

BILL

Brannon P. Denning*

My first encounter with Bill Schroeder occurred on the tennis court. Wenona Whitfield organized a law school tennis tournament to benefit SIU's women's tennis team. I was paired against Bill in a doubles match. The first thing I noticed was that Bill's attire would not have passed muster at Wimbledon. He was dressed in torn jeans, a button-down, and top-siders. His serve, moreover, was every bit as idiosyncratic as his outfit. On every serve, Bill would heave the ball up, give a sort of shimmy, then—as his untucked button-down rose up over his ample belly—deliver a crushing overhead stroke. I remember having a very difficult time returning his serve, whether because of the force of it or because I was mesmerized by his unorthodox style I cannot quite remember. It was all, however, pure Bill.

Bill's indifference to the state of his dress, and that of his office, could lead one to think that he would not have taken care in things like teaching or scholarship. Nothing could have been further from the truth. Bill was an excellent scholar. One of his first articles was pathbreaking. In *Detering Fourth Amendment Violations: Alternatives to the Exclusionary Rule*,¹ Bill leveled a critique at the indiscriminate use of the exclusionary rule to remedy violations of the Fourth Amendment's search and seizure provisions. He suggested that the costs of the rule might outweigh its benefits and argued that other remedies—civil damage actions, for example—might deter official misconduct at lower cost to public faith in the judicial system. That article has been cited scores of times and anticipated later critiques by the likes of the Yale Law School's Akhil Amar.²

Bill followed that article up with another, in which he argued that the focus on deterrence as a justification for the exclusionary rule was misplaced.³ Better to think of its “principle role [as] restor[ing] victims

* Associate Dean and Professor, Cumberland School of Law, Samford University. Assistant and Associate Professor, Southern Illinois University School of Law, 1999-2003.

1. See generally William A. Schroeder, *Detering Fourth Amendment Violations: Alternatives to the Exclusionary Rule*, 69 GEO. L.J. 1361 (1981). Though its placement in the *Georgetown Law Journal* is nothing to sneeze at, I remember Bill telling me this article made it to a final board read at the *Harvard Law Review*.
2. See Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757 (1994).
3. See generally William A. Schroeder, *Restoring the Status Quo Ante: The Fourth Amendment Exclusionary Rule as a Compensatory Device*, 51 GEO. WASH. L. REV. 633 (1983).

of . . . unconstitutional searches and seizures that yield incriminating evidence to the position they were in before the illegality occurred.”⁴ The Fourth Amendment remained a central focus of his writings during his career;⁵ fittingly, his final article returned to another theme of those writings: that the seriousness of an offense ought to play a role in making determinations on such Fourth Amendment questions as the adequacy of probable cause.⁶

Bill also was a renowned expert in evidence, both in Alabama⁷ (where he began his teaching career at that *other* Alabama law school) and, later, in Illinois⁸ and Missouri.⁹ He wrote articles on judicial notice,¹⁰ the evidentiary use of collateral crimes,¹¹ burdens of proof,¹² and privilege.¹³ I remember his Missouri and Illinois evidence handbooks in particular being in a constant state of update, with proof pages and slip decisions he was incorporating into new editions strewn all about his already rather *dishabille* office.

Serious scholar though he was, I think Bill’s passion was his students. I was in awe, as a young professor, at how Bill could stop a conversation, mid-sentence, when he realized that he had class in three minutes, gather up the ragged copy of his casebook (usually several editions out of date), a few notes, and conduct a brilliant class that left students talking about it hours later. He relished being in the classroom dispensing “Schroederisms,” several of which made it onto a T-shirt years later.

4. *Id.* at 636.

5. *See, e.g.*, William A. Schroeder, *Federal Habeas Review of State Prisoner Claims Based on Alleged Violations of Prophylactic Rules of Constitutional Criminal Procedure: Reviving and Extending Stone v. Powell*, 60 U. KAN. L. REV. 231 (2011); William A. Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment*, 58 MO. L. REV. 771 (1993); William A. Schroeder, *Factoring the Seriousness of the Offense into Fourth Amendment Equations—Warrantless Entries into Premises: The Legacy of Welsh v. Wisconsin*, 38 U. KAN. L. REV. 439 (1990).

6. *See generally* William A. Schroeder, *Factoring the Seriousness of the Offense into Fourth Amendment Equations: Strip Searches in Detention Facilities—Atwater Strikes Again*, 46 AKRON L. REV. 331 (2013).

7. *See generally* JEROME A. HOFFMAN & WILLIAM A. SCHROEDER, *SCHROEDER AND HOFFMAN ON ALABAMA EVIDENCE* (3rd ed., 2016).

8. *See, e.g.*, WILLIAM A. SCHROEDER, *COURTROOM HANDBOOK ON ILLINOIS EVIDENCE* (2016).

9. *See, e.g.*, WILLIAM A. SCHROEDER, *COURTROOM HANDBOOK ON MISSOURI EVIDENCE* (2016).

10. *See, e.g.*, William A. Schroeder, *Alabama Judicial Notice*, 34 ALA. L. REV. 197 (1983); William A. Schroeder, *Missouri Judicial Notice*, 48 MO. L. REV. 893 (1983).

11. *See generally* William A. Schroeder, *Evidentiary Use in Criminal Cases of Collateral Crimes and Acts: A Comparison of the Federal Rules and Alabama Law*, 35 ALA. L. REV. 241 (1984).

12. *See generally* Jerome A. Hoffman & William A. Schroeder, *Burdens of Proof*, 38 ALA. L. REV. 31 (1986).

13. *See, e.g.*, William A. Schroeder, *Marital Privileges in Dissolution Actions*, 36 ST. LOUIS BAR J. 39 (1990); William A. Schroeder, *Medical Privileges under Missouri Law*, 46 J. MO. BAR 305 (1990).

Bill was also a believer that—as a college professor of mine used to say—learning occurred all around us, and should not be confined to the classroom. He conducted a weekly poker game with students and recent grads. That game was simply an extension of his law school classes and seminars. The same could be said for the dinners that he, R.J. Robertson, and I auctioned off occasionally. I remember one dinner in particular where we ended up talking with students about the discretion lower courts have when implementing Supreme Court decisions. Not, perhaps, the unbuttoned conversation the students expected when they bid on the dinner; but, one hopes, memorable nonetheless. I always admired the way Bill could be completely at ease with his students, familiar even, and how none of them would dare trade on that familiarity when it came to academics.

To me, Bill was simply a very good friend. I arrived at SIU to begin my teaching career when I was twenty-eight years old—a good portion of my students were older than I was. A few had *children* older than I. Bill was a constant and unstinting source of sound advice about teaching, balancing the roles of a professor, interacting with students, and navigating the shoals of faculty politics. I passed more than a few hours with him at the Midland Inn or at Mugsy’s drinking beer and talking about my worries, seeking advice, or just being reassured that I wasn’t about to be exposed as a fraud. We frequently had lunch at what Bill referred to as “Carbondale’s premiere middle-class restaurant” (the actual name of it escapes me), with Bill ordering the same thing: a hamburger with absolutely nothing on it, which he would then salt within an inch of its life. (I don’t think I ever saw Bill eat a vegetable, come to think of it.)

Bill’s advice to me never failed to lend much-needed perspective. When I would experience the angst familiar to all new law professors during the law review submissions seasons, Bill was always there with a helpful reminder that no article—regardless how well-placed or highly praised—would ever have the impact that a dedicated professor can have on a single student. Bill loved to see the light come on with students, and would cheerfully work on their behalf writing recommendations and suggesting contacts they should make.

And he was absolutely correct. While I still love writing and love to see my articles place well, neither compares to notes from students saying how much they enjoyed my class, or telling me that they felt well prepared for the constitutional law questions on the bar exam, or when I can successfully recommend them for a job or admission to a graduate program. Bill was always there to remind me by example why I wanted to be a teacher in the first place.

One final story about Bill: My last fall in Carbondale, in 2002, I was worried and upset by some hiccups that had arisen in the course of my vetting for tenure. Bill suggested that I forget that for a while and

accompany him to a Halloween party thrown by some of our students who had urged us to drop by. He even drove. I went dressed as our colleague Ted Kionka (an easy costume to pull together because Ted and I both favored khakis, button-down shirts, and bow ties);¹⁴ Bill, of course, went as Bill. I suppose it was either that, or go as the badger he sometimes resembled, especially if he had not trimmed his beard or gotten a haircut recently. By the end of the evening, Bill had convinced me that all was well and that the faculty were pulling for me. It was a much-needed and much-appreciated act of kindness. I am not sure I ever thanked him properly or told him what his sage counsel meant to me.

When I first moved to Birmingham, I would call Bill and catch up on the state of the law school and of the university. Gradually, though, my calls became less frequent. When I heard about his death, I experienced a twinge of guilt at having allowed us to lose touch. I recalled a line from Philip Larkin:

*“The first day after a death, the new absence
Is always the same . . .”*¹⁵

And so it was. That line continues, and the poem ends:

*“we should be careful
Of each other, we should be kind
While there is still time.”*¹⁶

Bill’s untimely death is a reminder that the great gift that we have as law professors is the opportunity to make connections and foster relationships. We connect our students with ideas and with the law. We connect them with opportunities. With luck, one-time students become lifelong friends because of a connection we made with them personally. We make intra- and inter-faculty connections when we collaborate on an article or read a colleague’s draft. In fact, our monolithic-sounding academic “career” is really a skein of these various connections. But that fact does not mean that one feels any less the sense of loss when death severs one of them.

I miss my friend Bill, and I will be mindful to tend a little more carefully to my remaining connections and make time to cultivate new ones.

14. Of course, students could not wait to tell Ted what I had done. The next day, Ted did not let on that he knew about my costume until he passed by my office on his way home, whereupon he stuck his head in my door and assured me that he wore the look much better!

15. Philip Larkin, *The Mower*, POETRY FOUNDATION, <https://www.poetryfoundation.org/poems-and-poets/poems/detail/48423> (last visited Dec. 17, 2016).

16. *Id.*