

Welsh White: A Farewell Tribute To A Generous Spirit

James J. Tomkovicz*

Readers of this account may be understandably skeptical. If I didn't know the story of my relationship with Welsh White, know it in the depths of my heart and soul, I would have trouble believing it. It seems quite unlikely that two men who were in each other's presence but once, and only for a few hours, could successfully produce five editions of a well-received criminal procedure casebook.¹ It seems impossible that those same two men, who rarely heard each other's voices after the advent of e-mail,² could become and remain good friends with abiding concern and respect for each other. Yet such is the story of my bond with Welsh White, a story that began in the late 1980s and continued until his most untimely passing on the final day of 2005. There can be only one explanation for this improbable professional success and this remarkable personal bond—the generous and caring spirit that defined my valued colleague and dear friend.

This tribute will revolve around the tale of our coauthorship, but will venture out onto the various branches that sprouted from that trunk. Until I came to reflect upon our association, I hadn't realized how much every facet was animated by and reflected Welsh's essence. I can only hope that my words can capture and convey a sense of the enviable intangibles that made him so unique, so special.

Our relationship began in the spring of 1988. I had been in law teaching for just seven years, but had rapidly become intensely discontented with the published criminal procedure casebooks. Some time during the mid-1980s, I had assembled a quite rough collection of photocopied materials from which I taught that course. In 1987, I decided to submit a casebook proposal to publishers in hopes of getting my materials into print. One publisher—Matthew Bender—showed strong interest, but insisted that I secure a co-author. My unexpressed reaction was more than a little resentment. After all, this was *my* project, *my* plan, *my* baby. I was capable of producing the final product single-handedly. I didn't need anyone's assistance, and I certainly didn't want to have to deal with another law professor's undoubtedly sizeable ego. Nonetheless, I understood the demand to be both business-related and,

* Edward A. Howrey Professor of Law, University of Iowa College of Law

¹ JAMES J. TOMKOVICZ & WELSH S. WHITE, *CRIMINAL PROCEDURE: CONSTITUTIONAL CONSTRAINTS UPON INVESTIGATION AND PROOF* (5th ed. 2005).

² For me, the fact that our means of communication had become almost exclusively e-mail for the last several years highlights a serious cost of succumbing to modern technology. Although it felt as if we were "talking" to one another, in fact, we were reading one another's typed thoughts. I have several regrets. Among them is that I did not hear Welsh's actual voice more often in recent years. Fortunately, if I pause and quiet myself, I can hear his voice in my mind. I pray it doesn't fade as the years pass.

more important, inflexible. I agreed to accept a forced marriage, but had no one in mind who seemed qualified. Fortunately, the editor at Bender did have a list of names of academics whom the company considered attractive prospects, a list that included one name that I recognized right away: Welsh S. White.³

Welsh was the only person I ever approached about the prospect of coauthoring the casebook. From the first telephone call, as I remember it, he was enthusiastically ready to come on board. It quickly became apparent that collaboration was our destiny. Like me, Welsh had used one of the most prominent, popular texts, and he too had become increasingly dissatisfied with its pedagogical limitations. We agreed entirely that the Supreme Court opinions which are the focus of the criminal procedure course should not be edited down to the bare essentials. We shared the view that it was imperative to provide students with substantial amounts of the Justices' reasoning. We believed that dissenting viewpoints make essential contributions to a meaningful understanding of issues. We both found extensive interstitial notes and endless, unanswerable questions to be counterproductive in the classroom, and exceedingly frustrating for students. And, finally, we concurred completely about the need for practical problems that could test student understanding—problems based on actual, contested cases. Moreover, we wanted a text that was flexible, suitable for an array of teaching styles and methods. From the first edition of our casebook published in 1990, through the fifth edition that was published in January 2005, we implemented and remained true to our beliefs, principles, and objectives. Welsh would not have had it any other way.

Our consultations and critiques of manuscript drafts during compilation of the first edition were all conducted by technologically archaic means—the telephone and the postal service.⁴ Perhaps we might have faxed materials on a rare occasion. A major contributor to our successful and efficient completion of the project, and of all four subsequent editions, was our virtually effortless division of labor.⁵ Each of us was to be primarily responsible for designated chapters.⁶ Our drafts of those chapters

³ There were two reasons I recognized and was favorably disposed toward Welsh. First, he had already established a stellar reputation in the field of criminal procedure, a reputation that was sure to grow. Second, he had graciously written a favorable review of one of my tenure pieces and had aided my attainment of tenure and a full professorship. Clearly, this was someone with good taste and judgment, I thought.

⁴ In addition, personal computer use and word processing programs were pretty much in their infancy. The hardware and software we began with are positively antiquated by today's standards. The progress made in these respects during our collaborative association is nothing short of astounding.

⁵ Our publisher can testify to our "efficiency." I am virtually certain that we never missed a publication deadline with either the casebook or the teachers' manual. Instead, we ordinarily submitted manuscripts and returned page proofs well ahead of schedule. Welsh and I both prized our record of timeliness.

⁶ Because Welsh had special expertise in the area of confessions, he assumed responsibility for the chapters devoted to that topic, as well as the chapters concerned with entrapment, the right to counsel at trial, and eyewitness identification processes. I drafted the Fourth Amendment and exclusionary rule chapters.

would, of course, be reviewed by one another and feedback would be taken into account. Moreover, we agreed upon a simple dispute resolution mechanism at the outset. In case of disagreements over content or form that we could not resolve by persuasion and negotiation, the drafting author's choice would control. I recall having fear that we might frequently disagree—after all, we were law professors—and that large parts of the text would prove unsatisfactory to each of us as a result of the other's exercise of his prerogative. That fear was entirely unfounded. During our nearly eighteen-year process of producing five editions, I believe that we had but one impasse, a single instance requiring resort to the mechanism. The casebook was truly *our* casebook—a product we were both responsible for, content with, and proud of.⁷

As I suggested in the introductory paragraph, the credit for not only a total absence of discord, but for a spirit of mutual respect and cooperation must, in all fairness, be attributed to Welsh. I know my own tendencies. I am not the most flexible or accommodating of souls, and I can get my back up quite easily. Welsh's grace, his perspective, and, above all, his generosity, ensured that our working relationship would be a model of productivity and congeniality. Without the slightest hesitation, I can repeat in print what I have often told others about my professional collaboration with Welsh White: it has been the best, most rewarding, most gratifying part of my scholarly career. I cannot imagine a more enriching, fruitful meeting of two minds. For this, I owe Welsh a boundless debt of gratitude. My mind will miss the stimulation, the nourishment that his provided.

Of course, if Welsh were able to respond, he would prove my point by denying that he deserves such credit. He would express gratitude to me—as he so often did—for initiating the project and for inviting him to join me, for carrying the lion's share of administrative responsibilities, for ensuring that we met deadlines, and for being the force behind the text. But he would be wrong. The truth is that our endeavors were successful and our relationship flourished because of Welsh's limitless generosity of spirit. One simple example illustrates this point, providing a small, but significant, glimpse of what I mean.

Sometime during the publication of the third edition, someone at Matthew Bender decided that White and Tomkovicz should instead be called Tomkovicz and White. (I didn't prompt the change. Honest!) I think it had something to do with alphabetical order—one the few times in my life I've won the battle of the alphabet! The odd thing is that the text was already known as White and Tomkovicz, so it made eminently good business sense to leave it that way. Moreover, Welsh was the senior and much more accomplished colleague and therefore deserved to be listed first. I have to admit that I liked the modification and was not about to resist. I didn't graciously volunteer to seek restoration of the status quo, but if Welsh had wanted it changed, I could hardly have protested. I probably knew that Welsh, being Welsh, would do exactly what he did—decide that it was only appropriate that my name

⁷ I should add that the same remarkably cooperative spirit was pervasive throughout the writing, reviewing, editing, and revision of five editions of our teachers' manual.

come first because of the hard work I had invested in the project. What could be more bizarre than a law professor cheerily surrendering top billing to anyone, much less his junior colleague? Yet it was completely consistent with the character of my senior colleague, Welsh White.

Much to my regret, the casebook and its accompanying teachers' manual were our sole joint endeavors. Working with Welsh cannot have been anything but enjoyable and immensely productive. Our continuing relationship through multiple revisions of the text, however, did branch into a variety of other professional connections. We shared drafts, articles, manuscripts, and briefs with one another, always valuing one another's feedback. We regularly informed one another of our ongoing scholarly projects, and Welsh was always ready to provide encouraging words or constructive criticism. In recent years, I have had the opportunity to author a couple of *amicus curiae* briefs before the Supreme Court in cases concerning the breadth of the *Miranda* doctrine. I was fortunate to have the opportunity to run my drafts past Welsh, an acknowledged, insightful expert on *Miranda*. As usual, he was generous with his time and praise—and prompt with his responses.

Several years back, I was honored when asked to provide the University of Michigan Press with a review of the manuscript for Welsh's exceptional text on *Miranda*.⁸ A publication decision hinged, at least in part, on my evaluation. I willingly took on the task, confident that I would find what I found—the highest quality scholarship by the brightest, most thoughtful of legal minds. Welsh knew and cared about the *Miranda* doctrine and its unfortunate distortion and dilution by the Burger and Rehnquist Courts, and it showed. And yet not once, in any of his scholarship, did I find any evidence that he had an axe to grind. His insights were always expressed tactfully, temperately, and respectfully. His gracious spirit informed all his endeavors.

A few years ago, at my dean's request, Welsh wrote a letter in support of my nomination for a chaired professorship. His eagerness to aid my cause and his enthusiastic support ensured that I received the honor. Just a year or two ago, the University of Pittsburgh asked me to reciprocate by supporting Welsh's candidacy for a chair. The first reaction I had was how outrageous it was that I had received such a distinction before Welsh. (If ever there was evidence that life is about being in the right place at the right time, this was it!) I was delighted to have the opportunity to sing Welsh's praises to his home institution and to let them know, without equivocation, that this recognition was long, long overdue. I remember with joy the news that Welsh had received this validation of his contributions to Pitt. I only wish he had stayed around longer to enjoy the well-earned honor.

In my opinion, there was no more deserving recipient imaginable because not only had Welsh proven himself as an outstanding, nationally-renowned scholar, but he had evinced a genuine, intense dedication to teaching and to the best interests of his

⁸ WELSH S. WHITE, *MIRANDA'S WANING PROTECTIONS: POLICE INTERROGATION PRACTICES AFTER DICKERSON* (2001).

students at the Pittsburgh Law School. Many times through the years we spoke of our teaching loads and the successes and disappointments of our semesters. Welsh's sincere concern for the education and well-being of students was palpable on every occasion that the subject of teaching arose—and there were many over the course of almost eighteen years. It first appeared when he agreed to co-author the casebook, for his primary motivation was a desire to produce a vehicle that could enable students to gain a richer appreciation of constitutional rights and doctrines. It surfaced again, many years later, when he enthusiastically shared with me his successful experiment in changing casebooks in his Evidence course. He happily reported that the new book had improved classroom discussions and he took delight in the fact that the students had responded exceptionally well to the change. I still recall his buoyant account of the significant half-point rise in his numerical teaching evaluations that semester.⁹ Although I never saw him teach, I know that the same care and generosity that pervaded our professional interactions informed his approach to that most vital aspect of the academic enterprise. Students at Pitt were blessed to have had such a devoted, caring instructor. Future generations have been seriously deprived by his premature departure.

Welsh and I often discussed the goings-on at our institutions, particularly the processes of searching for deans. In the course of these discussions, his loyalty to his home institution and his unmitigated commitment to its integrity and quality were ever apparent. Welsh was a large part of the bedrock on which his law school rested. I recall being flattered beyond measure on one occasion many years ago when I was contemplating a foray into administration. Welsh encouraged me to pursue a deanship at Pittsburgh. I figured that I must be pretty darn good if a man of such high standards would consider me for a leadership position at an institution that was the foundation of his professional life and so obviously dear to his heart.

During the spring semester of 1992, I was a visitor at the University of Michigan Law School. But for that opportunity, I might never have met Welsh face-to-face. Because Ann Arbor was a relatively short drive from my relatives who lived thirty miles outside of Pittsburgh, our family decided to make a brief visit to the area. I was eager to arrange a visit with Welsh, and recall him being delighted that we could stop by his home on the way back to Michigan. As I remember it, my wife took our small children and his to a local mall to enable the two of us to make the most of the time together. We spent no more than three or four hours visiting. Now, more than fourteen years later, I have absolutely no recollection of what we chatted about, though I know it was not all business. What I do recall is that this single, much-too-brief encounter with Welsh was intensely enjoyable and exceedingly comfortable. I left his home all the more pleased at the astonishing good fortune of my association

⁹ I took Welsh's recommendation and switched to the same casebook: DAVID SKLANSKY, *EVIDENCE: CASES, COMMENTARY, AND PROBLEMS* (2003). My teaching evaluations rose as much as his did, and stayed that high the following year. The professional debts I owe Welsh just continued to accumulate through the years.

with him. He was as gracious and generous a host as he was a colleague and co-author.

In some ways, it seems impossible that Welsh and I were in each other's presence but one brief time during our long, fruitful association. The long-distance nature of our lengthy professional relationship, however, did not hinder the development of a remarkably powerful, deeply enriching, personal bond.¹⁰ Through the years we spoke of our feelings about a wide range of topics. We shared ambitions, recounted vacation plans, spoke of our health problems, bemoaned political developments, and talked about our families. I marvel at how naturally and imperceptibly our professional alliance branched and grew into a personal attachment built upon mutual respect, affection, and concern. I also marvel at how Welsh's sincerity, decency, tranquility, and, yes, his enormous generosity, infused and nurtured our friendship.

This past July, as I was preparing to go on vacation, Welsh told me that he had developed a health concern, that medical tests were needed, but that the problem did not seem serious. When I returned from vacation in August, he reported that lung cancer had been detected, but that his prognosis was quite good. I wished him well and promised to remember him in my prayers, and he expressed his gratitude. Not long thereafter, he intimated that there had been a bit of a setback, but gave the impression that it was nothing serious. A few months later, I was devastated to learn that he was gone. I had tried to get in touch with him during the time that I now know he was fighting to survive, but had not heard back. Just two days before I learned of his death, I had sent him a message of hope and support. He was, in fact, on my mind daily. When I heard of his death, I felt sorrow for many reasons. One was that I had not had the chance to say farewell and to let him know, in detail, how much he meant to me. I should have tried harder. Had I only known of his decline, I would have. Had the shoe been on the other foot, Welsh, being Welsh, would have found a way.

I hope and believe that this tribute will find him, now that he is at rest, and that it can serve as a belated goodbye. God smiled on me, Welsh, when you agreed to become my co-author. The entwining of our professional lives—your presence for me as collaborator, confidant, and supporter—has been one of the most gratifying blessings to come my way during a quarter of a century in law teaching. I mourn the lost opportunities to work with you, to consult with you, to learn from you, and just to chat with you in the coming years. I mourn most deeply the end of our earthly friendship. I'm afraid I reaped much richer profits from that bond than you did. (Do

¹⁰ Although I cannot explain why, there is a part of me that believes that without this one, brief, in-person encounter the bond formed would not have been as vital. While I wish we had had more occasions to get together, I am grateful for the one encounter. I should note that I did make one effort to orchestrate an arrangement that would have enabled us to spend an entire semester together. Sometime during the 1990s, I encouraged Welsh to consider a visiting position at the University of Iowa College of Law, and I mentioned to those responsible for faculty appointments at Iowa that Welsh would be an excellent candidate for our distinguished Mason Ladd visitorship. I was sure that his presence would enrich all of us immensely. Unfortunately, this proposal never bore fruit. As I recall, I broached the subject at a time when Welsh's family was not mobile.

you remember the time you told me that I was a basically “optimistic” person? I never told you, but I did not think of myself that way at the time. Your sincerity, however, persuaded me that there must be some truth to your assessment!) Please know that I will continue to be inspired by your accomplishments and by your wisdom. I will never look at our casebook without remembering you, missing you, and thanking you. I will do my best to ensure that future editions remain faithful to our shared vision. You have left this planet, but with typical generosity you have left parts of your spirit with me. In every respect, I am better for having traveled so long with you.