

Foreword

A year ago, many of us gathered in Vanderbilt University Law School's Flynn Auditorium to attend a "Celebration of the Life of Professor Richard Nagareda." Frankly, I didn't feel like celebrating, a sentiment I suspect others shared. Richard—scholar, teacher, mentor, colleague, friend, father, husband—had left this earth before any of us were ready to part with him.

And yet, as the speakers shared their memories of Richard, the intense grief I had felt since learning of Richard's untimely death began to dissipate. There was then, and there remains now, so much to celebrate about his life. For in his forty-seven years, Richard so greatly touched the lives of those of us who were fortunate to spend time with him that he forever will be with us.

This issue of the *Vanderbilt Law Review* honors Richard—our scholar, our teacher, our friend. In it appear tributes from a group of distinctive scholars who, in many ways, knew him best: Maria Glover, who was a prize student of Richard's and will soon be a prize scholar in the field of civil litigation; John Goldberg, Richard's long-time colleague and friend; Chris Guthrie, Dean of the Law School and another colleague and friend; Sam Issacharoff, Richard's mentor in the legal academy or "Sith Lord,"¹ as Richard affectionately called him; and Suzanna Sherry, who not only was a colleague and friend but who also ensured that Richard's dedication to his students carried forward in his absence. Each of these scholars delivered deeply touching tributes to Richard when we met last year to celebrate his life. Here, they build upon them. In particular, each will begin with a selection from the ever-quotable Nagareda. Those selections will serve as a starting point for discussing how Richard enriched our lives as well as the law.

Given that Richard had only recently reached his academic prime, the breadth of his scholarly impact is staggering. He began his academic career writing on the Federal Rules of Evidence and mass

1. The term comes from George Lucas's world of *Star Wars*, and it refers to an evil Jedi master who has embraced the dark side of the Force. I don't think Richard actually thought Sam was evil; if anything, Sam was less Richard's Darth Vader and more his Obi-Wan Kenobi.

tort litigation. He soon dumped the former to focus on the latter, and he then pivoted from analyzing mass tort litigation specifically to theorizing about aggregate litigation more generally. Richard quickly established himself as a leading authority in that increasingly important field—and particularly with respect to the Rule 23 class action. His works have been cited in over six-hundred law-review articles,² not to mention books and treatises. In 2003, only nine years after Richard had entered the academy, he was appointed Associate Reporter for the American Law Institute's recently published *Principles of the Law of Aggregate Litigation*. But these feats are rivaled by one he did not see: the role he played in the Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*.³ This decision was among the most significant of the 2010 term, not only because of the story behind the case—1.5 million female employees of Wal-Mart suing the world's largest private employer for gender discrimination—but also because of the effect it will have, and already has had, on the Rule 23 class action. The Court didn't merely cite Richard. Instead, the majority and partial-dissenting opinions heavily relied on his thoughts on the law that underpins Rule 23. In some sense, the competing opinions debated the meaning of Richard's work.

Still, a question remains: how did Richard become this leading authority? The scholars here can better answer that question than I can. Nevertheless, here's my theory. Richard's mind floated in the clouds: he possessed brilliant insights about aggregate litigation that few others shared. But that alone doesn't create greatness in an academic; one need only scan the annals of this law review, and others, to observe the wisdom of many legal scholars. What made Richard so special, instead, was *how* he conveyed his wisdom. He had a remarkable ability to explain his insights in a manner understandable to all, from the first-year law student to the general public. That very accessibility enabled his ideas to take flight. And yet Richard never sacrificed substance or style, especially the occasional pop-culture reference, for the sake of simplicity. To me, this unique gift—the ability to share his brilliance with the masses—allowed him to become one of the most influential voices in aggregate litigation.

2. As of October 8, 2011, a Westlaw search for "Nagareda" in the journals-and-law-reviews database resulted in 687 hits. (I'm quite certain he's the only "Nagareda" who will appear in a JLR search.) Richard published 25 law-review articles, 3 of them posthumously.

3. 131 S. Ct. 2541 (2011).

Yet it's not Richard the scholar that I'll most remember. For as great as he was in that capacity, he was an even greater teacher of the law.

I vividly remember my first class with Richard. I strolled into the classroom ten, maybe fifteen, minutes early, hoping to reserve a good seat for the semester. For most classes, the professor enters perhaps five minutes before class is scheduled to begin. Not Richard. He had already taken up position near the front of the classroom, and he had filled nearly the entire whiteboard with bullet points. For those ten to fifteen minutes, he stood silently, sizing up this new batch of students. (I sized him up too: he was sharply dressed, sporting a thin-pinstripe suit and monogrammed French cuffs.) The clock struck 9:30 a.m. "This course is intended to disabuse two melodramatic views of complex litigation," Richard began without welcome, his signature bass voice filling the room. "One, this is all about noble plaintiffs righting the wrongs of corporate defendants. Two, this is all about law-abiding defendants being shaken down by greedy plaintiffs' lawyers." And then, for what seemed like thirty minutes, Richard introduced complex litigation to us in perfectly crafted sentences, never once stammering. I was astounded. But it wasn't just his stylistic prose that astounded me: substantively, every word served an instructive purpose. When class ended, I turned to a friend and said, "He's the Bard reincarnated as a law professor." I wasn't entirely joking.

Richard truly had mastered the art of teaching the law. His lectures, as just described, were exquisite. But even more impressive, I think, was his use of the Socratic Method. Tough, unrelenting, and blunt best describe that use. Of course, those words also suggest that he was a real-life version of the infamous Professor Kingsfield from *The Paper Chase*. Not so; unlike the callous Kingsfield, Richard always treated us students with respect. And he was tough on us because he believed in our infinite potential. Richard often focused his attention on one student, and only one student, for significant stretches of class time. He would pepper that student with question after question, each one more nuanced than the last; few, if any, having a correct answer. My turn came one day in class, and I remember the dizzying feeling of falling down the rabbit hole of legal complexity as Richard asked successive questions of increasing difficulty. At the time, it didn't feel like I was learning much; I merely was trying to keep up with him. But later, when I reflected on that class, I realized the great extent to which I had learned through his questions. He used them to push me, and all his students, toward a higher understanding of the law. For many of us, Richard was the best

teacher we ever had because he led us to intellectual heights we never before had reached.

Richard, then, expected the best from us; and in turn we wanted to do our very best for him. Most of us prepared more for his class than any other. Sure, for some that can be explained by a simple fear of embarrassment during Socratic questioning. But many others, including me, saw the significant effort he put into teaching each class, and felt that he deserved no less effort from us. So we pushed ourselves, and pushed ourselves, and pushed ourselves in pursuit of a unique goal: attaining Richard's satisfaction. And to satisfy him meant never to settle for mediocrity in the work that we do, but always to strive for greatness. For in the end, that was Richard, and now it is us.

A year has passed without Richard, and many more will, but his legacy will endure in each of us—in every article, brief, memorandum, or opinion we write; in every case we argue; in every class we teach; in every student we mentor; in so much of what we do as practitioners, students, and teachers of the law.

And that is worth celebrating.

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