 501 N.E. 2d 542 (N.Y. 1986); People v. Silver, 310 N.E. 2d 520 (N.Y. 1974); People v. Culhane, 305 N.E.2d 469 (N.Y. 1973); People v. Liberta, 474 N.E. 2d 567 (N.Y. 1984); People v. Berg, 451 N.E. 2d 450 (N.Y. 1983); Wilkinson v. Skinner, 312 N.E. 2d 158 (N.Y. 1974); Curle v. Ward, 389 N.E. 2d 1070 (N.Y. 1979); Seelig v. Koehler, 556 N.E. 2d 125 (N.Y. 1990); Doe v. Coughlin, 518 N.E.2d 536 (N.Y. 1987); People v. Goetz, 497 N.E. 2d 41 (N.Y. 1986); Chapadeau v. Utica Observer-Dispatch, Inc., 341 N.E. 2d 569 (N.Y. 1975); People v. Thompson, 530 N.E. 2d 839 (N.Y. 1988); Konigsberg v. Coughlin, 501 N.E. 2d 1 (N.Y. 1986); People v. Epps, 334 N.E. 2d 566 (N.Y. 1975).

<sup>4</sup> I interviewed Mr. Chertoff, now a defense attorney, by telephone on February 18, 1998,

New York Times articles about the case and its aftermath<sup>5</sup> and Linda Wolfe's Double Life,<sup>6</sup> which (luridly) tells the story of the crime and the gossip about the central figures involved. I read all of this because I did not feel that Wachtler was telling the whole truth about his life; his sense of entitlement fairly leaps from the pages despite his protestations of guilt and remorse whenever he describes his affair, his extortion scheme, or the prosecution of his case. He views that prosecution as unduly harsh and politically motivated. He is right, and he is wrong.

Sol Wachtler came from comparatively humble beginnings -- his father was a traveling salesman who made his living auctioning off the estates of the dead or the failed, his mother was a Russian immigrant.<sup>7</sup> I learned most of this from Wolfe's book, only some of it from Wachtler's despite his moving description of living in North Carolina and being beset by bullies for the apparent crime of owning shoes and being from a

---

<sup>5</sup> See, e.g. *Judge Wachtler Heads for Prison*, N.Y. Times, September 10, 1993, at A26; Diana Jean Schemo, *A Prison Term of 15 Months for Wachtler*, N.Y. Times, September 9, 1993, at B1; Frank J. Prial, *Men in the News: Two Court Appointees from Different Backgrounds: Sol Wachtler*, N.Y. Times, January 3, 1985, at B6.

<sup>6</sup> Published by Pocket Books, 1994, New York City.

<sup>7</sup> Wolfe, Double Life, p. 13.

city.<sup>8</sup> The story like many of the recollections in Wachtler's book has the feeling of disembodiment, of Wachtler having *observed* these things happening to himself, rather than experiencing them. Wachtler provided this touching, tiny detail, but failed to provide some of the more overarching information about his growing up. Indeed, his description of the crime, suffers from the same malady. Perhaps this is a function of Wachtler's serving so many years as an appellate justice, of having to remove himself from his decisions in order to be objective.

Wachtler was selected by his father as the "one" in his family. He was the one who was accorded special treatment, was marked to get the education and wasn't allowed to work in the family business like his brother Morty. He got into Milford, a prestigious prep school which had a good reputation for getting kids into Yale.<sup>9</sup> He didn't get into Yale, but he did get into Washington and Lee University in Virginia. He was a good looking energetic kid, and he met Joan Wolosoff right after he graduated from Milford. He ultimately married her and the money that came with her. In part that money, and the connections that it brought him, helped him get elected to local office, to run for

---

<sup>8</sup>Wachtler, After the Madness: A judge's own Prison Memoir, Random House, New York City, 1997, pages 42-50.

<sup>9</sup>Wolfe p. 14.

statewide office and to ultimately win his position on the Court of Appeals. Wachtler was considered one of the finest jurists of his time, his writing clear and concise, his insight masterful.

Until the affair with his "ward" Joy Silverman, Wachtler was a faithful husband, albeit not a passionate one. When Wachtler came into closer contact with the fascinating Joy Silverman, an affair between them began. Essentially, Wachtler was upset that Silverman broke off their affair and had found another man. He invented a character ("David Purdy") who wrote a series of increasingly frightening letters to Silverman threatening her with "exposure," threatening her teenage daughter with kidnaping, and demanding ultimately for money not to kidnap her.<sup>10</sup> The crime that Wachtler was charged with was an extortion scheme.<sup>11</sup> The letters were mailed interstate and thus what might have been a misdemeanor set of charges in the state of New York,<sup>12</sup> became a

---

<sup>10</sup>Wachtler, p.5, 17, Wolfe pp. 1-8, United States District Court, District of New Jersey Indictment 93-58

<sup>11</sup>United States District Court, District of New Jersey Indictment 93-58

<sup>12</sup>There are five comparable New York state statutes. Those offense are: 1) Harrasment in the First Degree: New York Penal Code Section 240.25, 2) Harrassment in the Second Degree: New York Penal Code Section 240.26 3) Menacing in the third degree: New York Penal Code Section 120.15, 4) Menacing in the Second Degree: New York Penal Code Section 120.14, and the one which would not apply 5) Menacing in the First Degree: New York Penal Code Section 120.13. This last statute would not apply to Wachtlersince it requires a predicate conviction for menacing. All of the rest of the statutes are misdemeanors.

much more serious federal felony.<sup>13</sup>

Wachtler complains about this choice of prosecution, and credits then Assistant United States Attorney Michael Chertoff's ambition, as well as his Wachtler's status, as the true motivations for treating his transgressions as a serious federal offense.<sup>14</sup> He also accuses Chertoff of "nurturing" his criminal conduct by waiting to "take him down" when it could be a stronger case for the prosecution.<sup>15</sup> It is this kind of accusation, coupled with blaming his crime on self-medication of his bipolar disorder which makes his protestations of sincere remorse ring hollow.<sup>16</sup> Chertoff told me that Wachtler was like many defendants -- trying to blame someone else for his misdeeds. Chertoff said that Wachtler seemed to think that the FBI should have just come to see him in his chambers, and that as "one of the boys" they should have told him to cut it out, rather than surrounding his car on the road and arresting him so publicly, a scene he describes vividly. The reason for the on the road arrest, Chertoff said, was to avoid an arrest at home where it

---

<sup>13</sup> 18 U.S.C. 1952, 18 U.S.C. 1001, 18 U.S.C. 876, 18 U.S.C. 2. These are all felonies which in Wachtler's case would carry a maximum of five years in prison.

<sup>14</sup> Wachtler pp. 195-197

<sup>15</sup> Id. pp 19,20, 196.

<sup>16</sup> Id. at p.20

was more likely someone would get hurt ,<sup>17</sup> and given the violent nature of the letters, this seems a legitimate concern. However, to say that politics or fame had nothing to do with the prosecutorial decisions in this case would be inaccurate.<sup>18</sup>

Wachtler correctly points to an arguably similar circumstance~~s~~ when an Assistant United States Attorney wrote herself threatening notes which were originally thought to have come from terrorists, causing extraordinary measures to be taken for her security as well as that of the courthouse and the judge in front of whom she practiced. She claimed to have no memory of having written the notes and she was never arrested, or subjected to any conditions of release, but simply allowed to voluntarily admit herself to a psychiatric facility and from there fifty days later simply went home.<sup>19</sup> When I spoke with Chertoff, he assured me that her case involved much more serious mental illness than bipolar disorder and "Wachtler's self-medication, but rather involved a true schizophrenic."<sup>20</sup> There is no reason not to believe both Chertoff and Wachtler about this, undoubtedly the Assistant United States Attorney's mental illness was more

---

<sup>17</sup> Telephone interview with Michael Chertoff on February 18, 1998.

<sup>18</sup> Wachtler reports a television interview with Chertoff when he left the United States Attorney's Office in which he counted the Wachtler prosecution as a triumph. Wachtler, p.195.

<sup>19</sup> Wachtler at pp. 197, 198.

<sup>20</sup> See note 16.

serious, but the fact she was "one of their own" surely played into the charging decisions made. Wachtler was charged federally, went to prison, and lost a great deal more than most people charged with similar or worse conduct towards their spouses or lovers after a break-up.<sup>21</sup>

The question of whether Wachtler's exalted and powerful position warrants more serious punishment is a thorny one, and frankly beyond the scope of this book review, but in order to examine Wachtler's claim, it is important to look at not only the prosecutorial agency, but the complaining witness, Joy Silverman.

Wachtler is careful in his book never to disparage Silverman (although you can feel him *wanting* to), something Wolfe has no problem with doing. Wachtler is so careful not to disparage

---

<sup>21</sup> Embedded in Wachtler's proclamations about his mistreatment by the prosecution, is an element of truth. A November 1992 response to an Op-Ed piece in the New York Times submitted by Rena K. Uviller, Presiding Judge of the New York State Supreme Court, Criminal Term, touches on this discrepancy:

"If Judge Wachtler has received special treatment thus far, it is surely harsher, not more lenient, than someone less prominent would have received.... I do not criticize the appropriateness of the security measures imposed by the Federal Magistrate. I only suggest that the prominence of the accused played a role in imposing them."

If this is the case, Wachtler's prison memoir may bring even more to the surface than he realizes. For entitlement aside, our criminal system is one based, at core, on consistency in application of punishment. Perhaps far more disconcerting than the experience of a single man in prison, even *this* man, is the realization that leniency or severity might go hand in hand with race, wealth, prominence, or stature. And if they, in one courtroom, are slanted in one way, who is to say that in another courtroom, courthouse, jurisdiction, they won't tilt in the other direction.

Silverman that I didn't learn from his book the extent of Silverman's political connections to the Republican party (both Silverman and Wachtler were Republicans). Silverman's connections and her adept Republican fundraising led to her ultimately unsuccessful nomination by President Bush attempt to become ambassador to Barbados.<sup>22</sup> When Silverman began to get the threatening letters from Wachtler she called the Director of the FBI, William Sessions, directly for help.<sup>23</sup> Joy Silverman wasn't just somebody's girlfriend who was getting scary letters and hang-up phone calls, she was an important player in the Republican party. To say that her status had nothing to do with the kind of prosecution that Wachtler faced would be foolish.

Similarly it would be foolish to say that Wachtler's position of power had nothing to do with his transgressions; it facilitated them and gave him the sense that he could do anything. Wachtler describes this grandiosity as a manifestation of his bipolar disorder, and I have no doubt that he is right, but that simply is not the end of the story. Power is, as the saying goes, a powerful aphrodisiac, and Wachtler succumbed to it.

This book is most powerful when Wachtler forgets to complain about his situation and simply describes what being in prison

---

<sup>22</sup> Id at p.131.

<sup>23</sup> Wolfe, p.194-196

does to someone, someone who has the support of his family, his friends and who received a visit from United States Supreme Court Justice Blackmun at prison.<sup>24</sup> It is in these descriptions where he is least self-conscious and most persuasive. Wachtler struggles mightily in his present circumstances to justify some of his decisions as a judge.<sup>25</sup> For example, as a Court of Appeals judge he authored a decision regarding solitary confinement, called Wilkinson v. Skinner.<sup>26</sup> In that case, an inmate claimed that being put in solitary confinement for five days was cruel and unusual punishment. Wachtler writing for the Court held that it was not unless the cell was "subhuman"<sup>27</sup> and was cruel and unusual for that reason. He recalls for us a discussion with two fellow justices who had formerly been prosecutors in which they tried to convince the court that solitary confinement is simply a necessary way to keep

---

<sup>24</sup> Wachtler at pp. 181-183.

<sup>25</sup> In reading Wachtler's opinions I stuck to criminal and prisoners cases. I was struck by the tightrope he seemed to often be walking; trying to vote with the powerful force in the case (usually to affirm a conviction or confirm a prison's authority), and yet a deep reluctance to step too hard on the "little guy" or to trespass on the constitution. In a word, Wachtler was a moderate. A brilliant, erudite articulate and politically savvy moderate.

<sup>26</sup> 312 N.Y.2d 158 (1974).

<sup>27</sup> 312 N.Y.2d at 162.

discipline, a conversation he remembers ruefully..<sup>28</sup> Wachtler will not go so far as to say his decision was wrong, but goes on to describe his own sojourn in solitary, which is where he was put on his arrival to Butner prison. He movingly describes the isolation and its inherent cruelty and suggests that judges should have to understand, that is to see, the import of their decisions, not because they should be sending a message with their decisions, but because they must be aware of the societal and individual costs of their decisions.<sup>29</sup>

Not long after after coming out of solitary, and back in the general prison population, Wachtler was stabbed in the back. The weapon was never recovered but could have been a fork, and his assailant was never found. The prison authorities seemed to think the wound was self-inflicted, something which Wachtler vehemently denies,<sup>30</sup> and institutional response was not to take Wachtler out of the prison he was in, or even to take him to a hospital; it was to put him back in solitary confinement. For the general public, this may come as a surprise; to those familiar with the prison system, it is not. Wachtler was stabbed, therefore he might be stabbed again, therefore put him in solitary. It is while back in solitary that the veneer seems

---

<sup>28</sup> Wachtler at p.30-32.

<sup>29</sup> Id at pp.31,32.

<sup>30</sup> Id at 118-122.

to slip, and despite his "objective language" Wachtler's fears surface, his loneliness and isolation strip away his equilibrium and we see him, human before us. He is smart, he is sophisticated, he is scared:

"This morning - very early this morning - I awoke with a start. Since the stabbing, and the infected elbow, my sleep is easily disturbed so that the shuffling noise over my cot, although barely audible, was enough to awaken me. There, not two feet from my head, was the largest, hairiest, and most sinister-looking spider I had ever seen. Although it had the size and characteristics of a tarantula, it had the ominous hourglass marking of the black widow.

As a rule, insects do not frighten me. But this one, larger than my fist, caused me to bolt out of my bed in frantic search for a light switch. Remembering that the lights must be turned on from outside my cell, I began shouting through the food slot for the duty officer.

There I was on my hands and knees shouting through the door slot, "Officer! Officer! Officer!" My voice became part of the nocturnal chorus. I was trying to yell louder than any of the others who were shouting, barking, singing and screaming. I had become one of them. And although I thought the spider was enough of a reason for me to require special attention, I am certain that whatever devil, fiend or specter had moved in with them was at least as disturbing.

When the officer put on the light, there was no spider. This news came as no surprise to him. He had witnessed the simple turning on of a light put flight to vampires, mummies, devils and once, the four horsemen of the apocalypse. My spider was no challenge at all. But it frightened me. Not the spider. The fact that I saw the spider."<sup>31</sup>

This passage in Wachtler's book is the one which convinced

---

<sup>31</sup> Wachtler, pp. 140,141.

me it is worth reading. Worth reading because, all sense of entitlement aside, all frustration at hearing either too much or too little of Wachtler's life and rise and fall aside, at this point, in this place all irritation at the standing beside himself voice disappears. If it can happen to him, it can happen to me. To you. To anyone.

Because that veneer was been stripped away, at least for a little while, the important, simple observations begin to come through. It is these simple things that he describes which tell us so much about the dehumanizing effects of prisons; what it is like to shower or urinate in front of guards, what it feels like to visit with your wife and daughter and then to have to "bend and spread 'em," naked, afterwards, the fact that you have no name in prison.

He also talks movingly if simplistically about the foolishness of incarcerating non-violent offenders (primarily on drug possession charges) for decades, about the need to look seriously at our priorities and policies regarding crime, and about the opportunities we are missing to provide help to those who need it by punishing them instead of treating the causes of their behavior. His list of suggestions include adopting a public safety philosophy rather than a punitive one, eliminating of mandatory drug sentencing, using alternatives to prison as sentences where possible, taking all governmental funding to

prisons away if they fail to provide treatment facilities for drug and alcohol abusers, and taking a look at alcohol and drug rehabilitation programs that really work.<sup>32</sup> His opinions as a judge were not very much more conservative or punitive than these suggestions (although they were somewhat more conservative), they just lacked the visceral understanding of what incarcerating so many people means.

In our country today, over 1.2 million people are in prison.<sup>33</sup> When you add those in jails and on probation, the numbers jump to 5.5 million -- 2.8 % of the population of our country.<sup>34</sup> Wachtler's suggestions are not just humane, they are necessary. Prisons are one of the largest growth industries today. Small towns fight to get them; they mean employment and new businesses which support them will locate in those depressed areas. But at what cost? That we imprison millions of people who might, given help, contribute to our society? That we become so inured to injustice that we refer to wrongful convictions as "another one of those cases" as though it could never happen to anyone who matters? That we are willing to trade human beings

---

<sup>32</sup> Id at pp.267-269.

<sup>33</sup> The U.S. Department of Justice Bureau of Justice Statistics, June 1997 report. The number includes prisoners in custody and persons under the legal authority of a prison system but who are held outside its facilities.

<sup>34</sup> The U.S. Department of Justice Bureau of Justice Statistics, year-end 1996.

and their potential for a feeling, however illusory, of safety? That is one of the important lessons that Wachtler's book teaches us.

The other lesson is less obvious, and never directly stated. Wachtler is one of "us" rather than "them". By that I mean he looks like the privileged person whom one assumes does not go to prison, not the street thug of our imaginations. He was highly visible within the prison system, yet he was stabbed, left to sicken and treated like a cipher. It is possible for the privileged to look at Wachtler and imagine that they too could one day be in prison, that they too could suffer in that environment. If it *could* happen to a "have", then maybe we will pay more attention to what happens to this population, to "have not", maybe we can see that there is more than one way to deal with crime and punishment.

"If we continue to increase penalties and continue to categorize more offenses as felonies, we have to build more prisons, and we will continue to believe that the more people in prison, the less crime there is, without distinguishing the violent from the nonviolent offender and without effectively dealing with the drug problem, the real cause of crime.

I read somewhere that when the only tool you have is a hammer, you tend to think of every problem as a nail."<sup>35</sup>

This book answers many questions about the prison experience, and tells a fascinating story. It's insights into

---

<sup>35</sup> Wachtler, at p. 269.

the "big" problems of prisons are brilliant. That is why although Wachtler's book is disappointing in many respects, it is worth reading, worth discussing, and worth teaching.