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A Dedication to Andrew E. Taslitz: "It's All About the Egyptians," and Maybe Tinderbell Too

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A DEDICATION TO ANDREW E. TASLITZ: “IT’S ALL ABOUT THE EGYPTIANS,” AND MAYBE TINKERBELL TOO

STEPHEN E. HENDERSON*

In the Fall of 2012, I kicked around the idea of convening a symposium on the newly enacted American Bar Association Criminal Justice Standards on Law Enforcement Access to Third Party Records (LEATPR). It would be a success only if I could encourage great people to participate, and one of two obvious people to ask was Andrew Taslitz. Andy—known as “Taz” to most, a nickname given by Howard students appreciative of his incredible energy and enthusiasm—was on the Task Force that drafted the initial version of the Standards. Moreover, as he would later confide to me, Andy was the person to whom I owe my role as Reporter for the project.¹ At the time he made that recommendation I did not know him personally, and I could not have imagined what a blessing it would be to serve in that role. Without it, I might *never* have known Andy, and I can scarcely describe what a personal loss that would have been. He died on February 9, 2014, at the too-young age of fifty-seven.

There is great temptation when we suffer the death of a loved one, or even of an acquaintance, to suddenly exaggerate their qualities and make them larger than life. Indeed, it is difficult to imagine how pleasant a world this would be were everyone in life as described in funerals and other bereavement services. And it is hard to see clearly from the eye of a storm. Yet I do not think I err in heaping compliments upon Andy Taslitz. I am typically level in my praise. To me the ultimate compliment, which I

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1. It is possible that another mentor (and now friend) also had a role in my selection. But whereas Andy confided his key role in one of our later discussions, I have no need or desire to inquire of the other.

borrow from the judge for whom I clerked, is to say that someone is “solid.” I am not into fancy things and foods that I cannot easily understand or pronounce and, well, solid is pretty much where it is at for me. But I could not imagine leaving Andy with only that label.

Of course, Andy *was* solid. He was an accomplished scholar, teacher, and public servant. But that is just it. To say those things is ordinarily meaningful and probably sufficient. But for Andy it beggars the facts. He wrote more than one hundred articles and seven books, and that in a career shorter than many. And not even that jaw-dropping count does him any justice. It is not merely that he wrote a lot; rather, it is how insightful and encompassing that writing tends to be. Not only was Andy perhaps the only person I know who could seriously inform criminal justice via a discourse on Tinkerbell—yes, *that* Tinkerbell, the fairy²—but his writing was so encompassing that Professor Andrew Ferguson and I, and I am sure many others like us in disparate fields, independently took to running a Taslitz preemption check before writing our own articles. And at least in my case, I will freely admit, I later came upon work of Andy’s that already said much of what I ultimately wrote. Of course, when I pointed this out to Andy, he denied it. But that was just Andy. There must have been moments where he seemed even defensibly proud in his life; I after all only had the pleasure of knowing him as a friend for six years. But I never witnessed one. This is a guy who always managed to kindly come across like he was better off for your company and thinking.³

How about teaching? It would seem his selection as one of the nation’s very best law teachers for inclusion in the recent book *What the Best Law Teachers Do* would be sufficient mention.⁴ Only I am not sure it is. As we worked on the ABA Standards and visited at conferences, I would ask him about teaching. Not only did I know he was highly respected and even adored by his students, but I suppose I felt some kinship because at the time

2. Andrew E. Taslitz, *Why Did Tinkerbell Get Off So Easy?: The Roles of Imagination and Social Norms in Excusing Human Weakness*, 42 TEX. TECH L. REV. 419 (2009). Or see Andrew E. Taslitz, Review, *Daredevil and the Death Penalty*, 1 OHIO ST. J. CRIM. L. 699 (2004).

3. A student of Andy’s shared this perception:

I feel like he’s teaching excellence and humility at the same time. Excellence and humility, excellence and humility, you know what I mean? Like, the more you know and the better you get, the more humble and down to earth and giving and generous you have to be. I mean that’s the way he lives his life, you know? And that’s what I feel like he’s imparting.

MICHAEL HUNTER SCHWARTZ ET AL., *WHAT THE BEST LAW TEACHERS DO* 304 (2013).

4. *Id.*

we both taught at schools far from the upper echelons of the annual *U.S. News* rankings. My school, Widener Law, placed in what legal blog *Above the Law* very unflatteringly terms the “dreaded ‘Unranked’ portion” of the rankings,⁵ while his did a bit better. Of course, neither of us felt such dread, because we valued our students and colleagues. But at these schools perhaps teaching is more important than at Yale and Penn (our respective alma maters), or even than at American and Oklahoma (our later homes), and I certainly put a lot of myself into my teaching and always enjoyed talking to Andy about his. What was most remarkable was his obvious dedication and care for his students. I know from recently speaking with some of those students that they certainly felt it, and I am confident I am a better teacher and person for trying to let a little of it rub off on me.

I will not even attempt to summarize all of Andy’s service, both to his own schools and to the greater legal profession. He served as the Reporter for multiple Uniform Law Commission projects, was actively engaged in a number of ABA law reform efforts, and wrote important reports on topics as varied as the death penalty and actual innocence. As with the first two segments of the academic triad, what most of us do in the singular or barely plural, Andy did in spades.

In short, when bragging about Andy one could go on and on. But rather than do that, I will content myself with a brief story and then end with why this Symposium volume is so appropriately dedicated to his memory. As I mentioned, Andy was on the Task Force that drafted the initial version of the ABA LEATPR Standards. Those drafting sessions could become contentious (those who know me can verify that I could not *possibly* have anything to do with that). I sometimes struggled to articulate, or at least to convince certain persons, that privacy from the government matters, and that it matters for everyone. I vividly recall Andy at one point declaring that it was all about the Egyptians and the Red Sea. Now this is a topic of some interest to me. I actually quite like reading from the Old Testament, much to the chagrin of my younger children. But it was naturally not a topic I expected to address at one of our meetings.

Believer and unbeliever alike know that Exodus story: Moses miraculously leads the Israelites across the sea, and when the Egyptians unwisely follow, they are swallowed up in its depths. Some Israelites, explained Andy (and according to the Talmud some angels, I believe),

5. Staci Zaretsky & Joe Patrice, *Flagging Law School Needs a New Logo, Budgets Itself a Whole \$50!*, ABOVE THE LAW (Nov. 5, 2013, 12:19 PM), <http://abovethelaw.com/2013/11/flagging-law-school-needs-a-new-logo-budgets-itself-a-whole-50/>.

wanted to sing for joy. Justice had been done! Yet finding joy in untimely death was unacceptable, because we do not cheer the demise of any man or woman, no matter their character.⁶ I cannot do Andy's retelling justice; I cannot even claim to remember his precise words. But I hope you can imagine a bit of the empathy his thinking demonstrated, especially in the context of a professional meeting, and so far as I could tell Taz demonstrated that empathy, compassion, and kindness in everything he did.⁷

So, again, when I thought to convene a symposium regarding the Standards, Andy was one of the first on my list. I certainly hoped he would accept, but I could not be sure. He was, after all, terribly busy. So I was extremely gratified to receive his response: "[H]ow could I say no to you? Of course I'd be delighted! The program is a great idea, and I've never been to Oklahoma, so I'll have added one more state!"

But that was never to happen. Cancer killed Andy before he could add Oklahoma to his list. In typical Taz fashion, when sickness made this particular travel impossible, he graciously offered the following: "I hope you'll allow me to contribute an essay on the grand jury even if I can't attend. I'm really sorry about this. I hate to let you down."

As if Andy *ever* let me down. He drafted most of that essay, and I hope someday to find the appropriate way to, as he requested, finish it and publish it for him. Perhaps I should have been more aggressive and done so for this volume, but Andy was so confident he was going to beat this, and I could not bring myself to think otherwise. When that did not happen, and I learned of his horribly untimely death, I was too devastated to immediately consider it.

In *The Fellowship of the Ring*, the wise wizard Gandalf gives this good counsel, which I share with my students every year as we study self-defense: "Many that live deserve death. And some that die deserve life. Can you give it to them? Then do not be too eager to deal out death in judgement. For even the very wise cannot see all ends."⁸

I am not very wise, and I certainly cannot see all ends. I do not understand why someone so full of life, and who gives so generously, should be taken from it. But what a life well lived. Heaven just got a little bit louder, because the laugh of Andrew Taslitz can overflow any space.

6. According to Scripture some Israelites did sing in praise of God with content that some might find equally objectionable. See *Exodus* 15:1-21.

7. The interested reader can look to Andy's aforementioned article on Tinkerbell, a beautiful and important piece. See Taslitz, *supra* note 2.

8. J. R. R. TOLKIEN, *THE FELLOWSHIP OF THE RING* 58 (Houghton Mifflin Co. 1994).

In a small gesture, we dedicate this volume to Andy and to those memories of him we will now cherish all the more, since no additional can ever be planted.