

Remembering Welsh White

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I am unsure how to write about my former colleague, Welsh White. Welsh was the kind of person with whose passing an entire institution changes, including the careers of everyone who is linked to that institution. And, for someone of Welsh's stature and influence, those changes will reverberate well beyond a single institution. As a result, I cannot easily or simply memorialize him, for neither I nor anyone else will know for quite a while exactly what his legacy will be, except that it will be enormous.

When I remember Welsh, I think of energy and movement. He was a restless person, never fully satisfied with his work and instead driven to revisit and reassess his research and ideas. For example, although he had written books on the death penalty, my impression was that, by the late 1990s, he had decided not to write any more in the area of capital punishment and to concentrate instead on interrogation issues, as evidenced by his wonderful book and many articles on *Miranda v. Arizona* and other aspects of the law of confessions.¹ Yet, in recent years, he returned to the death penalty, in part through his continued interest in the importance of the right to counsel.² His mind was simply too active and his energy too great for him to let a topic rest.

Although I have referred to some of Welsh's scholarship, I do not see a need, particularly for readers of this journal, to discuss the breadth and depth of Welsh's work in any detail. Suffice it to say that he was a scholar of the first rank. It is simply impossible to write about involuntary confessions, *Miranda*, the death penalty, or the issues facing lawyers with clients on death row without reading

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¹ Welsh's initial books on the death penalty are *LIFE IN THE BALANCE: PROCEDURAL SAFEGUARDS IN CAPITAL CASES* (1984), *THE DEATH PENALTY IN THE EIGHTIES: AN EXAMINATION OF THE MODERN SYSTEM OF CAPITAL PUNISHMENT* (1987), and *THE DEATH PENALTY IN THE NINETIES: AN EXAMINATION OF THE MODERN SYSTEM OF CAPITAL PUNISHMENT* (1991). The *Miranda* book is *MIRANDA'S WANING PROTECTIONS: POLICE INTERROGATION PRACTICES AFTER DICKERSON* (2001). For some of his articles on the law of confessions, see *Police Trickery in Inducing Confessions*, 127 U. PA. L. REV. 581 (1979), *Defending Miranda: A Reply to Professor Caplan*, 39 VAND. L. REV. 1 (1986), *Confessions Induced by Broken Government Promises*, 43 DUKE L.J. 947 (1994), *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 HARV. C.R.-C. L. L. REV. 105 (1997), *What Is an Involuntary Confession Now?*, 50 RUTGERS L. REV. 2001 (1998), *Adapting to Miranda: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by Miranda*, 84 MINN. L. REV. 397 (2000) (with Richard A. Leo), and *Miranda's Failure to Restrain Pernicious Interrogation Practices*, 99 MICH. L. REV. 1211 (2001).

² See Welsh S. White, *Confessions in Capital Cases*, 2003 U. ILL. L. REV. 979; Welsh S. White, *A Deadly Dilemma: Choices by Attorneys Representing Innocent Capital Defendants*, 102 MICH. L. REV. 2001 (2004).

Welsh's work. That statement emphatically includes his last book, *Litigating in the Shadow of Death*, which, happily, he was able to see in print before he died and which is destined to become a standard work in the field.³ Keeping up with Welsh's output was hard to do, and his almost relentless production of significant scholarship was a powerful example to the rest of us.

Rather than discuss Welsh's writings or his scholarly impact any further, I would like to say a bit more about what it was like to be his colleague. By the time I arrived at the University of Pittsburgh School of Law in 1998, Welsh was approaching his thirtieth year on the faculty. Most of the Pitt faculty already knew Welsh better than I ever would; after all, he had worked with many of them for twenty or more years—and he knew the institution better than almost everyone else. Yet Welsh never cultivated distance; there was no sense that he was too senior, too involved, or too far removed from the concerns of even the most junior faculty. To the contrary, he craved engagement, and over the years we spent a lot of time talking about issues in politics and criminal law, our scholarly projects, courses, faculty issues, family matters, and the like.

Welsh was a wonderful mentor to junior faculty. I heard stories from other faculty of how he reviewed and commented on their scholarship as they neared promotion, and I will never forget his pages of comments on one of my own drafts. In numbered paragraphs he covered everything from word choice and punctuation to critical analysis of the arguments I had made and—even more important—of those I had failed to make. Yet he did not try to direct the analysis; if he disagreed with an assertion or a line of reasoning he would explain why and move on. I also learned from Welsh in the process of coauthoring a short article with him on the use of torture in terrorism investigations.⁴ Welsh's drafts for his parts of the article, and his comments on my sections, were clear and concise, with a flair for the well-turned phrase but a focus on analysis, not rhetoric. Just as noteworthy was the way in which he grounded his normative claims in an analytical structure, both as a way of recognizing the interdependence of moral and legal argument and also to avoid the polemical tone that sometimes infects legal scholarship. Welsh treated the endeavor as a true collaboration, but it was clear to me who was learning from whom.

Welsh's engagement with his colleagues did not run in only one direction. He shared drafts of his articles and book chapters in search of critical comments. In light of his expertise built up over many years, however, it was often hard to find weak points or to do anything more than suggest changes in emphasis or point out counter-arguments to pad out the footnotes. Still, he was always willing to discuss the issues and to consider new arguments or new variations on old themes. At the end of the day, that is, Welsh once again ended up serving as the mentor.

³ WELSH S. WHITE, *LITIGATING IN THE SHADOW OF DEATH: DEFENSE ATTORNEYS IN CAPITAL CASES* (2006). The book is reviewed in this issue of the *Journal*. 4 OHIO ST. J. CRIM. L. 223 (2006).

⁴ John T. Parry & Welsh S. White, *Interrogating Suspected Terrorists: Should Torture Be An Option?*, 63 U. PITT. L. REV. 743 (2002).

My strong impression is that, as a teacher, Welsh was always welcoming to his students. He spent hours advising, counseling, and sometimes consoling them. He also thought deeply and carefully about the best ways to present material to students. He was not only willing to share strategies but was also eager to discuss and learn from others. If I asked him how he taught a particular doctrine—perhaps voluntary manslaughter—he would tell me, but he would usually also express doubt that his was necessarily the best approach, and he would then ask me about what I was doing and whether it seemed to work. Often, I would hear back from him that he had tried something new—with doctrines that had changed little over the decades that he had taught them. Here again was his energy, restlessness, and refusal to be satisfied with what he had already done.

Somehow, Welsh also found time to be passionately devoted to Pitt Law School. He was deeply involved in faculty issues, talking to everyone, triangulating among the various faculty blocs, attuned to issues, swings, and tendencies, all with the goal of serving the institution. Of course he was not always on the winning side (whether or not he was correct), and I sometimes ended up concluding that his views were mistaken (whether or not his view won out). Either way we usually talked it all out in his office. But, win or lose, I do not remember that he ever bullied, gloated, or sulked, which is more than I can say for most veterans of faculty meetings, myself included.

For all his energy and desire to engage, Welsh also maintained a core of reticence. We had intense conversations about all kinds of topics, but I would not describe them as heart to hearts. Maybe others on the faculty had a different experience, but I think Welsh always held something in reserve. This reticence extended to his illness. During the summer of 2005, when I was in Oregon, he sent me a draft of an article on police interference with a suspect's request for counsel. It will be published posthumously in the *University of Pittsburgh Law Review*.⁵ I sent back comments—the usual quibbles and arguments over emphasis. He responded with his own comments and then, at the end of the e-mail, almost as an afterthought, he mentioned his cancer diagnosis and said that he would soon begin treatment. His manner was so offhand that I was lulled into thinking (or hoping) that it could not be too serious. I'm still shocked and angry at how quickly he was taken from us.

Going over what I have written, I fear that I have not captured what it was like to know and interact with Welsh. I've failed to convey the intangible things about a person that make you willing to put aside what you are doing and dive back into a conversation that has extended over time and across topics. Perhaps the problem is simply that I can't show him the draft, sit down on the ancient couch in his office, and talk it through.

⁵ Welsh S. White, *Deflecting a Suspect from Requesting an Attorney*, 68 U. PITT L. REV. (forthcoming 2006).

