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Article Dedication to Patrick K. Duffy (The Trial and Incarceration of Andy Dufresne)

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THE TRIAL AND INCARCERATION OF ANDY DUFRESNE

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I. INTRODUCTION

*The Shawshank Redemption*¹ had a relatively humble beginning. Stephen King wrote a ninety-page novella, entitled *Rita Hayworth and the Shawshank*

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I wish to dedicate this article to the memory of Patrick K. Duffy (USD School of Law Class of 1987 and former Editor-in-Chief of the *South Dakota Law Review*). He was a fabulous student and, after graduation, he taught me far more than I ever taught him. Our conversations were always free-ranging and lively. Although we often differed on political issues, we found much common ground in our discussions of law and legal institutions. Patrick was relentless in his critique of these institutions. See, e.g., Patrick K. Duffy & Lois A. Lofgren, *Jurassic Farce: A Critical Analysis of the Government's Seizure of "Sue," A Sixty-Five-Million-Year-Old Tyrannosaurus Rex Fossil*, 39 S.D. L. REV. 478 (1994); Victoria Wicks, *Attorney Discusses Court Case Involving Prayer*, SOUTH DAKOTA PUB. BROADCASTING (Nov. 13, 2013), <http://listen.sdpb.org/post/attorney-discusses-court-case-involving-prayer>. I deeply miss those conversations. Patrick's principled position against the death penalty remains as a powerful witness. See, e.g., South Dakota Public Radio, *Testimony Before the House Committee on the Judiciary on Bill No. 1183*, (2014), <http://sdpb.sd.gov/SDPBPodcast/2014/hst24.mp3> (beginning at about 31:30). My conversations with him on the politics of incarceration have shaped my thinking.

Patrick was a great trial lawyer. He represented me in a time of trouble, was co-counsel with me on several cases, and served very ably and honorably as opposing counsel in another. Working with him as he prepared for trial or appellate argument was a privilege and an education. He also shared his stories and insights generously with students. I have heard from many that his classroom presentations (often with now U.S. Magistrate Veronica Duffy) were among the most memorable of their law school careers. Those presentations were "breath-taking," to use one of his favorite words. His passion as an advocate never wavered, whether it was on a pro bono case or for compensation. He would say that you could hire him for his time and talent, but he always threw in his heart for free. This was no trite slogan. He really lived it and thereby demonstrated at the highest level what it means to be a lawyer.

On May 8, 2015, Patrick passed away unexpectedly and joined his mentors, Joe Butler and Mike Driscoll, in the everlasting conversation. There is a profound sense of loss for those who remain. While his words were many, very few were memorialized in writing (outside of the many briefs he filed for specific legal purposes). His tribute to Joe Butler is a classic. Patrick K. Duffy, *Dedication to Joseph M. Butler, On Behalf of the South Dakota Law Review Volume 48*, 48 S.D. L. REV. 1, 5-6 (2003). Please read it. Let me offer a tantalizing excerpt from this tribute:

It is difficult to write accurately about Joe Butler. Indeed, it is difficult to write with any real certainty about anyone whose role in life has faded into the storied history of the Bar. I think Joe was singularly unusual, an extraordinary mix of cunning, guile, charm and sheer drive the likes of which we'll not see again in a long while. Joe Butler had what great politicians and law firm builders all possess, that eerie ability to make his subject, a client, or a potential ally, or, more likely than not, a judge, feel like the single most important person in the entire world as long as Joe's attention was in focus, or, to put it more accurately, as long as that person was in the cross-hairs of Joe's incredible, deadly Irish charm.

[Joe Butler] was blessed, but extraordinarily lucky, and he knew it. He was present at the creation of the modern trial: the rise of automobiles and interstate highways paved the way for insurance; the Vietnam War and discontent with the power of the state rendered society, and juries, much more liberal than they had ever been before. People woke up. From dark times where a human life was worth no more than ten thousand dollars and the

Redemption, one of four short stories or novellas, published collectively under the title *Different Seasons*, in 1982.² In terms of movie interest, this novella was not the first choice among the four.³ Frank Darabont, a then relatively inexperienced screenwriter and director, purchased the movie rights from Stephen King for the grand total of one dollar.⁴ The movie was shot over an intense three-month period during the fall of 1993. It was released in 1994 to mixed, albeit generally positive, reviews.⁵ While the movie was not initially a box office success, managing only barely to cover the expenses of production, it found a niche in secondary distribution, particularly as a staple on night-time television on Ted Turner's classic movie channel.⁶ Together with continued strong word-of-mouth support and growth in DVD sales, *The Shawshank Redemption's* reputation grew steadily until, ten years after its initial release, it had become a very popular film.⁷ Today, it is ranked by the Internet Movie Database as the most popular movie of all time.⁸

How did this happen? It is a good story, but there are many good stories out there. Why did this one touch so many people so deeply? It has roots in the genre of stories about revenge, including the classic *The Count of Monte Cristo* by Alexandre Dumas.⁹ The story connects with a deep-seated sense for righting a

cap on what a defense lawyer might be paid in a murder case was one hundred dollars, society marched into the light of just compensation.

Joe was there for that march, but behind his charm were cynical predictions about the future of the law: its unpredictability, its ever-quickenning lurch to the right, the seemingly continual denial of fundamental rights, the collapse of the tort system, Joe's predictions to me all come more true every day. Or, as he would often bluntly put it, "don't hold your breath, Paddy, the pendulum's not swinging back in your lifetime." Perhaps not, but take a deep breath and pause but a moment to remember Joe Butler and hope you can feel the pendulum's swing slow a little bit.

Id. at 5-6; see also Patrick K. Duffy, *Dedication to Robert E. "Mike" Driscoll*, 57 S.D. L. REV. i, iii-iv (2012). It is our loss that he did not write more. The memory of his intense pursuit of justice will remain with those whose lives he touched. 1. THE SHAWSHANK REDEMPTION (Castle Rock Entertainment, 10th Anniversary ed. 2004) (1994). Throughout this article, pinpoint citations to specific occurrences in the film are provided in the format of "hours:minutes:seconds." Movie dialogue or incidences referenced to in the text begin at the cited time stamp.

2. STEPHEN KING, *Rita Hayworth and the Shawshank Redemption*, in *DIFFERENT SEASONS* 15, 15-107(1983).

3. Margaret Heidenry, *The Little-Known Story of How The Shawshank Redemption Became One of the Most Beloved Films of All Time*, VANITY FAIR HOLLYWOOD (Sept. 22, 2014, 9:10 AM), www.vanityfair.com/hollywood/2014/09/shawshank-redemption-anniversary-story. Director Rob Reiner had read the Stephen King collection, but chose one of the other novellas and made the movie, *Stand By Me*. *Id.* After Darabont wrote the screenplay, Reiner then offered \$3 million for the right to direct the film, but Darabont turned him down and directed it himself. *Id.* Reiner, to his credit, did not pull rank on the fledgling director and allowed Darabont to proceed with the picture under the auspices of Reiner's newly formed studio. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* See also John Swansburg, *The Shawshank Reputation—A Decade After its Theatrical Release, Why is The Shawshank Redemption Still so Popular?*, LEGAL AFFAIRS (Mar./Apr. 2004), https://www.legalaffairs.org/issues/March-April-2004/appraisal_swansburg_marapr04.msp.

8. *Top Rated Movies: Top 250 as Rated by IMDb Users*, IMBD, http://www.imdb.com/chart/top?ref_=tt_awd (last visited Jan. 9, 2017).

9. ALEXANDRE DUMAS, *THE COUNT OF MONTE CRISTO* (Bantam Classics 1984) [hereinafter *THE COUNT OF MONTE CRISTO*]. The book itself played a cameo role in the movie when Andy was sorting through books for the library. *THE SHAWSHANK REDEMPTION*, *supra* note 1, at 1:17:16. There are many