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The Hidden Life of Andrew Taslitz

FRANK H. WU*

What do dogs want most? They want to belong, and they want each other. — Elizabeth Marshall Thomas, *The Hidden Life of Dogs*¹

The late Andrew Taslitz was renowned as a scholar and a teacher. His influence is attested to by the tributes in this volume and his skill training the next generation is confirmed by his selection as an exemplar.² He was not known, however, to most of his peers as a husband and the human to canine companions. These aspects of his life deserve to be memorialized in this venue, the pages of law reviews where he otherwise displayed his talents.

Only some individuals make a mark on the world. It is easy to overlook the humanity of such persons, because their accomplishments are so impressive. Yet Andy was able to achieve what he did, thanks to everything else that remained in the background.

For many, perhaps most, professors, scholarly interests are intimately related to life experiences. Whether one follows the dictum to “write what you know,” almost all of us write what we love – either already or in anticipation. In this instance, Andy was an expert on dog evidence who became the head of a dog pack. His objective inquiry into dogs preceded his personal contact with them.

In the summer of 1978 while preparing for the LSAT exam, he met Patricia (“Patty”) Sun, another applicant to law school.³ Andy had been encouraged to sign up for the course by a friend, who claimed that he would meet smart women there. Andy and Patty each succeeded in their studies.

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1. ELIZABETH MARSHALL THOMAS, *THE HIDDEN LIFE OF DOGS* 111 (1993).

2. See generally MICHAEL HUNTER SCHWARTZ, GERALD F. HESS & SOPHIE M. SPARROW, *WHAT THE BEST LAW TEACHERS DO* (2013) (profiling a total of 26 law professors).

3. Interview with Patricia Sun, in Wash., D.C. (June 20, 2014).

They married, and, after a stint in Philadelphia, they moved to Washington, D.C. Andy joined the faculty of Howard University School of Law, while Patty went to work for the federal government.

He continued his research on criminal law, substantive and procedural, and established himself in the classroom of the leading historically black college/university (HBCU). He also was recognized as a leader among his colleagues: the respect he was accorded was signaled by the offer made to him to serve as the Associate Academic Dean (which he turned down). He later moved as a lateral to American University, but he continued to be identified by his two-decade affiliation with Howard.

One of his earliest law review articles considered the credibility of dog testimony.⁴ Although popular portrayals of the legal process suggest that evidence from dogs is reliable and should be credited, Andy was a skeptic. He presented a comprehensive catalog of cases in which a dog sniff was used to identify a specific scent, and, on the basis of a bark directed toward a suspect, that person could be convicted, even given the death sentence.⁵

He suggested that the courts had imbued the canine sense of smell, which is extraordinary, with mythic qualities.⁶ Thus the courts did not regard a dog's sniff as a "search" and also excused it from the requirement of corroboration. The dog sniff was not an esoteric topic. It was integral to investigations of drug smuggling among other transgressions.

After considering the scientific findings on the canine sense of smell,⁷ including the factors affecting a dog's accuracy in tracking and the variability within the species, Andy turned to the evidentiary rules. Writing when scientific evidence was governed by the *Frye* test,⁸ prior to the ruling in *Daubert*,⁹ he offered the following understatement about dogs' testimony: "effective cross-examination is difficult."¹⁰ He concluded that dogs could and should serve "a special and valuable function in law enforcement."¹¹ But he urged that the dog

4. Andrew E. Taslitz, *Does the Cold Nose Know? The Unscientific Myth of the Dog Scent Lineup*, 42 HASTINGS L.J. 15 (1990).

5. See Taslitz, *supra* note 4, at 18 n.7 (citing *State v. Roscoe*, 700 P.2d 1312 (1984)).

6. *Id.* at 20-33.

7. *Id.* at 43-52.

8. *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

9. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

10. Taslitz, *supra* note 4, at 87-88.

11. *Id.* at 133.

scent no longer be admitted into evidence as probative of guilt in criminal trials.¹²

This 114-page law review article was more than comprehensive. It demonstrated a Renaissance person's ability to blend together disciplines. Andy surveyed literature (showing the reverence for the dog in Western culture), science (demonstrating the reasons to doubt the dog's abilities, including to communicate through a handler), and law (reviewing the doctrine).

With publication of the piece, Andy became the leading authority on the subject. In the best tradition of engaged scholarship, he later published a practical version of his analysis for an American Bar Association magazine.¹³ He was called upon from time to time to serve as an expert with respect to the weight to be accorded to dog testimony. The article itself has been cited at least 15 times by the courts.¹⁴

The role of the *Canis familiaris* is more significant than the merely academic. Andy and Patty became interested in acquiring a dog, through their neighbors who owned a Norwegian elkhound. (Andy had not grown up around dogs, but Patty's family had had an outdoor dog.)

They cared for Hope, when her family traveled. Based on those interactions, they decided they wished to rescue another member of the same breed.

After an extensive search, Andy and Patty adopted B'lanna through a rescue organization. They named her for a character from *Star Trek: The New Generation*.¹⁵ The screen version of B'lanna is a half-human, half-Klingon.¹⁶

12. *Id.*

13. Andrew E. Taslitz, *The Cold Nose Might Actually Know? Science & Scent Lineups*, 28 *CRIMINAL JUSTICE* 4 (2013).

14. *United States v. \$5,000 in U.S. Currency*, 40 F.3d 846, 850 (6th Cir. 1994); *United States v. Carr*, 25 F.3d 1194, 1215 (3rd Cir. 1994); *United States v. Florez*, 871 F. Supp. 1411, 1421 (D.N.M. 1994); *United States v. \$639,558 in U.S. Currency*, 955 F.2d 712, 714 (D.C. Cir. 1992); *People v. DeSantiago*, No. BA182395, 2003 WL 21753766, *14 (Cal. Ct. App. July 30, 2003); *People v. Mitchell*, 2 Cal. Rptr. 3d 49, 65 (Cal. App. 2003); *State v. Kelly*, No. CR0661742, 2009 WL 323481, *9 (Conn. Super. Ct. 2009); *Harris v. State*, 71 So.3d 756, 768 (Fla. 2011); *People v. Cruz*, 643 N.E.2d 636, 663 (Ill. 1994); *Commonwealth v. Santiago*, No. WOCV201100872, 2012 WL 2913495, *3 (Mass. Super. 2012); *Harris v. City of Mayfield Heights*, No. 95601, 2011 WL 1584579, *4 (Ohio Ct. App. 2011); *State v. Dominguez*, 425 S.W.3d 411, 423 (Tex. App. 2011); *Powell v. State*, No. 14-09-00398-CR, 2011 WL 1579734, *2 (Tex. App. 2011); *State v. Smith*, 335 S.W.3d 706, 712 (Tex. App. 2011); *Winfrey v. State*, 323 S.W.3d 875, 883 (Tex. Crim. App. 2010).

15. *Star Trek: The New Generation* (Paramount television 1987).

16. *Star Trek: Voyager* (Paramount television 1995).

Andy had long been a Trekkie, but unlike some fans of the Gene Rodenberry science fiction show celebrating diversity he enjoyed more than the original series from his adolescence. Patty became immersed in the online culture dedicated to the Norwegian elkhound.

Later, they decided that it was important for B'lanna to have a friend at home. They returned to the same network to find Odo — another moniker from the Star Trek universe.¹⁷

Their lives were complete.

Andy was survived by Patty, as well as B'lanna and Odo.

For the rest of us who continue to perform intellectual labors, there is a salutary effect in catching this glimpse of a family man. While Andy will continue to live through his ideas, he also will influence us through his actions.

All of us will miss his wisdom. Patty, B'lanna, and Odo knew an Andy Taslitz who was more than a source of learned argument.

17. Odo was a "shapeshifter" in *Star Trek: Deep Space Nine* (Paramount television 1993).