



I admire the ability of The Simpsons to communicate on a wide range of levels. The show does a wonderful job at ridiculing pretentiousness of all varieties without devolving into cynicism.

—Richard Nagareda¹

Here's what I like about this quotation. For me, and I hope for others who knew him, it preserves vividly the memory of sitting in Richard's office, surrounded by his beloved pop-culture trinkets. I swear I can still smell the plastic.

It also reminds us of Richard's remarkable and endearing breadth. I'm not sure I've ever met anyone who was as fluent in pursuits both highbrow (e.g., opera) and lowbrow (e.g., bad television).² And for those who might have drawn a mistaken impression from having observed Richard only in buttoned-down professional mode, the quotation will serve to point out that he also had a sense of humor. More on this below.

Finally, the quotation obviously expresses Richard's detestation of pretension and his rejection of cynicism.

Richard's dislike of poseurs was visceral. It stemmed in part, I believe, from a lingering resentment that the academy was slow to accept him, not only because of his conservative politics, but also because he was quite incapable of engaging in the sort of performance-art that sometimes passes for displays of intelligence.

Richard's relationship to cynicism was more complicated. He was cynical about certain things and probably could not have been otherwise. His academic career was devoted to studying the high-stakes machinations of boundary-pushing lawyers and businessmen. Vices such as greed and corruption naturally accompany this sort of activity,³ and Richard was far too clear-eyed not to understand the power of the dark side in this context.

1. As quoted on the Vanderbilt University Law School website, <http://www.vanderbilt.edu/day/nagareda.html> (last visited Aug. 27, 2011). The comments that follow my ruminations on the above quotation are a revised version of remarks delivered at the memorial service held for Richard Nagareda at Vanderbilt Law School in November 2010.

2. I do not mean to suggest that *The Simpsons* counts as bad television. Richard was equally knowledgeable about good television.

3. So too do virtues such as integrity and professionalism.

And yet, Richard was quite idealistic about the role that law and principles of democratic governance could and should play in mass tort litigation. He understood the degree to which law leaves room for maneuver in the resolution of complex disputes. Still, he was keen to stress law's guiding and cabining role. Richard believed in law. And so he believed that, in complex litigation, no less than in a simple slip-and-fall suit, liability should turn on whether one has a valid claim—hence his concern to smoke out instances in which procedural rules and lawyerly and judicial practice allowed for end-runs around substantive law.⁴

Much the same can be said of his views on democratic governance. Worries about the use and abuse of power lie at the center of his magnificent book. It aims to demonstrate that mass tort suits are not so much instances of private dispute resolution as exercises of regulatory authority by attorneys over their clients.⁵ The fundamental challenge, as he saw it, was to harness law and market forces to ensure that this authority is wielded legitimately. Legal representation, he insisted, is in this context a form of governance and must therefore be subject to the constraints of democratic principle.

So Richard was a realist about life and an idealist about law and democracy. That he—the son of a man unlawfully detained in an internment camp—should be idealistic in these ways is at once entirely remarkable and entirely understandable.

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Richard and I were something of an odd couple. Readers of a certain vintage might think of us as Felix Unger and Oscar Madison. The difference in our physical statures was merely the most visible of many.

Richard studied the high-stakes, big-money, fast-moving world of class actions, multidistrict litigation, plaintiffs' steering committees, and settlement grids. That stuff makes me dizzy. I'm still trying to understand what it means to commit a trespass.

4. See, e.g., Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 104 (2009) (arguing that procedural and evidentiary issues associated with class-certification decisions mask "an implicit demand for a new and often controversial conception of the substantive law that governs the litigation"); Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 COLUM. L. REV. 149, 181–88 (2003) (maintaining that the bargaining power of class counsel derives, and should derive entirely, from class members' preexisting legal rights).

5. RICHARD A. NAGAREDA, *MASS TORTS IN A WORLD OF SETTLEMENT*, at ix–x (2007).

Richard was also a true blue (red?) conservative. I don't know how things work at Federalist Society headquarters, but Richard surely had achieved the status of Grand High Lord Protector, or whatever title is bestowed upon their most eminent eminences. I'm not part of that world, instead belonging to the mushy center-left—folks who like to congratulate themselves for being reasonable, often while getting nothing done.

Richard was most definitely a steak-and-potatoes guy. I remember a law school event that brought us together at a local steakhouse. As he sipped his martini (gin, of course!) and tucked into his barely departed cow, he couldn't resist mocking the gigantic head of broccoli that played the role of entrée for his vegetarian friend.

Richard was fastidious. Until I met him, I thought that rubber overshoes—"galoshes," my parents called them—had gone the way of the rotary phone. This same sensibility was evident across Richard's wardrobe: Brooks Brothers, even on the hottest Nashville summer day. I had it in my head that he spent his evenings in a smoking jacket and slippers. No surprise, then, that Richard was unimpressed with my commitment to "grad student chic," especially when I took on a position of nominal authority at the law school. "Jesus, Goldberg, you're supposed to be a grown-up!! Dress like one!!"

Enough said; the point is made. We were two very different people. By all rights, we shouldn't have been friends. But we were. What is it that brought us together? I won't venture to say what Richard saw in me. But I can say what I saw in him.

Richard was smart—super, scary smart.

Richard had standards. And he wasn't shy about letting it be known when someone failed to meet them. In others, this might have been irritating, but Richard played fair. He held everyone to the same standards. And he was harder on himself than anyone else.

Richard was driven. From the day he set foot in the academy, he had something to prove. All those self-satisfied, loosey-goosey, multifactor-balancing, judicial supremacists would be hearing from him. And they did. Richard had the attention of the academy, the bar, and the bench.

Richard was funny—wickedly, bitingly, laugh-'til-you-cry funny. One of his specialties was nicknames. He had a real genius for them. Decorum prevents me from offering examples here. I assume that he had one for me, so if anyone wants to let me in on that secret, I'd love to hear it.

Richard was cultured. When we were in New York for an academic conference, he arranged for us to see Vanessa Redgrave and Philip Seymour Hoffman in *Long Day's Journey into Night*. It was

mesmerizing. We spent hours afterwards talking about it. It was no less a treat to hear him wax eloquent about the cinematic significance of *Kill Bill*.

Richard was loyal—when you needed him, he was there.

Richard was considerate. Just days before I was to embark on that vaguely debasing, three-month-long job interview referred to in this business as a “visit,” Richard stopped by my office with a bottle of scotch and an encouraging note. And it was good scotch. Really good scotch. Did I mention that Richard had standards?

Richard was caring. He was a devoted husband to Ruth and a proud father to Evan. And he loved his students—at least those who were serious about being students. I’ll never forget seeing him break down in tears as he introduced the first graduates of his beloved Branstetter Litigation Program to an assembly of proud family and friends.

Richard was responsible. In academic writing there’s the familiar character of the free rider. So far as I know, there’s little discussion of the free rider’s opposite. Let’s call him the “full-fare rider.” The full-fare rider is the one who subsidizes those who travel on a discount. It’s only because he pays more than he should—too much, way too much—that others get by on the cheap. Richard was the full-fare rider. He did everything and did it exceedingly well: husband, father, teacher, scholar, colleague, citizen, mentor, and friend. He gave all he had to give.

At Richard’s invitation, I once participated in a Federalist Society conference. Its members tend not to have kind things to say about the tort system. The audience was packed with tort skeptics, and most of the panelists added fuel to the fire. I meekly suggested that political conservatives, of all people, should be tort law’s defenders. It is, after all, the part of the law that is most about personal responsibility—the responsibility to adjust one’s own conduct so as to avoid injuring others. I didn’t get the sense that this message was well received. Later, at a reception, Richard introduced me to Gene Meyer, President of the Federalist Society. With his wry smile and booming voice, he said to Gene: “I’d like you to meet my colleague John Goldberg, a true conservative.” I couldn’t have been prouder.

The year 2010 belonged to the Giants—Richard's beloved San Francisco Giants. Richard was a giant. Richard was my friend. I will miss him terribly.

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