



*What is likely to emerge is not the exceptionalism of the U.S. experience but, instead, a striking lack of exceptionalism—McDonald’s on the Champs-Elysees, but with its Quarter Pounder famously restyled as a Royale with Cheese.*

—Richard Nagareda<sup>1</sup>

One of the joys of the academy is the rare opportunity it affords for engagement across generational lines. The shared rank of professor and the sheer duration of academic careers allow contact across the cycles of life. We see our colleagues have children, and we see them age. We experience joy, and we experience sorrow. It adds fullness to our lives, and it gives meaning to a life of transmitting knowledge from one generation to the next.

This is the first time that I have been asked to write in memory of a colleague and friend who was younger than me. I find this almost as bewildering as confronting the news of Richard’s death. The normal patterns of confronting death do not hold. This time, grief is mixed with disbelief. Mourning is unalloyed by the normal sense of reflection on a life fully realized. To think of Ruth, Richard’s wife, so much in her prime, and to think of Evan, his son, bursting with the energy of youth, is to realize how cruel and ungenerous the fates were that brought about such a young death.

Yet, it would dishonor our friend to not allow ourselves the normal, bittersweet remembrances of a life—a life too short, but a life well led. Let me go back in time to how I first met Richard. I was introduced to him, as were so many of us, through his writing. I came across his first piece, *Turning from Tort to Administration*, when it appeared in the *Michigan Law Review* nearly fifteen years ago.<sup>2</sup> The article stood out from within the still-nascent field of mass torts, before the Supreme Court’s defining opinions in *Amchem* and *Ortiz*. The challenge at the time was to bring the daunting procedural issues into alignment with the substantive claims in critical areas, such as asbestos, breast implants, and DES. Most daunting of all was how to

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1. Richard A. Nagareda, *Aggregate Litigation Across the Atlantic and the Future of American Exceptionalism*, 62 VAND. L. REV. 1, 52 (2009).

2. Richard A. Nagareda, *Turning from Tort to Administration*, 94 MICH. L. REV. 899 (1996).

reconcile the individual nature of a tort claim with the underlying epidemiologic proof in mass torts.

What stood out immediately was Richard's writing. My wife insists on clear writing, and Richard was always a favorite of hers. From his first article, Richard's ability to express difficult concepts clearly was remarkable. The turns of phrase, the use of analogies from distant areas of law, the humane introjection of popular references, all yielded a compelling prose that was crisp, analytic, evocative, imaginative.

Richard had the ability to think across categories to try to find the operational lever that could resolve a puzzle. He relished the opportunity to use cultural references to bring difficult issues to life. The references could be to high culture, but he had a remarkable attentiveness to popular culture. So Richard could look askance at my being taken by a concert I had heard by Lang Lang—too flashy, he thought. But Richard brought to life an otherwise long and difficult article we wrote together by comparing an imprecise doctrine of procedural law to Shimmer, the commercial creation of *Saturday Night Live* that could serve as both a dessert topping and a floor wax. It is no doubt the most memorable part of the article.

Or let me give one of my favorites, the last line of Richard's insightful piece on the hesitating European experiments with aggregate procedures: "What is likely to emerge is not the exceptionalism of the U.S. experience but, instead, a striking lack of exceptionalism—McDonald's on the Champs-Elysees, but with its Quarter Pounder famously restyled as a Royale with Cheese."<sup>3</sup> How great it is to read a law review article and hear it in the voices of John Travolta and Samuel L. Jackson. And how sad to think that the last enterprise that Richard and I organized together was a conference in Italy on just this theme, one that Richard's health forced him to miss.

To return to our first meeting, I sent Richard a letter on his first article, the old kind with stamps and all. I praised the piece and welcomed its contribution to the field. But I also meted out criticism for what I thought of as shortcomings in the analysis and assumptions that needed further scrutiny in future articles. It was the criticism directed at a peer that I had so deeply appreciated when I was a junior professor at the University of Texas School of Law. And, in seeing a kindred scholar at another institution, and perhaps one who did not have colleagues as engaged in his fields of inquiry as I had been fortunate enough to rely upon, I ventured out of the blue to offer not

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3. Nagareda, *supra* note 1, at 52.

only praise but serious commentary on his piece. From there began a long and deep collaboration.

Sometime later, I was invited to give a lecture at the University of Georgia School of Law when Richard was on the faculty there. Richard gave me the most memorable introduction I have ever received. It was memorable not for the usual, overly laudatory, false flattery of the invited speaker—an odd academic affectation—but for the way he took the occasion to address the students in the audience. Richard began the introduction by referencing the unsolicited letter I had sent him. He told the students what it meant to be starting out and insecure and unsure of whether what you are doing is worthwhile. He described in an open way his own vulnerabilities and his own sense of being reassured by the attention of someone more established so that his students might also find a deeper sense of resolve and perseverance in their moments of doubt.

For me, it was an introduction to Richard the extraordinary teacher, someone who would not let pass an opportunity to engage his students not just on matters of substance, but also on the way one learns from all aspects of life. I had the privilege to see this side of Richard when he visited as a professor at schools where I taught. And it is this side I see in the outpouring of student grief over his loss. To quote one of my students, writing to me, “I just heard about Professor Nagareda via a friend at Vanderbilt. I know he was a friend of yours in addition to a colleague, and I am sorry for your loss. He was one of the best professors I had at NYU.” Simple, but he touched people.

Let me turn to a personal note, one about the sense of loss following the intense engagement that I had with Richard, Charlie Silver, and Bob Klonoff over a five-year period working for the American Law Institute on the *Principles of the Law of Aggregate Litigation*. For Richard, I know, this was a significant professional experience, even leaving aside the personal relations that ensued. The masterful work that Richard did on this project enriched his book, *Mass Torts in a World of Settlement*, and provided the raw material for his important casebook, *The Law of Class Actions and Other Aggregate Litigation*. Most recently, it was Richard’s work on how to litigate class actions that was relied upon by the Supreme Court in *Smith v. Bayer Corp.*<sup>4</sup> Even more striking was the repeated invocation of Richard’s work on proper and improper aggregation in the majority and dissenting opinions in the *Wal-Mart Stores, Inc. v. Dukes* case.<sup>5</sup>

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4. 131 S. Ct. 2368 (2011).

5. 131 S. Ct. 2541 (2011).

But I want to turn to the personal side of this engagement, for this is what I will most treasure and miss from my relation with Richard. Male friendships are a complicated business. We tend to be the second-most communicative members of the human species. Grunts, expletives, one-word answers are often our preferred forms of discourse. Yet, it is through common effort, for example in sports or in professional activities, that male friendships form.

Honoré de Balzac in his greatest novel, *Lost Illusions*, noted that male friendships tend to be made early in life, particularly in the military, where there are shared vulnerabilities and openness. I want to take up that theme for the efforts Richard, the others, and I went through during the ALI project, with all the differences properly discounted. We were no longer young men, we had made our lives, and we were not at war. All true.

Yet, for five years, we felt ourselves besieged by a project that would not obviously end well. And although we were neither young nor at war, our experience was a shared camaraderie, a sense of mutual reliance, and the joy of a joint endeavor. Often we would spend an entire day having one hundred or more people take turns assailing the limitations of our product. And yet, it was fun.

Before each meeting we would indulge ourselves a good dinner, with wine or spirits (Richard's rule: you do not mix; though we never knew why). Here we would talk casually about our work, hear of Evan's exploits on the gridiron, and speak of our various engagements. We had such dinners in many places, including China and Italy, in the various permutations of our work. As Bob Klonoff told me, it is these dinners that seem most vivid now.

When Richard died, my daughter sent me the following email: "Hey dad, Mom just told me about Richard Nagareda. I am so sorry. Of all your colleagues I met he was one of my favorites. Really can't believe it. Hope you're doing okay." Her email allowed me to acknowledge the personal sense of loss. I know I speak for Bob and Charlie as well to say we all feel diminished. On behalf of the broader communities Richard engaged, I am certain that we are all the less for this.

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