

STORIES OF JOHN COPELAND NAGLE

*Deanell Reece Tacha**

You may tell a tale that takes up residence in someone's soul, becomes their blood and self and purpose. That tale will move them and drive them and who knows what they might do because of it, because of your words. That is your role, your gift.¹

John Copeland Nagle was a storyteller! In his book, *Law's Environment: How the Law Shapes the Places We Live*,² John explains his belief in the power of story as an interpreter of the legal principles and broader societal issues that animate the direction of the law and the work of academics and lawyers. John saw the untimely death of his mother, his travels around the world, and his dedication to biodiversity and environmental law as interrelated narratives that shaped his understanding of the law. In honor of John's extraordinary storytelling, I want to share a few personal stories that place his legacy of teaching and scholarship in a more personal context. The close bond that John Nagle and I shared is its own story. This story has shaped me and influenced indelibly my view of the law and how interconnected it is to the world we share.

This "John Nagle and Judge Tacha story" began on a freezing cold afternoon in Kansas City shortly after I was confirmed as a judge on the United States Court of Appeals for the Tenth Circuit. Impressed by his resume, I had invited John to interview for a clerkship. Upon meeting John for the first time, I was slightly taken aback because his exceptional paper record did not lead me to expect a young, affable, and somewhat gangly guy in a full leg cast and on crutches due to a serious skiing accident. The typical clerkship applicant would have

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* The Honorable Deanell Reece Tacha, former Chief Judge of the United States Tenth Circuit Court of Appeals and former Dean of Pepperdine University School of Law.

1 ERIN MORGENSTERN, *THE NIGHT CIRCUS* 505 (2011).

2 JOHN COPELAND NAGLE, *LAW'S ENVIRONMENT: HOW THE LAW SHAPES THE PLACES WE LIVE* (2010).

asked to reschedule the interview. Not John! “Traveling for an interview while temporarily disabled? No problem, not even worth mentioning to the Judge.” In that moment, John demonstrated then, as he did throughout his entire life, his quiet self-confidence and uncanny ability to take life’s curveballs calmly in stride.

As every new judge will attest, there is no primer explaining how actually to do the job. The best metaphor is the proverbial “drinking out of the firehose!” The first task for any new judge is to hire excellent law clerks, who literally work at your elbow (hence the term “elbow law clerks”). A judge’s very first clerks are, in my experience, the most important. If the judge chooses wisely, the first law clerks help establish the standards for opinion writing, research and analysis, the workplace routine of the chambers, everyone’s role in producing the opinions, and, most important, the judge’s contribution to the jurisprudence of the Court. John Nagle was the perfect first law clerk. Although all of my law clerks were outstanding, it was John who first set the standards for subsequent clerks to follow. I know that John profoundly influenced my early work as a judge and my approach to cases. His quiet self-confidence translated into a true partnership arrangement. As we embarked upon the business of studying and deciding cases, John inevitably challenged me respectfully, added thoughtful dimensions to my work, brought his considerable intellect to every single issue, and made me work harder at every turn in response to and in tandem with him. It was John who convinced me that all of my law clerks should work with me on every case as a team—thus involving the entire chambers in the case analysis and opinion drafting. I followed this practice for my entire tenure as a judge. I am convinced John’s approach made my opinions better because each clerk touched every case. John’s “team” approach has guided me throughout both my judicial and academic careers, and, in my judgment, has been responsible for strengthening the quality of my work. In short, John and I mentored each other in the early stages of his career and my time on the bench. John Nagle made me a better judge, a more probing analyst, and certainly more worthy of the title, “Judge.”

John and I shared an almost slavish attention to the “story” of each case—the factual record developed at the district court level. I was constantly in awe of his complete mastery of the facts for every case. In retrospect, it was John’s belief in the power of a story that made him such a careful reader of transcripts, records, cases, and all the sources we drew upon in deciding cases. He understood that each case is a unique human story—the people, the history, the legal framework, the procedural issues, and the myriad circumstances that all contribute to an appeal to the Tenth Circuit. John’s year in my chambers served as

a powerful tutorial for me in studying and understanding the importance of “getting the facts right” and seeing the interconnectedness of the facts with the law. One example is forever etched in my memory. We had a very difficult and long-litigated death penalty case that required the Tenth Circuit to determine whether the district court had consistently and uniformly applied its own law in imposing the death penalty. John Nagle read every single death penalty case from that court and outlined them all for me. It does not take much imagination to conjure the gruesome and tragic facts of all of those cases. John meticulously made sure that we studied and understood all of the relevant facts before we decided a case with such profound life consequences.

John’s approach to his work and his analytical framework were never ideological, nor were they superficially labeled in any doctrinaire way. His was not just the life of the mind. It was the life of the man. Somehow, in this age of conveniently pigeon-holing everything and everybody in terms of political or societal or cultural categories, John Nagle was never captured by that pesky lawyer’s temptress of compartmentalizing problems, issues, or people. He was always willing to engage with difficult, highly contentious, and timely issues in a way that forced himself, and his audience, to examine all sides and all perspectives. For example, when John thought about a national park or a river or an endangered species, he was not confined by the legal parameters and legal precedent. He saw the full array of human, regulatory, scientific, biological, and religious consequences. In his essay, *The Evangelical Debate Over Climate Change*,³ John concludes by revealing his own guiding principles for engaging in scholarly debate over contentious public policy issues. He writes that “the law cannot solve all of our problems”⁴ and “legal disputes should be conducted with humility and civility.”⁵ These two simple principles capture the essence of John as a legal scholar. Future legal scholars would do well to follow his example.

John was much more than a law clerk to me. He was like a son. It is rare indeed in this life to be blessed with sharing life fully with another person who is not in one’s immediate family. As John went on with his many academic and scholarly achievements, we shared all of life’s ups and downs and gave each other advice and frequent critiques. He would read a published opinion that I authored and call me to tell me where I got it right (and also where I may have gone astray). As he

³ John Copeland Nagle, *The Evangelical Debate Over Climate Change*, 5 U. ST. THOMAS L.J. 53 (2008).

⁴ *Id.* at 86.

⁵ *Id.*

was working on drafts of books and articles, I would read them, comment, tease him, and generally be a sounding board. I have no idea whether my thoughts were incorporated into his work, but in these exchanges his intellectual rigor and curiosity always provided a powerful inspiration for me.

Part of what made “John the storyteller” unique was his lifelong commitment to his faith and to constant introspection regarding how his faith intersected with his life journey, his work, and his relationships. In his scholarly work, he frequently referred to biblical examples or stories to make a point. His references to the Old Testament story of Noah have given me a whole new perspective on biodiversity! Although he had a deep sense of his own beliefs and convictions, John’s faith story was like his life story. He immersed himself in learning about other faith traditions and respected the array of religions that have animated world history. As he and his wife Lisa traveled the world (as they did so often), John inevitably returned with new insights and understandings. John’s innate openness allowed him to inform his own story with the stories of other religions, traditions, and cultures.

The dominant theme in John Nagle’s personal story, however, is the importance of family. Before actually meeting any member of his family, John introduced me to his mother, father, brother, and sister through funny, endearing, and revealing anecdotes. I knew them all very well long before I actually had the privilege of being with them in person. The loss of his mother and its effect on John’s understanding of biodiversity is best related in his raw and revealing essay, *Biodiversity and Mom*.⁶ Later, the family story became the story of a great love affair! I have always chuckled that the one life decision John never consulted me about was the decision to marry Lisa! That was a certainty from the start. Two kindred souls definitely found each other! They shared a faith commitment that bound them together. They traveled the globe and immersed themselves in the natural environment and the life of the people wherever they went. I have always credited Lisa with opening up the world so majestically for John. Together with Lisa, John’s wanderlust and zest for new people and places was unstoppable—even when I worried (as I am sure his own mother worried) sometimes about the wisdom of some of the destinations and adventurous modes of travel. Along with Lisa, John was completely smitten and “over-the-top” proud of his two daughters, Julia and Laura. Whenever even the smallest event or achievement related to the girls occurred, we all knew about it! John embraced fatherhood

6 John Copeland Nagle, *Biodiversity and Mom*, 30 *ECOLOGY L.Q.* 991 (2003).

with the same openness, enthusiasm, and complete dedication that characterized every aspect of his life. John's personal story evolved into a story of two much-loved and very lively girls, along with the endless stream of dogs and horses that accompanied them. John even brought their two enormous dogs into my house and had them swimming outside in my pool! Neither of these locations had ever experienced a dog at all because (to put it mildly) I am not a "dog person." My own children (all dog enthusiasts and owners) to this day are still miffed that the Nagle dogs enjoyed a privilege no Tacha dog had ever enjoyed!

No retelling of John's personal story would be complete without highlighting his wonderful, funny sense of humor. He was a harmless prankster. One of the funniest (and often repeated) gags was the way he exploited his mother's job as the "Butterball Turkey Expert" at Thanksgiving time. He convinced more than one Article III federal judge to call the Butterball line and ask all sorts of ridiculous questions about cooking turkeys or other turkey-related matters! John also would call the hotline himself feigning other identities (some quite famous!) and put his mother on the spot. She had no clue it was just her own prankster son!

John Nagle's story is richly documented in his remarkable, professional-quality photography. As he studied biodiversity and environmental law, he took pictures to document the places, people, and issues that he encountered. I know that before his death John was in the process of publishing a book on the American National Parks—accompanied by his extraordinary photographs—because I had the privilege of reviewing a draft of the book. As I was preparing to write this memorial tribute, I searched for a copy of the book and discovered that it has not been published. Surely a publisher might be found for John's last scholarly story, a beautiful and important contribution to our understanding of the legacy of the National Parks.

In the finest spirit of his photographs, John Nagle lived out a panoramic view of life and left us with a sweeping narrative. In his honest, open style, he perceived, felt, and lived out life as an integrated panorama of the personal, the professional, and the Divine. His personal story calls us to view life with as wide a panoramic lens as we can bring to our own stories—to take as his legacy a renewed commitment to sharing all of ourselves in order to enrich the people and world around us.

