



IN MEMORIAM: WELSH S. WHITE
1940-2005

TRIBUTES

WELSH S. WHITE (1940-2005)

**Welsh: Dedicated Scholar, Devoted Colleague,
and Dear Friend**

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Welsh White died of lung cancer at the age of 65 on the last day of 2005. He was a fine athlete who never smoked, stayed in terrific shape, and ran ten-minute miles and played great tennis until his diagnosis in August. The months after August were grueling and discouraging, but Welsh had only one complaint. He missed teaching.

I met Welsh in the green pastures of Harvard University when we were nineteen-year-old sophomores. We did some growing up together, shared some great and goofy friends, and even learned a few things—less in Harvard’s classrooms than in the Kirkland House dining hall and Cronin’s Tavern. Welsh, however, was a more serious student than I and even admitted that he enjoyed studying. This sort of admission was un-cool, but Welsh knew only one way to talk and that was to shoot straight.

After college, Welsh studied law at Penn. His favorite teacher was Anthony Amsterdam, a criminal proceduralist and capital case litigator whom Welsh revered and took as a model. After law school, Welsh remained in Philadelphia to practice law at White and Williams, the firm his grandfather had founded, and, after a year of that, in the District Attorney’s office. On a visit in 1967, I watched him successfully prosecute a purse-snatcher and then accompanied him to one of the end-of-the-day de-briefing sessions that District Attorney Arlen Specter held regularly with his staff. I learned why Specter’s sessions did not endear him to the lawyers in his office.

Welsh began teaching criminal procedure at Pitt at the age of 28, and he remained at Pitt throughout his career apart from visiting professorships at Virginia, Penn, and Berkeley. I taught criminal procedure too, and our relationship became professional as well as personal.

Welsh was always a hopeless addict, and his addiction was scholarship. On several occasions over the years, he reported that he intended to take a two- or three-month break from writing to pursue other interests. If he had done what he said he'd do, his respites would have been well earned, but with one exception, he didn't. During his one hiatus from scholarship, Welsh got John Lesko off death row (temporarily anyway) through a habeas corpus victory in the Third Circuit, and he litigated other capital cases as well. On all the other occasions, a new manuscript appeared within the period that Welsh had said he would set aside. Whether he was contributing to the store of knowledge or working to save a life, Welsh was incapable of putting down his pen even briefly.

Welsh never kicked his addiction. His final book, *Litigating in the Shadow of Death*, appeared in the bookstores five days after he died. Welsh held an advance copy a few days before his death, admired the dust jacket by Phoebe Gloeckner, and heard his wife Linda and a friend read a portion of the text. Welsh's final law review article—a study of the police practice of discouraging a suspect under interrogation from requesting an attorney—appears in this issue of the *University of Pittsburgh Law Review*. Welsh looked forward to writing another capital punishment book for the University of Michigan Press during his sabbatical in the 2006-07 academic year.

Although Welsh wrote on a wide variety of topics, he was known particularly for his work on police interrogation and the death penalty. Unlike critics who see the Supreme Court's ruling in *Miranda v. Arizona* as overly protective of criminal suspects, Welsh argued in a series of articles and in his 2001 book *Miranda's Waning Protections* that *Miranda* permitted abusive police practices.

As Welsh noted, about 80 percent of all criminal suspects under interrogation waive their *Miranda* rights. Once they do, their interrogation proceeds as it would have before *Miranda*. Welsh wrote in fact that *Miranda* might have "had the unintended effect of reducing the extent to which the due process voluntariness test provides protection against [unfair] interrogation practices." Welsh showed how police interrogators had adapted to *Miranda*. He presented transcripts of interrogations to illustrate their stratagems and considered which police tactics were lawful.

Welsh was particularly concerned about the risk of false confessions. He recognized, “The idea that a suspect who is neither insane nor the victim of physical coercion will confess to a crime he did not commit seems counterintuitive.” Drawing on the work of Richard Leo and Richard Ofshe, however, and offering detailed descriptions of interrogations in which the police had obtained false confessions, Welsh showed that the danger should be taken seriously. He then proposed specific restrictions on interrogation. They included limiting the length of the interrogation, prohibiting some sorts of trickery (particularly misrepresentation of the evidence against a suspect), prohibiting some threats and promises (particularly threats of adverse consequences to friends and loved ones), videotaping interrogations, and restricting the interrogation of especially vulnerable suspects.

Welsh explored in depth and detail every aspect of America’s system of capital punishment. He discussed false confessions in capital cases, the quality of counsel, client interviewing, factual investigation, plea bargaining, jury selection, the issues posed by defendants who tell their lawyers not to oppose death sentences, the persistence of racial discrimination, the role of victims’ families, the role of psychologists and mitigation specialists, jury instructions, penalty trial procedures, closing arguments, appeals, habeas corpus, and the rulings of the Supreme Court.

Welsh’s final book on capital punishment, the one published just after his death, focused on the work of defense attorneys. Like much of Welsh’s other scholarship, it went beyond reported cases, academic writings, and other law library materials to present material from trial transcripts and Welsh’s interviews with practitioners. Among the more than 30 defense attorneys, expert witnesses, and other criminal justice system actors Welsh interviewed were many of the most respected capital defenders in America. The book effectively encapsulated their wisdom.

Welsh did not write this book to be a practice manual, but a practitioner who sought down-to-earth guidance on how to litigate a capital case could not find a better place to start. He did not write this book to be a best seller, but its compelling narratives of cases, ethical dilemmas, and strategic choices are often difficult to put down. He did not write this book as a treatise on the law, but it includes a careful description of how the Supreme Court has restricted the right to the effective assistance of counsel and of how the Court’s narrow construction of this right may be changing. He did not write this book as a brief against the death penalty, but the book reveals how variations in the quality of counsel produce gross inequalities in who lives and who dies.

In this book and in his earlier writing, Welsh examined the effect of plea bargaining on the administration of capital punishment. Welsh, Steve

Schulhofer, and I once applied for a grant to determine how many of the inmates on death row are there only because they turned down a deal that would have saved their lives. How many may be executed not only for the crime of being a murderer but also for the crime of being an optimist?

We did not get the grant, but Welsh did not need the number to know that the strongest candidates for the death penalty often beat the executioner by striking bargains. Consider the Green River killer whose 48 admitted murders make him the most prolific serial killer in American history and the BTK killer whose grisly crimes terrorized Wichita for 30 years. Welsh wrote about the mass murderer Ted Bundy, whose rejection of an agreement that was clearly in his interest posed a painful dilemma for his attorneys. He wrote about Sandra Lockett, the defendant in a prominent Supreme Court case who had been minimally involved in a robbery that ended in an unanticipated killing by a co-felon. Lockett found herself sentenced to death because she had a plausible defense and therefore turned down offers that could have saved her life. Welsh concluded, "Plea bargaining in capital cases makes it less likely that the death penalty will be applied even-handedly or that imposing it will achieve any of the penological goals it was intended to serve."

Welsh was not the first scholar to note the frequency with which sleeping and otherwise incompetent lawyers bring death sentences to their clients, but he was the first to show systematically how exceptional lawyers work their magic and save even the worst of the worst from execution. Again he demonstrated that who is sentenced to death depends more on morally irrelevant circumstances than on differences in defendants or their crimes. The last sentence of Welsh's last book reads as follows: "In the long run, . . . just as a defense attorney's compelling narrative of injustice can produce a favorable result for a particular capital defendant, defense attorneys' compelling narratives of the series of injustices perpetrated by the modern system of capital punishment may lead to a continuing decline in the use of the death penalty, and eventually to its outright abolition."

Welsh's enthusiasm extended even to the mundane aspects of his job. Six weeks before his death, he returned home from the hospital after treatment for a cancer-induced stroke, and his first request was to read applicant files for the admissions committee. In a profession in which a critical attitude toward just about everything is usually a job requirement, Welsh celebrated the positive. He liked, appreciated, and admired his colleagues and was distressed when they did not seem to like, appreciate, and admire each other. Shortly before his death, he noted that Pittsburgh's new dean, Mary Crossley, appeared to be just the person to heal divisions in the faculty.

Welsh was dedicated to his students, and they were dedicated to him. Some posted reminiscences on cyberspace blogs following his death, in one case accompanying the tribute with a favorite snapshot. A student named Emily remarked, "He made me fall in love with the fourth amendment."

Although devoted to his law school, Welsh had time for chess, hiking, tennis, running, vacations in Maine, and especially his family. He bragged about Henry, Robin, Kathy, and Ryan and was terribly proud of them, and he was totally in love with Linda.

In the same quiet, matter-of-fact, un-cool, straight-shooting manner he had when we were sophomores, Welsh put all the parts of a dedicated and virtuous life together. Although there were frustrations and difficult periods, he took things one step at a time and made it all seem simple. On learning of his death, his teacher Tony Amsterdam remarked, "Welsh had a combination of nobility and unpretentiousness that was very rare and very precious. A world too poor in persons blessed with either virtue will be much poorer still for his loss." Traveling through 45 years of professional and personal adventures with Welsh was a constant joy. I will miss those long e-mails combining talk of Ryan's tennis triumphs and Kathy's graduate studies with descriptions of dean search frustrations, kind words about my latest article, expressions of concern about my worries of the moment, and enthusiastic plans for the next writing project. I have never had a more loyal and caring friend.

Anthony Amsterdam
Professor, New York University

What distinguished Welsh White was character. I don't mean simply that Welsh possessed estimable traits of character. I don't mean simply that he was *a* character, one of a kind, a unique and unforgettable personality. More important, Welsh **had** character—"character" in the old-fashioned sense comporting (but transcending) stability of judgment, intellectual integrity, independence of spirit, courageous and relentless adherence to principle, and, withal, unselfconscious, effortless humility.

Character in this sense—particularly the humility part—is vanishingly rare and very precious in legal academia. Because law teaching is a profession in which the major payoff is esteem, law teachers have every reason to try to look at least as good as they are, if not better. They have every reason to pose, if not to posture grandiloquently. So guys who are lucky enough to have the brilliance of mind and the breadth of knowledge that Welsh White had are prone to be self-important, self-centered, even arrogant. On this showy stage, Welsh's unpretentious dignity and selfless dedication to his students and his work were things of great, natural, unspoiled beauty.

Welsh was absolutely genuine. He genuinely cared about his students, about the education that they got and the personal and professional growth that each of them could achieve. He genuinely cared about the law, about its aspirations to be reasoned and just, and about its many failures to respond to reason or deliver justice. He genuinely cared about important causes—about assuring fair treatment for criminal suspects and defendants, about achieving equality for all people and respect for the autonomy and worth of every individual. For Welsh, caring meant unstinting commitment; and it was the bone-deep sincerity of his caring and commitment that made him a great teacher (to his friends and correspondents and readers, as well as his students at Pitt) and a forceful, creative thinker on the legal, moral and practical issues that he studied and litigated and wrote about.

Welsh had been an assistant district attorney in Philadelphia for a couple of years at the beginning of his career. He was a good and effective advocate for the prosecution but at the same time his first-hand experience with the power that police and prosecuting agencies wield and the institutional advantages that they have over criminal suspects, defendants and defense attorneys made a lasting impression on him. Welsh was struck by the unfairness of many of those advantages and by the dangers of unreliable conviction, inhumane punishment, and oppression that imbalances of this sort create in a system of justice which relies upon a contest (or at least a process

of bargaining) between theoretically equal adversaries as the means for reaching factually accurate adjudications of guilt and well-informed sentencing judgments while also protecting against abuses of basic constitutional rights. From the time he left the D.A.'s office until his death, Welsh worked and fought and taught with tireless energy to rectify those imbalances.

He did a part of this work as a litigator. The sagacity and skill, dedication and resourcefulness, stamina and infinite patience with which he represented death-sentenced (and popularly despised) clients like Stanton Story¹ and John Charles Lesko² produced impressive victories in exceedingly difficult cases. Welsh also filed influential *amicus* briefs³ and made important conceptual and strategic contributions as a consultant to lawyers representing condemned inmates in appeals and postconviction proceedings *pro bono*.

Another part of his work took the form of books and law review articles addressing a wide array of key issues in criminal cases, with a special focus on capital prosecutions.⁴ Welsh chose his topics carefully with a view to exposing and analyzing aspects of criminal procedure that disadvantaged the defense and were both underdeveloped in the scholarly literature and infrequently challenged by litigators. His treatments of the topics were scholarly; they were not adversarial briefs packaged in the wrappings of law review reprints; but they stimulated and informed many successful criminal defense lawyers' objections, arguments and briefs.

Welsh also worked outside the framework of traditional *genres*—and outside the box—in his essays (particularly the chapters of his last book) which explore practical pretrial and trial techniques used by experienced

1. See, e.g., *Commonwealth v. Story*, 497 Pa. 273, 440 A.2d 488 (Pa. 1981). This was the sequel to an earlier appeal on which Welsh had also represented Story and gotten his initial murder conviction and death sentence reversed.

2. See, e.g., *Lesko v. Lehman*, 925 F.2d 1527 (3d Cir. 1991). Welsh represented John Lesko for 10 years, from Lesko's direct appeal to the Pennsylvania Supreme Court in 1982-1983 through the federal district court ruling in 1992 setting aside Lesko's death sentence on remand from the Third Circuit decision I've cited.

3. See, e.g., *Commonwealth v. Bonadio*, 490 Pa. 91, 415 A.2d 47 (1980). Welsh's *amicus* brief in *Walton v. Arizona*, 497 U.S. 639 (1990), provided an invaluable historical examination of the right to jury trial. It failed to convince the Supreme Court to invalidate Arizona's capital-sentencing procedure on Sixth Amendment grounds in *Walton*; but when the Court revisited the issue in *Ring v. Arizona*, 536 U.S. 584 (2002), Welsh's *Walton amicus* brief served as a major resource for the attorneys who briefed and argued *Ring* successfully.

4. See, e.g., WELSH S. WHITE, *LIFE IN THE BALANCE—PROCEDURAL SAFEGUARDS IN CAPITAL CASES* (1984); WELSH S. WHITE, *THE DEATH PENALTY IN THE NINETIES—AN EXAMINATION OF THE MODERN SYSTEM OF CAPITAL PUNISHMENT* (1991).

capital defense attorneys.⁵ These essays offer sure guidance in the planning and teaching of training conferences for death-penalty defense lawyers, as well as assisting individual lawyers to prepare and conduct their cases.

So, there are more than ample reasons for folks in my lines of work—legal education and legal practice, both—to be grateful to the Gods for having lent us Welsh White for a time. But to those of us who knew him well, such reasons can be only the smallest part of the basis for our gratitude and our debt. Welsh was a true friend. (In a phrase his correspondents will recognize:) *May the Force be with him.*

5. See WELSH S. WHITE, *LITIGATING IN THE SHADOW OF DEATH—DEFENSE ATTORNEYS IN CAPITAL CASES* (2006).

Welsh White: Enduring Optimism in the Shadow of Death

Ronald A. Brand

Professor of Law and Director, Center for International
Legal Education, University of Pittsburgh

This year the University of Pittsburgh lost a great scholar, a great teacher, and a great colleague. Those of us at the School of Law also lost a good friend. For Welsh White, these would not be sentimental comments, but simply facts. He worked in a world of facts; a world for which he strived to improve the law we use in order to determine outcomes from those facts—so that individual lives might continue as a result of his work. And so that all of us could live in a more humane world.

My own work has little to do with Welsh's expertise in the law on capital punishment and criminal interrogations. As someone who deals with international business and trade law, and civil dispute settlement at the international level, I have not been a frequent reader of writings on capital punishment and interrogations—just as I know Welsh did not spend his time reading in the areas in which I write. Two days before Welsh died, however, he had received an advance copy of his last book, *Litigating in the Shadow of Death: Defense Attorneys in Capital Cases*.¹ He was justifiably proud of the book, right down to the creative cover. Cancer had taken its toll, and Welsh was both weak and uncomfortable. He asked that I read his new book to him—clearly a way to listen without having to expend the energy to speak in response. I obliged, and stopped after the first paragraph to tell him I was not reading the footnotes. His response was, “Read the footnotes too.” Welsh cared about the details, and knew that attention to detail in his area of the law could quite literally mean the difference between life and death.

As I read further in Welsh's book, I discovered not only a piece of fine legal scholarship, but a compelling collection of stories about the lives of very real people. Some of those people had done horrific things, but Welsh nonetheless conveyed the need for society to consider very carefully any decision to take the life of another human being. He also conveyed the story of lawyers at both ends of the competence spectrum in the representation of death penalty clients.

Those who read Welsh's final book will better understand the law on death penalty issues and better understand the people most affected by that

1. WELSH S. WHITE, *LITIGATING IN THE SHADOW OF DEATH: DEFENSE ATTORNEYS IN CAPITAL CASES* (2006).

law. They will also gain insight into a scholar who loved to teach and a teacher who was a great thinker. Students in Welsh's classes knew they were privileged to receive instruction that combined theory and practice in a way that both challenged the intellect and prepared the practitioner. Many considered him their best professor. His teaching extended beyond the classroom, working with moot court teams and engaging in the kind of informal mentoring one only hears about when former students reminisce.

In the more-than-twenty years during which I was privileged to be Welsh's colleague on the faculty at the University of Pittsburgh School of Law, I often was reminded why he was considered one of the true intellects of that group. Many in that community experienced his ability to mentor and guide others. What stood out most, however, was the consummate scholar who was also a person of simple style and humble personality.

Any law faculty, over time, confronts decisions on which opinions differ. Sometimes the resulting discussions lead to uncomfortable divisions. Welsh never shied away from stating his position on such matters. No matter what that position, however, he was always able to provide honest expression of his views without offending. Even when you disagreed with him, you were left with respect for his views. And he was always ready to hear explanations of the views of others, and willing to be moved to change his mind. Welsh was the kind of institutional citizen we should all hope for in any important group process: always involved, willing to listen, never unpleasant, committed to the decision of the group. He was both an anchor and a bridge in a community that realized his constant respect for others.

In the final chapter of his final book, Welsh sums up his research when he states that "capital defendants who have the 'worst lawyers' are likely to get the death penalty regardless of the nature of their crimes," and "capital defendants who have the best lawyers are unlikely to get the death penalty regardless of their crimes or the government's aggravating circumstances."² Some would find this discomfiting. For Welsh, though, it provided reason to work harder to train more of the "best lawyers," both in the classroom and through his writings. The world will be a better place because the best lawyers will read his work and remember his classes.

Not long before his death, Welsh spoke of his plan to teach from his new book in his Spring 2006 class. Some would find irony in the fact that Welsh's final book focused on efforts to extend the lives of others—through better informed representation in death penalty cases—while his own life slipped

2. WHITE, *supra* note 1, at 197-98.

away. His enduring optimism while facing a terminal disease served to emphasize his sense of hope that individual lives can be spared, and that society can find better ways to punish and rehabilitate. We would all do well to do whatever we can to perpetuate that legacy.

Sara A. Chandler
Lead Executive Editor, Volume 67

During my three years as a law student at the University of Pittsburgh, I took three classes taught by Professor White and I had the honor of working for him as one of his Research Assistants.

Most individuals I have encountered in the legal community are aware of Professor White's renowned reputation as an expert in the areas of evidence and criminal procedure, but what those who did not know him personally may not realize is how much he genuinely loved teaching and conversing with students. He was well-known among students for his utilization of physical comedy in his Criminal Procedure course as a means to illustrate doctrinal points, his accessibility outside of class, and his later recollection (often months later) of points made by students during class. He also strived to grade our final exams as quickly as possible in order to alleviate our anxiety regarding our grades. In my conversations with him last fall, Professor White often spoke about how he felt rejuvenated when he came into his office and how he planned to return to teaching as soon as he could. He was truly the perfect person for his job.

In addition to his scholarly reputation and his love of teaching, Professor White was also known for being extremely kind. From what I have seen and heard, he treated everyone he encountered in his life with dignity and respect. He also was extremely devoted to his family and spoke with pride about his wife, Linda, and his children. For me, personally, examples of his kindness are what I am most reminded of when writing this tribute.

Most students who knew Professor White were aware of his love for Dave and Andy's (an ice-cream shop near campus) frozen yogurt. Professor White went to Dave and Andy's every single day, year-round. One day, while Professor White and I were walking to Dave and Andy's, he asked if I liked ice cream and, if so, what flavors I liked. I told him that I loved frozen yogurt, and, when he asked how often I treated myself to it, I said truthfully that I typically frequented Dave and Andy's when I had been having a crummy week. During my second year of law school, I became ill with pneumonia and had to miss classes for a few days. Unfortunately, I happened to become ill right when I was in the middle of several research assignments for Professor White. On my first day back at school, I ran into Professor White in the hallway—he took one look at me and told me concernedly that he could tell based on my coloring that I still was not feeling well and that any work I needed to do for him could wait. About a week later, I came into school on a Saturday to finish the assignments for him and also to get caught up on

schoolwork. Professor White, who was in his office that day (as he often was on Saturday mornings), came into the room where I was working and brought me Dave and Andy's frozen yogurt—he even remembered which flavors I liked. His thoughtfulness meant a lot to me and was illustrative of how he treated everyone.

In reflecting on the conversations I had with Professor White during the brief time I worked for him, I have come to fully realize how much of an influence he has had on my life. His work on the death penalty opened my eyes to the injustices in the system. His kindness has made me look more carefully at how I treat others. He was the person within the law school that I knew I could count on for advice and he was always willing to listen—his support instilled in me the confidence to pursue and achieve my goals. I am grateful that I had the opportunity to know him.

Paige Forster
Research Assistant, 2004

It is a truism to describe someone as unique. Of course each of us is different from all other people. But when I say that Professor White was unique, I mean that in significant ways, he was unlike any other person I know.

Professor White taught me Criminal Procedure and Evidence, and I was one of his research assistants during the Summer of 2004. These experiences and our many conversations in his office allowed me to observe that unlike most of us, Professor White was completely lacking in egotism and utterly comfortable in his own skin.

During my first year, Pitt Law's public interest organization held a luncheon for the faculty. On the appointed day, the students brought our pot-luck contributions to the Alcoa Room on the second floor of the law school. A young associate professor was the first to appear. When he saw the room full of students, a look of discomfort came over his face. "I'll be back in a minute," he told us. "I just have to put this book up in my office." The second professor to come was Professor White. He strolled into the room, saw the food, and helped himself. No one else was eating yet, and I decided to hurry through the buffet line so that I could join him and spare him the discomfort of eating alone. I'd only made it as far as the cold cuts when I needed to go and take care of a logistical task. A few minutes later, I glanced nervously back at Professor White and saw that he was indeed alone—eating with great enjoyment and no apparent embarrassment. By the time the young professor returned, Professor White had finished his lunch and was enjoying conversation with a group of students and faculty who had joined him.

Professor White's lack of egotism helped make him a wonderful teacher. When he stood before a class, he only wanted to convey the material as effectively as possible. He didn't set out to be funny or well-liked or to impress students with his wisdom, although of course he did all these things. One of his most memorable pedagogical methods was his physical comedy. He leaped across the classroom (the *Chimel* rule: how far might an arrestee reach to grab for weapons or contraband?). He inspected the bottom of the podium (can a police officer turn over an item that is not listed on a search warrant in order to ascertain whether it's stolen?). He mimicked a woman stepping back acquiescently when the police came to her door (what kind of nonverbal communication constitutes permission to search?). At the end of the semester, my Criminal Procedure study group spent an enjoyable half-hour

sharing our favorite Welsh White moments. I learned later that this pastime has been enjoyed by generations of Pitt Law students.

Professor White's lack of self-importance made him a tremendous mentor. I saw him give a continuing legal education talk and then earnestly seek feedback from a young student, a former research assistant who had helped him prepare the material he presented. He thanked me for my edits of various chapters of his final book, *Litigating in the Shadow of Death*, telling me that some of my changes made the writing a good deal clearer. Differences in age and status were immaterial; scholarly and intellectual interaction was what counted.

Another one of Professor White's most striking traits was that he seemed to have no filter between what he thought and what he said. This meant that he was an excellent source of gossip. If a topic came up in conversation, he would share everything he knew about it. From Professor White, I learned that the dean had resigned and who got the best grade in Criminal Procedure (it wasn't me).

Sometimes, the things he said set me back on my heels. For instance, after he offered me the research assistantship, he recommended that I talk to his prior assistant, Tim Lyon, to find out more about the job. "Tim was excellent," he said. "I would never expect to find a research assistant as good as Tim." Hearing that I could never hope to be as good as my predecessor was not an auspicious way to begin an employment relationship. Yet when the job actually began, I never felt that I was held to a standard I couldn't meet. Professor White had simply offered me his honest assessment of the high quality of Tim's work.

Professor White's kind heart compensated for his lack of a verbal filter. He could say whatever was on his mind because his thoughts were not petty or critical. They could be unexpected, but they were never mean. I can't afford to be as open with my thoughts as Professor White was. His unpretentious goodness was an example to me.

I miss Professor White actively. Many times during the spring semester, I happened to be on the fifth floor and had an impulse to knock on his office door for a chat. Simultaneously, I would remember that I could no longer chat with him and would experience the pang of loss again. I knew early on that I was privileged to be able to study under and work for Professor White. I didn't know just how precious the opportunity was and how soon the Pitt Law community would lose him. I will always be grateful that I knew Professor White.

Welsh S. White: Teacher, Mentor, Colleague and Friend

Robert Berkley Harper

Professor Emeritus, University of Pittsburgh School of Law

Those friends thou have
and their adoption tried
grapple them unto thy soul
with hoops of steel.

William Shakespeare

The advice of Polonius to Laertes in Shakespeare's play "Prince Hamlet," is of great significance in the times in which we are living. So much of life is transitory and often relationships are transparent. However, there are rare occasions when a great treasure is found in a friendship or professional relationship. This was true in the case of my friendship with Welsh White. Welsh proved to be the type of person that one would love to "grapple unto thy soul with hoops of steel."

Welsh and I discussed this passage from Shakespeare, because we were both fans of the famous bard. The interesting aspect of the passage is that steel had not been invented at the time Shakespeare wrote this play. Thus, one wonders what the original passage held and how it was changed over the years. No matter what the original passage, the meaning is of utmost importance: that we must honor friendship above all other things in life for there is nothing more worthy than a true friend.

Welsh was my teacher, mentor, colleague, but most of all, my friend. I met Welsh in my first year of law school in 1968, which coincidentally was his first year of law teaching. He joined the faculty at a time when our society was in a state of upheaval. He began teaching at a time when four other new young faculty members were hired: Bill Brown, Dave Cohen, Bob Greenspan and Tony Wettick. The Law School, as was the case of many institutions of higher learning, had a history of admitting few black students and many commencements had none. In fact, the School of Law seldom had more than one black student in a single class with a black student graduating every three to five years. But 1968 was a banner year when the faculty, with the impetus the young faculty members, voted to admit ten minority students in the first-year class, a record for the School. I was lucky enough to be admitted to that class. No doubt these young faculty members saw something in me that I did not yet see in myself.

The first course that I took from Welsh was in my second year when he taught criminal procedure. Most vivid in my mind is what happened on one

warm day when few of my fellow students were prepared for class. This was due partially because it was baseball season and the Pittsburgh Pirates played within viewing distance of the Law School. At the time the Law School was located on the twelfth, thirteenth, fourteenth and fifteenth floors of the Cathedral of Learning overlooking Forbes Field where the Pirates played their home games. It was also within sound distance where the cheers of the game would reverberate in the law classrooms after each important play. After calling on several students who were not prepared, Welsh called on me and said "Mr. Harper, are you prepared to answer the question or like your classmates will you 'pass?'" Welsh did not call on me to embarrass me, but knowing his students and watching their expressions, he knew that I would be able to assist him in carrying on the class discussion. He was a teacher not only in command of his subject, but a professor who knew his students and always conducted his class in a way that learning took place, even in competition with major league baseball.

I still have the paper that I wrote for Welsh in his criminal procedure course. Because of his thoughtful and encouraging remarks, it helped me to follow the path of practicing in the area of criminal law and procedure. I received a grade of 35 on the paper. Thirty-five you say, that's not much of a grade. But our grading system ranged from 0 to 45 and it was exceptional for a student to get a grade over 35. Our grading system was unique to ensure that employers would consider Pitt graduates in a different way than students from other law schools. The grading system was most successful in the employment area but was later changed due to student pressures to follow a more traditional grading system.

After graduating from law school I became the Police Legal Advisor for the City of Pittsburgh. Within a short time I was promoted to the Chief Legal Advisor and was responsible for most of the criminal work for the City. After leaving that job, I joined the faculty of the University of Pittsburgh School of Law and began to teach a similar course package as Welsh: Criminal Law, Criminal Procedure and Evidence. Welsh was always there to help and guide me with the selection of casebooks, to answer questions related to conducting class, and in assisting and reading my examinations.

Others will discuss Welsh's unquestionable successes as a teacher and scholar but my purpose is to demonstrate the qualities of Welsh as a person who strove to make this cooling cinder a better place for all. Two cases come to mind to illustrate this point. One relates to Fred Goins, a person who had worked at the School of Law and later had legal troubles in the criminal law area. As soon as his legal problems arose, he sought out Welsh to represent him. Seldom can a law professor represent a defendant due to our teaching

schedule, but because this incident occurred over the summer, Welsh took the case. Lay people often ask, “How can you represent a guilty person?” They do not truly understand that in our system of justice, no one is guilty unless the system says that they are guilty. Thus, Welsh represented Fred because he strongly believed that ALL persons should receive a fair trial, a theme which was often the subject of his writings, but also evidenced in his personal conduct.

Fred was charged with robbery and burglary among other charges. Not only did I assist Welsh with the case, but he also asked me to be a character witness for Fred. Since Fred had worked at the School of Law as a messenger for several years and had personally worked for me on several occasions, I was qualified to be a character witness for him. Lawyers feel very comfortable asking questions and directing cases, but when called as a witness and having to be cross-examined, they feel no different than other witnesses. My first time as a witness in a criminal case was not the “best of all possible worlds” for me. I learned more from Welsh during this case due to his professional skills that he gained as an assistant district attorney in Philadelphia. Not only could he teach the rules of evidence, he was a master in the use of the rules to defend a client to insure that the government’s case was proved beyond a reasonable doubt as required by the Constitution.

The second case was the murder trial case of Robert Smith who killed his lover. He met a woman and fell deeply in love with her but his advances were rejected. This led to a period of brooding and Robert decided to kill her and then kill himself. He waited for her to come home one evening and when she saw him she fled to the local fire station. He caught her in the fire station and shot and killed her and attempted to shoot himself. But the firemen knocked the gun from his hand and he was arrested and convicted of murder.

A layperson may not understand how one could say that Robert was not guilty of murder. But under our laws, criminal homicide has several degrees from murder one to manslaughter and the punishment spans from a death sentence to that of a period of probation. The underpinnings of our system of justice is punishment and Robert was a person who killed his lover, but was no longer a danger to others. The real reason for his punishment was retribution, he had killed another human being and must be punished. Again, Welsh’s purpose was not to get a person out of jail, but to ensure that justice was served. Although he could not overturn Robert’s conviction, he saw that all aspects of due process were addressed and that the punishment fit the crime.

Welsh was more than a lawyer and teacher, he was a true friend. Without the encouragement and help of Welsh, I would never have become a Professor

of Law. I was hired at a time when there had never been a tenured woman or tenured minority law professor at the School of Law. But once a woman and a minority was hired the rules were changed and standards were established. “Publish or perish” was the new standard, yet prior to this time there had been white men hired and promoted who had never published. But I looked at this as an opportunity and not an obstacle.

Welsh was willing to mentor me and steer me in the right direction to reach my potential. His advice was both scholarly and practical in telling me to write about something that I knew and felt strongly about. Since I had been the legal advisor for the City of Pittsburgh Police Department, I decided to write about the use of deadly force by police officers. Prior to my decision to write this article, the general law in the United States was that a police officer could shoot and kill a fleeing felon. Thus, if a person approached a police officer and spit on him and ran away, the officer would have the right to shoot and kill the fleeing felon.

The rule at that time could and did lead to abuse. After discussing the issue with Welsh, I decided to promote the use of the Model Penal Code standard, that an officer could shoot and kill only if the officer thought that his life or the life of another was in danger. This position was later accepted by the Supreme Court of the United States and is currently the law of the land. There is a difference in general writing and legal writing and Welsh helped me develop my ideas with the proper legal authority whereby I was able to write several more articles including one on limiting the use of firearms to save black lives. He would read over my articles and always give constructive criticism. His supportive help was there not only for my articles but also for the publication of my two books.

The list of persons, both in the academic community and those in private practice, that could relate similar stories about Welsh (even better ones) are legion as a result of his thirty-seven years of teaching, and this list would number in the thousands. Over the years that he served at the School of Law, the School has grown in both stature and size with an increase in the number of women and minorities as part of the faculty and the student populations.

Yes, Welsh was a great scholar, wonderful teacher and elite law professor, but just as important, he was a person who wanted to make the world a better place for all. From his writings and teaching, he used his position to ensure that all who came in contact with him were challenged both intellectually and academically. He fostered a strong belief in others to use their legal skills to promote justice that is the cornerstone of our nation’s legal system. Welsh White will live on in the hearts and minds of the many who have “grappled him unto their hearts with hoops of steel.”

Timothy Lyon
Research Assistant, 2003-04

“Are you a champion?” Professor White asked after lauding his youngest son’s championship tennis play. My fellow research assistant and I both laughed a bit nervously and responded in the negative. It was our first lunch with Professor White, and we were all still getting to know each other better, feeling each other out.

The lunch went well, and over the next two years I shared many other moments with the professor. But that exchange always comes to mind when I think about him, especially since his untimely passing. Not because he was so filled with pride as he described his son’s abilities, although he clearly was. Not because it was some sort of clichéd magical moment where I was inspired to become a champion. Rather, that exchange stands out because Professor White, while praising his son’s accomplishments, had no idea that he was a champion himself.

Perhaps *that* sounds cliché. It’s not. Not if you knew Professor White. Let me explain.

During my three years at Pitt Law (2002-2005) I was blessed enough to know Professor White well. He taught my first class in school, Criminal Law. He also taught my last, Advanced Criminal Procedure. In between I took two other courses he offered: Criminal Procedure and Evidence. Further, as his research assistant, I worked with him in the summer after my first year of school and throughout my second year of school as well.

I’m proud to say that we became friends. Indeed, my fondest memories of law school are of the times when I’d, upon his invitation or my own initiative, stop by his office in the afternoons to talk. He would enjoy his daily dose of ice-cream, and we’d both enjoy the company.

The countless hours we spent together revealed Professor White’s special qualities. He was a master in the classroom, and his command of the subject matter was unquestionable. He took dense, challenging material and presented it in a clear way. He never shied from argument or debate; he fielded all questions. His hypotheticals were illuminating, memorable, and oftentimes funny. No one who learned criminal procedure from Professor White will ever forget his “rolling drunk” routine.

Outside the classroom, Professor White was equally as informative and responsive to his students. Our afternoon conversations were often cut short by others seeking help. He maintained a true open-door policy. And, for those who preferred electronic communication, Professor White constantly

reviewed his e-mails. He responded to e-mailed queries almost instantaneously.

As a scholar, Professor White had almost unfathomable success. He produced a tremendous amount of material—during the twelve months alone that I was his research assistant he completed an extensive law review article, a tribute to a retiring professor, and a book. A brief review of his scholarship will reveal the extent of his publications. One word sums it up: vast.

However, more impressive than his work's voluminous nature is its quality. Read any of his articles or books. Each displays Professor White's erudition and wisdom. It's undeniable. Indeed, many other scholars have used Professor White's work as a foundation or source for their own. Legal scholarship, especially the areas of capital punishment and police interrogation, will be forever indebted to Professor White.

I too will be forever indebted to him. As a mentor, he taught me much more than the basics of criminal law and procedure. He helped me to refine my research skills, to strengthen my writing, and to better spot and analyze the issues before me. He taught me to focus on the details, yet be mindful of the big picture. Our more serious conversations challenged my beliefs about criminal law and, ultimately, helped me to better articulate my positions. And if that's not enough, he did the same for others too.

To top it all off, Professor White was also a good friend. As I mentioned, we spent a lot of time talking. But it didn't always concern the law. When my father passed away, Professor White, whose father also passed while he was in law school, kindly discussed it with me; he never failed to inquire into how my family and I were doing. We also spoke about sports, family, and friends. We chatted about school, current events, politics, vacation plans, and, of course, the weather. Sometimes—just sometimes—we even gossiped.

Champion doesn't sound so cliché now. Welsh White was an amazing professor, the greatest of scholars, the best mentor, and a solid friend. He was a man whom the University of Pittsburgh was lucky to have and I, along with many, many others, was blessed to know. That sounds like a champion to me.

Welsh S. White: Scholar, Teacher, Mentor and Friend

Mark A. Nordenberg

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When I joined the University of Pittsburgh's law faculty nearly thirty years ago, Welsh White was still a young man, but he already was a highly respected scholar with an impressive number of well placed and well regarded articles to his credit. Soon, he began adding to his reputation by authoring a series of three books, all of them published by the University of Michigan Press. Each of these volumes made a significant contribution to understandings of the legal framework within which capital punishment is imposed, and each reflected the highest standards of scholarship.

In commenting on *The Death Penalty in the Eighties: An Examination of the Modern System of Capital Punishment*, which was published in 1987, Yale Kamisar, now the Clarence Darrow Distinguished Professor of Law Emeritus from the University of Michigan, stated: "No one I know addresses . . . questions about the modern system of capital punishment more honestly, more carefully and more thoughtfully than does Welsh White." Some fifteen years later, when Welsh turned his attention to interrogations in *Miranda's Waning Protections: Police Interrogation Practices after Dickinson*, Anthony Amsterdam, the pioneering University Professor from New York University, wrote: "This absorbing, lucid study of police interrogation practices and the legal rules applying to them is required reading for anyone who wants to understand the perils of a law enforcement system that relies heavily on confessions to establish criminal guilt. . . . [Its] meticulous scholarly analysis [is] laced with frightening accounts of reality in the precinct house."

My last visit with Welsh—on the afternoon of Christmas Eve, 2005—occurred just days before his passing and coincided with the delivery of an advance copy of his last book, *Litigating in the Shadow of Death: Defense Attorneys in Capital Cases*. The arrival of that book was an early Christmas gift. It energized Welsh, who thought it was his best work, and he and his wife Linda and I spent an hour or so talking about everything from its cover art to its content. But in the selfless fashion so characteristic of Welsh, he did not approach that conversation from his own perspective as proud author. Instead, he mainly wanted to discuss the book in terms of the sections that he thought would most interest me, as a prospective reader.

I say that was characteristic of Welsh because, if he was respected at a distance for his scholarly work, he was beloved here at home for the kind and committed way in which he approached both his work as a teacher and his role

as a colleague. Among the many testimonials to Welsh posted on the web after his death were the following student comments.

“[H]e was awesome and brilliant . . . and he made me fall in love with the Fourth Amendment.”

“It is rare that a day passes that I don’t find myself faced with something I first learned from Professor White, and those of us who had the pleasure of learning from him could not have had a more inspired and able instructor.”

“I loved Professor White . . . and hope he realized how many lives he touched in his career of educating future lawyers.”

“I was in the last class that Welsh White taught . . . My class, my section. How lucky!”

In sharing their perspectives, his students also dubbed Welsh “the best physical comedian ever in a classroom setting,” making frequent references to his “sloppy drunk routine.” I must confess to being unfamiliar with this part of his pedagogical repertoire. However, at least back in my day, any new member of the law faculty was quickly exposed to the “absent-minded professor stories” long linked to Welsh. His reported appearance in class wearing two neckties at once has long been a part of our law school’s lore and may have been my favorite.

Whether literally true or not, those stories, which helped shape the “Welsh White legend,” also captured an essential part of the person we knew—a person who never wasted much time focusing on himself and never took himself too seriously. Unlike some highly successful scholars, Welsh also was not so focused on his own ideas that he was inattentive to the ideas, feelings or needs of others. To the contrary, he cared deeply about his students and worked hard at being a good teacher. He was a respectful, empathetic and extraordinarily generous colleague who offered a helping hand whenever he could. He understood, and willingly shouldered, the responsibilities that accompany faculty freedoms. He was a loyal and caring friend.

Welsh’s professional work reflected an unflinching commitment to principle, the consistent production of work of the highest quality, a deep reverence for life, and a heartfelt concern for the disadvantaged. He closed his book on interrogations by borrowing powerful language from a United States Supreme Court opinion in expressing his hope that the Court itself come closer “to imposing appropriate restraints on police interrogators and thereby reducing the likelihood that ‘the terrible engine of the criminal law . . . not be used to overreach individuals who stand helpless against it.’”

But even though such large and noble causes were very important to him, not all of Welsh’s life was a professional crusade. Instead, an equally

important part of his legacy was his advancement-by-example of the understanding that many of life's most important acts are the kindnesses that we have the chance to regularly extend to those around us. Welsh White built an enviable record of capitalizing on those opportunities, and I am grateful to have been among his countless beneficiaries.