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Denis Binder

Chapman University Dale E. Fowler School of Law, chapmanlawreview@chapman.edu

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A Tribute to Professor Ronald Rotunda

*Denis Binder**

Hi Ron, how are you doing?

“So far, so good.”

8:00 AM: So far, so good.

4:00 PM: So far, so good.

“So far, so good” was Ron’s credo in life. He led a good life, although “good” does not do justice to his life. Great is a better word. Professor Brian Leiter found he was the seventeenth most cited law professor in a 1998 study.¹ A follow-up study two years later moved Professor Rotunda up to number ten on the list.² Professor Leiter’s later listings were by discipline. Professor Rotunda was not listed either in constitutional law or legal ethics, but was listed amongst “highly-cited scholars who don’t work exclusively in this area.”³ His constitutional law citations would have placed him number ten on that list and legal ethics citations would have placed him number two on the legal ethics/legal profession list.⁴

Law reviews have traditionally published essays on esteemed colleagues who have retired or passed on.⁵ This paean

* Professor of Law, Chapman University Dale E. Fowler School of Law. I would like to thank Don Rotunda and Professors Kathy Heller and Celestine McConville for their comments, and Sherry Leysen and Heather Joy of the Hugh & Hazel Darling Law Library at Fowler School of Law for their assistance in preparing this Article.

¹ Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 451, 471 tbl.6 (2000). A Westlaw search on December 7, 2018 found 67 secondary sources for “Ron Rotunda,” 515 secondary sources and 37 cases for “Ronald Rotunda,” and 538 cases and 5264 secondary sources and 538 cases for “Ronald D. Rotunda,” as well as 992 downloads on SSRN.com. An additional 5177 downloads occurred on Bepress between October 9, 2011 and December 7, 2018.

² Brian Leiter, *Most Cited Faculty, 2000–02*, BRIAN LEITER’S L. SCH. RANKINGS, http://www.leiterrankings.com/faculty/2000faculty_impact_cites.shtml [<http://perma.cc/BH7P-LRZA>].

³ Brian Leiter, *Most Cited Law Professors by Specialty, 2000–2007*, BRIAN LEITER’S L. SCH. RANKINGS (last updated Dec. 18, 2007), http://www.leiterrankings.com/faculty/2007faculty_impact_areas.shtml [<http://perma.cc/X8W8-MG22>].

⁴ *See id.*

⁵ For example, Professor William L. Prosser wrote a wonderful tribute to Professor Warren Seavey, an expert in the overlapping areas of Torts, Equity, Damages, Remedies, and Restitution. *See* William L. Prosser, *Warren Seavey*, 79 HARV. L. REV. 1338 (1966).

is for Professor Ronald “Ron” Rotunda, who I view not only as a colleague, but more significantly, as a friend.

We could fill much of a volume of the *Chapman Law Review* with his fifty-five-page curriculum vitae, some of which I will highlight in this essay.⁶

Life is an incredible journey. Ron’s was a life well-lived. He lived it to the fullest, being an eyewitness to the two most colossal presidential debacles of our time. The young Ron Rotunda served as Assistant Majority Counsel to the United States Senate Select Committee on Presidential Campaign Activities, (the Watergate Committee) investigating President Nixon.⁷

The experienced Professor Rotunda served decades later as a consultant to Special Prosecutor Kenneth Starr in his investigation of President Clinton.⁸

A question which arose out of Watergate was posed by John Dean: “How in God’s name could so many lawyers get involved in something like this?”⁹

Ronald Rotunda graduated from Dwight D. Eisenhower High School in Blue Island, Illinois in 1963. He turned down scholarship offers from Georgetown, Johns Hopkins, and Notre Dame to attend Harvard College on a full ride scholarship at a time when Harvard didn’t offer many scholarships.¹⁰ He graduated magna cum laude in 1967 and remained at Harvard, also graduating magna cum laude from Harvard Law School in 1970, serving on the *Harvard Law Review*.¹¹

He clerked for Judge Walter Mansfield of the Second Circuit Court of Appeals from August 1970 to July 1971, and then

⁶ See generally Curriculum Vitae of Ronald D. Rotunda (last updated Dec. 18, 2017) (on file with Chapman University Dale E. Fowler School of Law), <https://www.chapman.edu/our-faculty/files/curriculum-vita/Rotunda-Ronald-CV.pdf> [<http://perma.cc/K33X-T88D>].

⁷ See John W. Dean & James Robenalt, *The Legacy of Watergate*, AM. BAR ASS’N (Sept. 18, 2018), https://www.americanbar.org/groups/litigation/publications/litigation_journal/2011_12/spring/watergate_legacy/ [<http://perma.cc/VW2G-7C7C>]. President Nixon technically resigned from office before the House of Representatives could formally impeach him, and the Senate could convict him, both of which were certainties. See *In 1974, Goldwater and Rhodes told Nixon he was doomed*, AZCENTRAL (Aug. 2, 2014, 2:27 PM), <https://www.azcentral.com/story/azdc/2014/08/03/goldwater-rhodes-nixon-resignation/13497493/> [<http://perma.cc/R2XU-YRML>].

⁸ See Charlie Savage, *Can the President Be Indicted? A Long-Hidden Legal Memo Says Yes*, N.Y. TIMES (July 22, 2017), <https://www.nytimes.com/2017/07/22/us/politics/can-president-be-indicted-kenneth-starr-memo.html>.

⁹ Bruce Walker, *A Scourge of Lawyers Post-Watergate*, AM. THINKER (April 8, 2015), https://www.americanthinker.com/articles/2015/04/a_scourge_of_lawyers_postwatergate.html [<http://perma.cc/DU6V-PVED>].

¹⁰ *Eisenhower Senior Wins Scholarship*, CHI. TRIB., June 2, 1963, at 3.

¹¹ Rotunda, *supra* note 6, at 2.

worked as an associate with Wilmer, Cutler & Pickering in Washington, D.C. from July 1971 to April 1973.¹²

He was a stalwart on the University of Illinois Law School faculty from 1974–2002, being the Alfred E. Jenner, Jr. Professor of Law from 1993–2002.¹³ He then moved to George Mason University School of Law as the George Mason University Foundation Professor of Law.¹⁴ We were fortunate at Chapman University Dale E. Fowler School of Law that Ron joined us in 2008 as the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence.¹⁵

Professor Rotunda was a scholar's scholar, a prodigious scholar, and a workaholic who never slowed down until complications arose from a routine surgical operation which resulted in aspiration pneumonia.

He was a giant in two legal fields: constitutional law and Legal Ethics.¹⁶ Either one would have occupied the full-time attention of most professors.

He authored a six-volume treatise on constitutional law,¹⁷ as well as a shorter one-volume treatise on constitutional law.¹⁸ He also co-authored a leading casebook on constitutional law.¹⁹

I consulted his treatise a few months ago during the Senate hearings on the appointment of then-Judge Kavanaugh to the Supreme Court. The question arose of impeaching the judge if he were confirmed to the Court. I found a forty-two-page section on impeachment,²⁰ including the impeachment of judges.²¹

He paralleled his constitutional law success in legal ethics. Success can come to those who see an opportunity, or more aptly seize the opportunity. The Dean of the University of Illinois Law School asked the young Professor Rotunda to teach a course in the critical, but mostly neglected, course in legal ethics because of the professor's involvement in the Watergate hearings.

¹² *Id.*

¹³ *Id.* at 1–2.

¹⁴ *Id.* at 1.

¹⁵ *Id.*

¹⁶ *See* Leiter, *supra* note 3.

¹⁷ RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE (5th ed. 2012 & Supp. 2018).

¹⁸ RONALD D. ROTUNDA & JOHN E. NOWAK, PRINCIPLES OF CONSTITUTIONAL LAW (5th ed. 2016).

¹⁹ RONALD D. ROTUNDA, MODERN CONSTITUTIONAL LAW: CASES AND NOTES (11th abr. ed. 2015).

²⁰ *Id.* § 8.10.

²¹ *Id.* § 8.13(c).

His casebook, *Problems and Materials on Professional Responsibility*,²² is the most widely used in the field.²³ He also co-authored with Professor John Dzienkowski the ABA's *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility*.²⁴ Additionally, Professor Rotunda chaired the American Bar Association Subcommittee on Model Rules Review from 1992–1997 that drafted *The Model Rules for Lawyer Disciplinary Enforcement*.²⁵

His law review articles appeared in seemingly every journal, including the *Harvard Law Review*, *Alabama Law Review*, *Arkansas Law Review*, *Brooklyn Law Review*, *California Law Review*, *Columbia Law Review*, *Corporation Law Review*, *Drake Law Review*, *Emory Law Journal*, *Florida International University Law Review*, *Fordham Law Review*, *Georgetown University Law Journal*, *Georgetown Journal of Legal Ethics*, *George Washington University Law Review*, *Hastings Law Journal*, *Hofstra Law Review*, *University of Illinois Law Forum*, *University of Illinois Law Review*, *Indiana Law Journal*, *Indiana Law Review*, *University of Kansas Law Review*, *Loyola University of Chicago Law Journal*, *Marquette University Law Review*, *McGeorge Law Review*, *Michigan Law & Policy Review*, *Northwestern University Law Review*, *Notre Dame Law Review*, *Ohio State Law Journal*, *Oklahoma City University Law Review*, *Oregon Law Review*, *University of Pennsylvania Law Review*, *University of Richmond Law Review*, *St. Louis University Law Journal*, *Santa Clara Computer & High Technology Law Journal*, *Southern Methodist University Law Review*, *Suffolk University Law Review*, *Syracuse Law Review*, *Texas Law Review*, *Texas Tech Law Review*, *University of California-Los Angeles Law Review*, *Vanderbilt Law Review*, *Virginia Law Review*, *Washington University Law Quarterly*, *Journal of Legal Education*, and the *Journal of Legal Studies*.²⁶

Professor Rotunda was also a giant in the modern American conservative movement. He published a steady stream of op-eds—mostly from a conservative perspective. He served as a Senior Fellow in Constitutional Studies from 2000 to 2009 at

22 THOMAS D. MORGAN, RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, *PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY* (12th ed. 2014).

23 *Professional Responsibility, Problems and Materials, Abridged*, WEST ACADEMIC, <https://faculty.westacademic.com/Book/Detail?id=131816> [http://perma.cc/5PGR-TURH].

24 RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, *LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY* (2017–2018 ed. 2017).

25 Rotunda, *supra* note 6, at 53. These amended rules were adopted by the House of Delegates of the American Bar Association on August 11, 1993. See *Model Rules for Lawyer Disciplinary Enforcement*, AM. BAR ASS'N (June 28, 2017), https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/ [http://perma.cc/45DE-UGR6].

26 Rotunda, *supra* note 6, at 21–48.

the Cato Institute and was on the editorial committee of the *Cato Supreme Court Review* from 2001 to 2008.²⁷ He was the faculty Advisor to the Federalist Society chapter at the University of Illinois.

His articles and op-eds appeared in the *ABA Journal*, *Atlanta Journal-Constitution*, *Chicago Sun-Times*, *Chicago Tribune*, *Christian Science Monitor*, *Defense Law Journal*, *Detroit News*, *Forbes*, *Legal Journal*, *Legal Times*, *Los Angeles Daily Journal*, *Los Angeles Times*, *National Law Journal*, *National Review*, *Newsday*, *Newsweek*, *New York Post*, *Orange County Lawyer*, *Orange County Register*, the *Professional Lawyer*, *Sacramento Bee*, *Texas Lawyer*, *Trial Magazine*, *USA Today*, *Wall Street Journal*, *Washington Post*, and *Washington Times*.²⁸ He even published a series of articles for *Justia*.²⁹

He served as a Commissioner on California's Fair Political Practices Commission from June 17, 2009 to January 31, 2013.³⁰ He also was called upon as an expert witness in cases.³¹

A well-researched, well-reasoned fifty-six-page memo³² he wrote in 1998 for Special Prosecutor Ken Starr's investigation of President Clinton received substantial media and professional attention last year.³³ He concluded "it is proper, constitutional, and legal for a federal grand jury to indict a sitting President for serious criminal acts that are not part of, and contrary to, the President's official duties. In this country, not even President Clinton, is above the law."³⁴

His points were:

- 1) The President "is subject to indictment and criminal prosecution," but may not be subject to imprisonment until after he leaves office;³⁵
- 2) No one "is above the law;"³⁶

²⁷ *Id.* at 2, 54.

²⁸ *Id.* at 21–52.

²⁹ *Columns by Ronald D. Rotunda*, VERDICT, <https://verdict.justia.com/author/rotunda> [<http://perma.cc/YY9W-5Z66>].

³⁰ Rotunda, *supra* note 6, at 1.

³¹ *See id.* at 52.

³² Ronald D. Rotunda, *Memorandum from University of Illinois College of Law Professor Ronald D. Rotunda to the Honorable Kenneth W. Starr Regarding Whether a Sitting President is Subject to Indictment [Portions redacted]*, U.S. DEP'T OF JUST. PUBLICATIONS AND MATERIALS (May 13, 1998), <http://digitalcommons.unl.edu/usjusticematls/32> [<http://perma.cc/6VHB-8477>].

³³ *See Savage*, *supra* note 8.

³⁴ Rotunda, *supra* note 32, at 55.

³⁵ *Id.* at 1.

³⁶ *Id.* at 55.

- 3) A President “may be impeached for actions that do not violate any criminal statute;”³⁷
- 4) No immunity exists for personal, private conduct;³⁸
- 5) A grand jury can investigate and indict a sitting President;³⁹ and
- 6) Neither a criminal investigation prosecution nor an impeachment proceeding will control the other proceeding.⁴⁰

He believed a sitting president could be indicted, but as he made clear to me several times, not by Special Prosecutor Robert Mueller because of Justice Department rules.⁴¹

Ron was a young seventy-three, still in his prime, when he left us on March 14, 2018. The indefatigable professor never slowed down until the medical complications from a routine surgical procedure. Treatises, casebooks, legal articles, op-eds—there was no stopping Professor Rotunda. He kept his publishers happy by publishing a stream of supplements to his casebooks.

Shortly before his death, Professor Rotunda published *John Marshall and the Cases that United the United States of America (Beveridge’s Abridged Life of John Marshall)*.⁴² The original edition by Albert Beveridge was four volumes.⁴³ He provided his own preface and an introduction to each chapter in his update. His new book is highly-rated on Amazon.⁴⁴

Professor Rotunda’s boundless energies could not be contained within America’s boundaries. His efforts crossed international boundaries. He served as the Constitutional Law Adviser to the Supreme Court of Cambodia in 1993 and assisted in the drafting of its first constitution.⁴⁵ He also consulted with the Czech Republic, Moldova, Romania, and Ukraine after the

³⁷ *Id.* at 4–5.

³⁸ *Id.* at 5.

³⁹ *Id.* at 6 (citing *Morrison v. Olson*, 487 U.S. 654 (1988)).

⁴⁰ *Id.* at 56.

⁴¹ See Ronald Rotunda, *The President Can Be Indicted – Just Not by Mueller*, WASH. POST (July 27, 2017), https://www.washingtonpost.com/opinions/the-president-can-be-indicted--just-not-by-mueller/2017/07/27/a597b922-721d-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.d2df94adc689 [<http://perma.cc/RH3B-VJA2>].

⁴² RONALD D. ROTUNDA, *JOHN MARSHALL AND THE CASES THAT UNITED THE STATES OF AMERICA (BEVERIDGE’S ABRIDGED LIFE OF JOHN MARSHALL)* (2018).

⁴³ ALBERT J. BEVERIDGE, *THE LIFE OF JOHN MARSHALL* (1916). Albert Beveridge’s book won the Pulitzer Prize in 1920. See *The 1920 Pulitzer Prize Winner in Biography*, PULITZER PRIZES, <https://www.pulitzer.org/winners/albert-j-beveridge> [<http://perma.cc/JW5X-WCEF>].

⁴⁴ See *John Marshall and the Cases that United the States of America (Beveridge’s Abridged Life of John Marshall)*, AMAZON, <https://www.amazon.com/Marshall-United-America-Beveridges-Abridged/dp/1946074144> [<http://perma.cc/3R5C-PHT8>].

⁴⁵ Rotunda, *supra* note 6, at 53.

collapse of the Soviet Empire.⁴⁶ His works have been translated into Czech, French, German, Japanese, Korean, Portuguese, Romanian, and Russian.⁴⁷

He was a Fulbright Professor in Venezuela in March 1986 and a Fulbright Research Scholar in Italy from January to June 1981.⁴⁸ Professor Rotunda was visiting lecturer at the Katholieke Universiteit Leuven in Belgium in November to December 2002 and a visiting lecturer at the Institute for Law and Economics at the University of Hamburg in May 2004 and December 2005.⁴⁹

His professional honors include membership in the American Law Institute since 1977 and a Life Fellow of the American Bar Foundation since 1991.⁵⁰ In 2012, Chapman University awarded him the Chapman University Excellence in Scholarly and Creative Work Award.⁵¹

If his professional activities weren't enough to fill twenty-four hours a day, he also had an interest in astronomy.⁵² He also published another book, *The Politics of Language*.⁵³

The professor had a great sense of humor. His Tesla had the personal license plate "E MUSK." His wardrobe contained a colorful collection of bow ties.

Was he perfect?

He could be a crusty curmudgeon and the bane of deans for Professor Rotunda could "cut to the chase" on proposals. If there was a weakness in a proposal, he would sense it intuitively. He would ask pointed questions at faculty meetings, questions that many did not want to answer.

Ron's intellect could be intimidating to many. Yet he was highly approachable. Ron and I had many long conversations about politics, law, life, and history, often interrupted by a phone call to Ron from a VIP. He was always helpful and willing to give freely of his time and his suggestions.

He may have seemed prickly to many, but that was a façade. He was overly sensitive to what he felt were personal attacks on him or his family.

⁴⁶ See *id.* at 54.

⁴⁷ See, e.g., *id.* at 14, 17, 19.

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at 1.

⁵⁰ *Id.*

⁵¹ *Id.* at 3.

⁵² See, e.g., Ronald D. Rotunda, *Mercury's Transit of the Sun* (photograph), in *ASTRONOMY*, Feb. 1974, at 57.

⁵³ RONALD D. ROTUNDA, *THE POLITICS OF LANGUAGE: LIBERALISM AS WORDS AND SYMBOL* (1986).

Professor Rotunda was “erudite”—to use a word rarely used today. He was also a Renaissance Man, a disappearing breed in today’s world of social media and Wikipedia.

The professor certainly had an ego, but he was not a braggart about his accomplishments. He was too busy doing.

We can measure one’s life by where they began, where they ended, and what they did in between. Professor Ronald Rotunda was a legal scholar who enriched the law, a political pundit, and a man of principle.

A cliché is that the only place success comes before work is in the dictionary. Professor Ronald D. Rotunda was ambitious. His success at least matched, if not exceeded his ambition. He succeeded because he worked extra hard.

His death is a loss to his family, friends, colleagues, the Academy, and the legal profession.

Ron, How’re you doing in Heaven?

So far, so good!