

INTRODUCTION TO SYMPOSIUM DEDICATED TO RONALD D. ROTUNDA

*Richard W. Painter**

I am honored to dedicate this Symposium to Ronald D. Rotunda, who was the Albert E. Jenner, Jr. Professor of Law Emeritus at the University of Illinois College of Law, and is now the George Mason University Foundation Professor of Law.

I have known Ron for many years, even before I entered teaching, indeed, even before I entered law school in 1987. My father, William Hall Painter, was the first Albert E. Jenner, Jr. Professor of Law. When he retired from Illinois, Ron became the second Jenner chair holder.

Over the years our paths have crossed many times.

When I was in practice in New York and Connecticut, Ron and I were on a panel together at the Association of the Bar of the City of New York on a case involving an associate who had been fired from his firm for blowing the whistle on another lawyer at the firm, as he was required to do under New York's Code of Professional Responsibility. This case was resolved in the associate's favor later that year by the New York Court of Appeals in *Wieder v. Skala*.¹ I enjoyed not only the panel itself, but also discussing the case in more detail with Ron and Howard Wieder, the plaintiff-whistleblower, at the top of Rockefeller Center afterwards. When I started teaching at the University of Oregon the next year, Ron visited Oregon and published in our law review.² While at Oregon, I began my

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1. 609 N.E.2d 105 (1992) (reversing dismissal of wrongful discharge suit by law firm associate and holding that implicit in the contract between a lawyer and his firm there is an agreement that all lawyers will comply with rules of professional responsibility). The Association of the Bar both filed a brief in *Wieder* and published a report informed in part by Ron's contribution at the panel. See Richard W. Painter & Sandra E. Nickel, *The Attorney's Duties to Report the Misconduct of Other Attorneys and to Report Fraud on a Tribunal, Report of the Committee on Professional Responsibility*, 47 REC. ASS'N BAR CITY OF N.Y. 905 (1992). New York's approach to this issue in *Wieder* is in my judgment, and I am sure in Ron's, far superior to that of the Illinois Courts. See *Balla v. Gambro*, 584 N.E.2d 104 (Ill. 1991), discussed in RONALD D. ROTUNDA, LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY §§ 17-3 & 36-2 (ABA & West Group, 2d ed. 2002-2003).

2. Ronald D. Rotunda, *Rethinking Term Limits for Federal Legislators in Light of the Structure of the Constitution*, 73 OR. L. REV. 561 (1994), cited in, e.g., *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 904, 917 (1995) (Thomas, J., dissenting).

own work on a topic that Ron had already written about, again in the Oregon Law Review,³ the confidentiality and disclosure obligations of a lawyer confronted with client fraud. My work in this area was inspired in part by Ron's own contributions to the field.⁴ In 1998, I left Oregon and permanently moved to Illinois, where Ron and I have each taught sections of Professional Responsibility.

Shortly after Ron entered teaching, he and Tom Morgan published their course book on Legal Ethics.⁵ Shortly after I began teaching, Judge John T. Noonan and I developed our own course book on legal ethics.⁶ Despite the obvious conflict with his self-interest in keeping competitors out of the casebook market, Ron was one of the people who encouraged his own publisher, Foundation Press, to publish it.

Over the years, Ron has been a prolific writer. A thorough academic study published in 2000 sought to determine the influence, productivity, and reputation of law professors.⁷ Under various measures, Ron was among the highest in the nation. In 2000, he was, for example, the seventeenth most cited faculty member in the United States, for a period that covered all the years in the Westlaw database, a period that covered years before Ron even began teaching.⁸ In another study, in 2002, he moved up in these rankings to eleventh.⁹ While rankings of this sort are far from a definitive measure of academic accomplishment, the fact that Ron has been cited so many times on such a wide variety of topics says a great deal about the impact his work has had in the legal academy and on the legal profession.

Ron is well known in two areas, constitutional law and legal ethics. With John Nowak, his colleague at the University of Illinois, he had written a five-volume *Treatise on Constitutional Law* (now in its third edition), as well as a one-volume student version, a course book, and numerous influential articles. With Tom Morgan he has published a major course book

3. Ronald D. Rotunda, *The Notice of Withdrawal and the New Model Rules of Professional Conduct: Blowing the Whistle and Waiving the Red Flag*, 63 OR. L. REV. 455 (1984), excerpted in 34 LAW REV. DIG. 14 (Mar./Apr. 1985).

4. Richard W. Painter, *The Moral Interdependence of Corporate Lawyers and Their Clients*, 67 S. CAL. L. REV. 507-84 (1994).

5. THOMAS D. MORGAN & RONALD D. ROTUNDA, PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (1976).

6. JOHN T. NOONAN & RICHARD W. PAINTER, PROFESSIONAL AND PERSONAL RESPONSIBILITIES OF THE LAWYER (1997).

7. Symposium, *Interpreting Legal Citations*, 29 J. LEGAL STUD. (part 2) 317-584 (2000) [hereinafter *Legal Citations*].

8. *Id.* (seeking to determine the influence, productivity, and reputation of law professors). For example, scholarly impact, most-cited law faculty in the United States, 17th, *id.* at 470; reputation of judges, legal scholars, etc. on Internet, 34th, *id.* at 331; scholar's nonscholarly reputation, 27th, *id.* at 334; most influential legal treatises since 1978, 7th, *id.* at 404.

9. The 2002-2003 New Educational Quality Ranking of U.S. Law Schools (EQR) ranks Ron as the eleventh most cited of all law faculty in the United States. See Brian Leiter, *Most Cited Law Faculty*, NEW EDUC. QUALITY RANKINGS OF U.S. LAW SCHOOLS (2002), available at http://www.utexas.edu/law/faculty/bleiter/rankings/most_cited.html.

in legal ethics, now in its seventh edition.¹⁰ He has also published a treatise in legal ethics, co-published by the American Bar Association (ABA) Center for Professional Responsibility and West Group.¹¹ He has published numerous other books and articles on a wide variety of topics, including university press books¹² and articles for the lay public,¹³ in this country and abroad.¹⁴

And he has been blessed with extremely favorable reviews. When Carolina Academic Press published his and John Nowak's book, *Joseph Story's Commentaries on the Constitution*,¹⁵ The Journal of American History said, "[I]t would not be perhaps amiss to suggest that the *most important publishing event* of the [Constitution's] bicentennial was the reappearance in print of Justice Story's own one-volume abridgement of Commentaries."¹⁶

When the University of Iowa Press published his book, *The Politics of Language*,¹⁷ news commentator Daniel Schorr observed that, in this book, Rotunda analyzed the "vital role that liberalism has played in history," and "illuminated what has happened to America," with "meticulous regard for historical scholarship."¹⁸

Excellent reviews have also greeted his five-volume, *Treatise on Constitutional Law*, coauthored with Professor John Nowak.¹⁹ For example, Charles Alan Wright, the late Professor of Law at the University of Texas said, "the authors showed their comprehensiveness and insightful mastery of this subject."²⁰ Yale Kamisar, Professor of Law at the University of Michigan Law School, said that this treatise is "the first place to look if you

10. See *supra* note 5.

11. ROTUNDA, *supra* note 1.

12. RONALD D. ROTUNDA, *THE POLITICS OF LANGUAGE: LIBERALISM AS WORD AND SYMBOL* (1986) (with an Introduction by former CBS reporter Daniel Schorr); Ronald D. Rotunda, *Law, Lawyers and Managers*, in *THE ETHICS OF CORPORATE CONDUCT* (Clarence Walton ed., 1977) (published by Prentice-Hall, Inc., Englewood Cliffs, N.J., for the American Assembly of Columbia University).

13. Ronald D. Rotunda, *Rolls Royce and the Case Law*, 37 *LAKE MICHIGAN LADY* 34, 34-36 (1994); Ronald D. Rotunda, *Roadblock to Mexico*, *WASH. POST*, Sept. 21, 1993, at A19; Ronald D. Rotunda, *Ethics*, *USA TODAY*, Feb. 15, 1983, at 10A; Ronald D. Rotunda, *Star Gallery '74*, 2 *ASTRONOMY MAGAZINE* 57 (Feb. 1974) (photographs of Mercury Transit of the Sun).

14. Ronald D. Rotunda, *Cautionary Lessons from American Securities Arbitration: Litigation v. Arbitration*, 5 *ARB. INT'L* 199 (1989); Ronald D. Rotunda, *Nici o constitutie . . .*, 18 *LUMEA AZI* 4 (May 2, 1991) (published in Romanian); Ronald D. Rotunda, *Nová pravidla profesního jednání advokátů v České republice (v komparaci s kodexy USA a EU)* [*The New Rules of Professional Conduct for Advocates in the Czech Republic*], 5 *EMP: EVROPSKÉ A MEZINÁRODNÍ PRÁVO* 58 (1996) (published in Czech and English).

15. RONALD D. ROTUNDA & JOHN E. NOWAK, *JOSEPH STORY'S COMMENTARIES ON THE CONSTITUTION* (1987).

16. Joseph Story's Commentaries on the Constitution, available at <http://mason.gmu.edu/~rrotunda/StoryBook.htm> (last visited May 9, 2003).

17. ROTUNDA, *THE POLITICS OF LANGUAGE*, *supra* note 12.

18. Daniel Schorr, *Introduction*, to ROTUNDA, *THE POLITICS OF LANGUAGE*, *supra* note 12, at xi-xii.

19. RONALD D. ROTUNDA & JOHN E. NOWAK, *TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE* (3d ed. 1999) (five volume treatise).

20. *What Lawyers and Laymen Say About Rotunda & Nowak's Treatise on Constitutional Law*, available at <http://mason.gmu.edu/~rrotunda/treatise.htm> (last visited Mar. 18, 2003).

have a constitutional law problem. A thoughtfully written, impressively researched and extremely readable work."²¹ One review acclaimed this book as the "first definitive account for constitutional law in nearly 100 years."²² A study of legal citations concluded that this treatise was the seventh most influential treatise on any legal subject.²³

With John Nowak, he has also coauthored a one-volume version, for primarily law students.²⁴ This book has been called "the best hornbook on the subject."²⁵

Two years ago, Rotunda published his treatise on legal ethics.²⁶ Enthusiastic reviews have greeted this book as well. Professor Robert F. Drinnan of Georgetown, who is the Faculty Advisor to the Georgetown Journal of Legal Ethics, has called this book "indispensable."²⁷ His colleague, Professor Sam Dash of Georgetown, advises: "Even lawyers with extensive experience in legal ethics issues will find this book very helpful."²⁸ Practicing lawyers as well as scholars praise the book. For example, the late Raymond R. Trombadore, former Chair of the ABA Standing Committee on Professional Discipline, said of this book: "It is a colossal contribution to the study of professional responsibility."²⁹ Bill Pryor, the Attorney General of Alabama, said that this book is "an invaluable resource for both lawyers and judges,"³⁰ while former ABA President William Reece Smith, Jr. said that Rotunda, "one of the nation's leading authorities on Legal Ethics," has given us a "current, comprehensive publication of enormous practical value to the busy lawyer."³¹

His course book, *Modern Constitutional Law*, is now in its seventh edition.³² One reviewer, in explaining why he uses this book, called Ron "a master of our subject. Indeed, *Rotunda* is a major brand name in constitutional law."³³

He is well known not only on the scholarly front but in the everyday world, because of his active work in law reform. National newspapers such as the Wall Street Journal and the Chicago Tribune have routinely cited

21. *Id.*

22. *New Treatise on Constitutional Law*, 60 FLA. B.J., Apr. 1986, at 88.

23. *Legal Citations*, *supra* note 8, at 404 (concluding that Rotunda and Nowak's treatise on Constitutional Law is the seventh most influential legal treatise since 1978).

24. JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW (6th ed. 2000).

25. Thomas E. Baker, *Mastering Modern Constitutional Law*, 21 SEATTLE U. L. REV. 927, 930 (1998) (reviewing RONALD D. ROTUNDA, MODERN CONSTITUTIONAL LAW (1992)).

26. RONALD D. ROTUNDA, LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY (2000).

27. See REVIEWER'S QUOTES ABOUT LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY, at <http://mason.gmu.edu/~rrotunda/ABA%20quotes%20re%20ethics%20book.htm> (last visited Apr. 1, 2003).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. RONALD D. ROTUNDA, MODERN CONSTITUTIONAL LAW: CASES AND NOTES (7th ed. 2003). The first edition was published in 1981.

33. Baker, *supra* note 25, at 929.

Ron in their editorials.³⁴ In May 2000, the American Law Media, publisher of *The American Lawyer*, the *National Law Journal*, and the *Legal Times*, picked Ron as one of the ten most influential Illinois Lawyers.³⁵ He was the only academic on the list. News columnist Nat Hentoff described Ron as “a person James Madison would have liked to have known.”³⁶

In 1984, he was the expert witness for the State of Nebraska on Legal Ethics at the Impeachment Trial of Nebraska Attorney General Paul L. Douglas (tried before the State Supreme Court; and the first impeachment trial in nearly a century). The following year, he was Assistant Chief Counsel to the State of Alaska, presenting, before the Alaskan Senate, the Senate Impeachment Inquiry of Governor William Sheffield. In 1985 and 1986, he was the Reporter for the Illinois Judicial Conference’s Committee on Judicial Ethics. Two years later, he was the Reporter for the Illinois State Bar Association’s Committee on Professionalism. From 1987 to 2000, he was a member of the Consultant Group of American Law Institute’s drafting the Restatement of the Law Governing Lawyers. From 1991 to 1997, he was a member of the ABA’s Standing Committee on Professional Discipline. He was the Chair of the Subcommittee on Model Rules Review from 1992 to 1997 when it drafted the ABA Model Rules for Lawyer Disciplinary Enforcement, which the ABA House of Delegates approved on August 11, 1993. In 1992, he was a member of the Illinois State Bar Association Special Committee on Professionalism. In 1993, he was the Constitutional Law Adviser to the Supreme National Council of Cambodia. For a time, he moved to Cambodia and worked with officials of the United Nations Transitional Authority in Cambodia and with Cambodian political leaders who were charged with drafting a new constitution to govern that nation after the United Nations troop’s withdrawal. From 1994 to 1997, he was the Liaison to the ABA Standing Committee on Ethics and Professional Responsibility. From 1994 to 1996, he was a member of the Illinois State Bar Association Standing Committee on the Attorney Registration and Disciplinary Commission. Since 1994, he has been a member of the Publications Board of the ABA Center for Professional Responsibility. From 1998 to 2002, he was a member of the Advisory Council to “Ethics 2000,” the ABA Commission considering revisions to the ABA Model Rules of Professional Conduct. And, since 2000, he has been a member of a special Advisory Board to the International Brotherhood of Teamsters. This Board is charged with removing any remaining vestiges of organized crime to influence the Union, its officers, or its members.

34. *E.g.*, *A Judge Gets Investigated*, CHI. TRIB., May 15, 2000, at 12; *A Wise Supreme Court Decision*, CHI. TRIB., Dec. 22, 1996, at 18; *Second Thought on Ethics*, WALL ST. J., Apr. 22, 1988, at 16; *The Court’s Conservative Turn*, CHI. TRIB., July 6, 1997, at 12; *Thinking Twice on Free Air Time*, CHI. TRIB., Mar. 28, 1998, at 22.

35. See RONALD D. ROTUNDA BIOGRAPHY, at <http://mason.gmu.edu/~rrotunda/bio.htm> (last visited Apr. 1, 2003).

36. Nat Hentoff, *Is It Time to Retire “Politically Correct,”* VILLAGE VOICE, Jan. 11, 1994, at 20.

Ron's influence abroad has paralleled his influence here in the United States. During the winter of 1996, he was the official Constitutional Law Adviser to the Supreme Constitutional Court of Moldova. Under the auspices of the United States Agency for International Development, he consulted with the six-member Supreme Constitutional Court of Moldova in connection with that Court's efforts to create an independent judiciary. The Court came into existence on January 1, 1996. Later that year, he moved to Prague, after he finished teaching his classes in May, and he became the special consultant to the Chamber of Advocates of the Czech Republic. Under the auspices of the United States Agency for International Development, he drafted the Rules of Professional Responsibility for all lawyers in the Czech Republic. He also drafted the first Bar Examination on Professional Responsibility, and consulted with the Czech Supreme Court in connection with the Court's proposed Rules of Judicial Ethics and the Court's efforts to create an independent judiciary.

Then there is the controversial combination of ethics and politics. Since the Second World War, the United States has had two practicing lawyers as president, Richard M. Nixon and William J. Clinton. Both were bright men in an academic sense, and both were popular enough to be elected to two terms. Both, however, managed to get in trouble with the law. Clinton was impeached and acquitted by a divided Senate; Nixon almost certainly would have been impeached if he had not resigned from office first. Rather than simply bemoan the decline of ethics in politics and the legal profession generally, Ron responded to abuses of executive power on both occasions. In 1974, he served as assistant majority counsel for Senate Democrats on the Watergate Committee. From 1997 to 1999, he was a special consultant to the Office of Independent Counsel. The work of the Watergate Committee and that of the Independent Counsel was of course controversial—controversy comes with the territory—but Ron in both cases had the courage to step into the controversy to stand up for what he believed was right.

Yes, Ron has been a busy man, and has had a distinguished career—a career that is not yet over. Now, he has left Illinois, but he has told us that his heart will always be in Champaign-Urbana, even when his car (of whatever model that might be) is not in the parking lot outside the College of Law. We, his faculty colleagues, as well as the students and staff at the College, will miss him very much.