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Tribute to Professor Doug Rendleman

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Tribute to Professor Doug Rendleman

Authors

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Tribute to Professor Doug Rendleman

Tribute to Doug Rendleman

Katy Barnett*

The first I knew of Doug Rendleman was his name, after reading his work on the United States law of remedies. Remedies law is a comparatively new field of study in Australia, and therefore I looked for inspiration to other jurisdictions where it was more established. I could not help but be impressed and inspired by Doug's capacious output and his magisterial *Remedies: Cases and Materials*¹ (since that time, he has now been joined by Caprice Roberts as a co-author). It's no surprise that when I came to write my own textbook, I quoted one of Doug's articles on page 1, when explaining why teaching Remedies as a distinct subject is important. That quote is still there: the subject of Remedies helps to "nurture and foster students' professional judgment to choose wisely between alternative remedial solutions within the range permitted by the wrongdoer's substantive violation and the victim's injury."²

I first met Doug in Hong Kong in 2014, at an Obligations Conference. I recall distinctly that he was giving a paper on disgorgement of gains (one of my passions) and I bounced up afterwards and peppered him with extremely enthusiastic observations, such was my excitement to find that he shared my interest. I suspect that I was somewhat overwhelming, but Doug, as always, was far too polite to show it. I came to know him better at subsequent remedies discussion group meetings, to the extent that I talked incessantly about "Doug" to my family

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1. DOUG RENDLEMAN & CAPRICE ROBERTS, *REMEDIES: CASES AND MATERIALS* (9th ed. 2018).

2. KATY BARNETT & SIRKO HARDER, *REMEDIES IN AUSTRALIAN PRIVATE LAW 1* (2d ed. 2018) (quoting Doug Rendleman, *Remedies—The Law School Course*, 39 *BRANDEIS L.J.* 535, 536 (2001)).

when I got home. This became somewhat confusing, as my father-in-law is also named Doug, and my husband said with some exasperation, “You simply cannot be talking about my father: I don’t think he cares about constructive trusts over bribes.” I said, “No, no, I’m talking about *Remedies Doug*.” Henceforth—little did he know it until this very moment—Doug Rendleman has become known as “Remedies Doug” to our family, and really, I can’t think of a better nickname. Later my husband met “Remedies Doug” (after he accompanied me to a conference in 2018) and he said afterwards, “Well, I see now why you’ve been raving about this man. What nice people he and his wife are!”

Doug has been so important to my development as an academic, not only through his work, but also through his support of me a more junior academic. At one point several years ago, I wanted to quit academia, because I was so dismayed and disheartened by the rivalry and conflict which pervades some areas of my field. And then Doug sat me down, and persuaded me to persevere. He assured me that my work was worthwhile, and I should keep trying. He advised me to walk my own path and not listen to what others said, just as he had before me. By his example, he showed me that it’s possible to be a giant in the field of Remedies law, but also a thoroughly humble, decent human being, always willing to listen and help others. I don’t know if he realizes it, but that was a turning point for me. When I said that rather than quitting, I was going to try for promotion, he was delighted, and supported me wholeheartedly.

There’s a lot of talk about scholarly impact. In my opinion, the impact Doug has (and will continue to have) is the kind of impact which really matters: through his insightful and clear writing, through the way his textbooks and teachings have influenced generations of students and scholars, and through the way in which he has supported and mentored junior scholars, including myself. Doug has an amazing depth of knowledge and experience, but he wears it so lightly. I am so grateful to be invited to write a tribute to Doug upon his retirement, simply because I’ve always wanted to thank him, and now I get to do so publicly. My husband and I confess: we still hope that we’ll be able to travel overseas again one day after COVID-19, and we’ll get to chat with “Remedies Doug” again in

the sunshine, with glasses of wine. For the moment, however, all we can do is to wish him all the very best in retirement.

Tribute to Doug Rendleman

Alison Bell*

In December of 2018, I thought I'd be early to the inaugural meeting of the Faculty Affairs Committee (FAC), but turning the corner into Chavis Boardroom I saw that I was not the first to arrive. Trim, bespectacled, seemingly at ease in red cardigan and khakis, a figure sat with hands folded and one leg crossed over the other. We introduced ourselves as I took a seat next to him—a spot that I would habitually come to occupy, in countless subsequent meetings, at the right hand of Doug Rendleman.

Indeed, much at that initial meeting informed ways that members of the FAC have since moved forward. Choosing a chair is a case in point. The nine of us candidly discussed what qualities and responsibilities the committee chair should have as well as our inclinations and ability to take on the position. Then Doug leaned over and said to me, but for the group to hear, “Why don't you do it?” I acknowledged my willingness, the group registered agreement, and the decision was behind us. No one asked for a vote; indeed, FAC has to date not voted on anything. Although future members of the committee might choose to hold votes and adopt the majority's position, our initial band opted to continue discussion until reaching consensus, as solidarity seemed so important for this new committee dedicated to issues of faculty voice and governance.

As a long-term member of the American Association of University Professors (AAUP), Doug shared perspectives that became foundational to W&L's FAC, both in fostering the committee's esprit de corps and in deepening our understanding of shared governance. He loaned me the so-called “red book,” the AAUP's publication on *Policy Documents and Reports*, which is

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dedicated to “academic freedom for a free society.”³ Doug had earmarked the “Statement on Government of Colleges and Universities.” This canonical document articulates principles of shared governance, noting that the “variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing boards, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.”⁴

Doug not only told members of Faculty Affairs but also showed us through his evaluation of situations that emerged on campus how university initiatives as truly joint efforts should work. Consistent with the AAUP’s mission, he advocated ardently for the economic security of “all those engaged in teaching and research in higher education.”⁵ Through his service on the Non-Tenure Track Task Force, a joint venture between FAC and the Office of the Provost, Doug worked to protect the interests of contingent faculty who held relatively precarious positions in the College and Williams School.

Doug modeled commitment to principles of shared governance in many ways. Among them, he spearheaded efforts to develop a faculty-run grievance process and body at W&L. He arranged for a speaker to meet with members of Faculty Affairs so that we could better understand how faculty-administered dispute resolution works elsewhere. He also took on the labor of researching best practices and of drafting an initial working-draft policy for the committee. As I write this, an iteration of Doug’s draft is nearing completion for consideration at the next meeting of the university faculty. Whatever tweaks colleagues might make, I’m optimistic that we will have a set of grievance procedures to which faculty can turn for resolution and support. Being able to be heard by faculty peers with equanimity, goodwill, and objectivity will be among Doug’s legacies at W&L.

3. AM. ASS’N OF UNIV. PROFESSORS, POLICY DOCUMENTS AND REPORTS (11th ed. 2015).

4. *Id.* at 118.

5. *About the AAUP*, AM. ASS’N UNIV. PROFESSORS, <https://perma.cc/AXN2-43PG>.

Doug's capable, energetic commitment to shared governance extended to FAC's campaigns for regular, meaningful, *ex ante* faculty involvement in university decision-making processes, as well as protections of academic freedom. His knowledge of AAUP-endorsed practices combined with his extraordinary legal grounding to inform a defense of inviting controversial speakers to campus, for example, and the committee's authorship of a statement on academic freedom. During one (it must be admitted) rather tense discussion that FAC held with a particular university party, I had the strong, if fleeting, feeling that the distinguished law professor at my left elbow had let loose a flash of Dirty Harry. Doug seemed unperturbable, "armed" with unique breadth and depth of understanding, delivering a powerful point in just a few words. His advocacy for faculty often indeed made my day.

I miss turning the corner into Chavis Boardroom and seeing Doug Rendleman already at the table, prepared and placid. Since that first day he became for me, and I suspect for all of us on FAC, a supportive friend, jovial colleague, and brilliant mentor. I'm deeply indebted to his tutelage on shared governance and academic freedom, and I hope to do it some justice by working with colleagues to carry this work forward. In so doing, I'll share with them, as I've shared with Doug, that to me he'll always be the godfather of the FAC.

Doug Rendleman: A Remarkable Gentleman and Scholar

Jeff Berryman*

I first knew of Professor Rendleman the scholar before I knew Doug Rendleman, a friend and gentleman. Doug's scholarship spans five decades. What's most impressive is that he appears to be more prolific now than when he started and certainly the breadth of topics his razor focus has illuminated is immense.

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Professor Rendleman was recognized early in his career as a champion in the scholarly development of civil procedure and remedies, and it was in that connection that I first engaged with his scholarship. In 1981 he published *The Inadequate Remedy at Law Prerequisite for an Injunction*,⁶ with the ostensible aim described in his last two sentences: “Moreover, though the inadequacy prerequisite has proved flexible enough to adopt to changed conditions, it grants excessive discretion and is too imprecise to ensure predictability. To expose that intellectual process and to constrain discretion with a rude set of standards are modest goals of the present effort.”⁷ Doug’s effort was neither rude nor modest. In what is typical of his style of scholarship he painted a quick canvas but with rich coloration, more a David Hockney than a Mark Rothko. Doug argued for a more nuanced understanding of the inadequacy of damages prerequisite, not throwing it out, but not applying it in a mechanical preemptive way. Doug demonstrated how the inadequacy prerequisite was informed by moral, administrative, economic, procedural, and psychological factors. Typical of his style, the article is peppered with little golden nuggets demonstrating an unprecedented depth and breadth of research and knowledge, for example drawing support from such diverse sources as Edward Gibbon,⁸ California’s Water Control Act,⁹ and the constitutional rights case *Bell v. Southwell*.¹⁰

Professor Rendleman has returned to the inadequacy prerequisites several times through his long career and it has been a latent feature in many other articles he has authored. Another of his perennial topics has been judicial discretion

6. See generally Doug Rendleman, *The Inadequate Remedy at Law Prerequisite for an Injunction*, 33 U. FLA. L. REV. 346 (1981). At a personal level, this article helped shape much of my own scholarship on the inadequacy of damages principle. See JEFF BERRYMAN, *THE LAW OF EQUITABLE REMEDIES* 35, 185 (2d ed. 2013).

7. Rendleman, *supra* note 6, at 358.

8. *Id.* at 356 (quoting 2 EDWARD GIBBON, *THE HISTORY OF THE DECLINE AND FALL OF THE ROMAN EMPIRE* 373–74 (Modern Library 1977) (1776)).

9. *Id.* at 353 (quoting CAL. WATER CODE § 13361(c) (West 1971)).

10. *Id.* at 352 (citing *Bell v. Southwell*, 376 F.2d 659 (5th Cir. 1967)).

applied by judges exercising equitable jurisdiction. The inextricable forces of legal realism, a hallmark of much American scholarship, gets tempered by legal positivism in Professor Rendleman's hands in his assertions that the exercise of equitable discretion is not unrestrained and in accordance with the proverbial length of the chancellor's foot, but is itself exercised within a web of rules and standards, yet inseparably linked to the context and factual matrix between the litigants and the public good. His article, *The Triumph of Equity Revisited: The Stages of Equitable Discretion*,¹¹ is a *tour de force* of the development of equity, the many ways that judges exercise discretion, and the principles that shape the exercise of equitable discretion. It should be a must read for any practitioner of the law, from any jurisdiction.

Doug led, and still leads, a group of remedies scholars who believed that, indeed, there is a law of remedies. He has often cited the Latin maxim, *ubi jus ibi remedium* (where there is a right, there is a remedy). Doug does not use this in the Birksian or monist formulation that sees remedies as nothing more than rights viewed from a different angle, but in the dualist, perhaps integrationist, notion that remedies do have their own rules of recognition and operationalization distinct, although not siloed, from rights.¹² Doug explored his own thinking about remedies as a substantive subject and teaching the same in *Remedies: A Guide for the Perplexed*.¹³ Here is also evident another of his great passions and intellectual strengths, his encyclopedic knowledge of practice and procedure. As one not familiar with US federal or state procedure, I have to confess that it is only through Doug that I have acquired some still extremely modest appreciation of the forces at play in what appears as often arcane and byzantine rules of civil procedure; a procedure hard to reconcile with the imaginative use of law to advance civil claims in novel situations, which is admired afar as a great strength of US civil law.

11. Doug Rendleman, *The Triumph of Equity Revisited: The Stages of Equitable Discretion*, 15 NEV. L.J. 1397 (2015).

12. See Jeff Berryman, *The Law of Remedies: A Prospectus for Teaching and Scholarship*, 10 OXFORD U. COMMONWEALTH L.J. 123, 125 (2010).

13. Doug Rendleman, *Remedies: A Guide for the Perplexed*, 57 ST. LOUIS U. L.J. 567 (2013).

It was not until 2000 that I got to meet Doug in person. We were both attending the Remedies Forum at the Louis Brandeis Law School. We have been fixtures at these fora ever since, and we owe a deep debt of gratitude to Professor Russell Weaver for having the insight to create these fora and the fortitude to keep organizing them. Every two years these fora have brought a group of remedies scholars drawn, originally from the common law world, but now also from European civilian law nations to discuss a commonly agreed upon topic for which the price of entry has been a scholarly contribution: often more think piece than fully developed ideas. The success of the fora lies in the fact that papers are read in advance by participants, and discussion is free ranging and always collegial. In these fora Doug is certainly *primus inter pares*. His capacity to read, understand, critique and offer constructive comment on a wide diversity of topics is unparalleled. Doug embodies the gentleman scholar, an impressively knowledgeable person who is willing to share his critique in a thoroughly empathetic, engaging, and charming manner. One always learns something good and of value from Doug.

I have never seen Doug teach a class, but I recall a story he once told at one of the remedies fora dinners. To put this into context, Doug's career spans a half century. In that time, he has seen the Gestetner copier, the IBM Selectric typewriter, Wang word processor, the Sony Betamax, and so on. Doug has witnessed a great deal of technology transform legal education including the cellular phone, and with that phone has come the ubiquitous classroom interruption and distinctive cell phone call signal. Doug described a classroom in which he was in full flight when from the back of the lecture theatre a loud cellphone rang. Without interrupting his flow, Doug, in his slightly raised voice speaking style, says, "you take that call, I'm too busy teaching." What could be a more perfect response?

Doug's years of contributions to the scholarship of the law of remedies now have deep roots. He has been, and remains, a highly influential scholar beyond his jurisdiction. Professor Rendleman is truly a gentleman and a scholar.

Tribute to Doug Rendleman

Neil Birkhoff*

I am honored to write a brief tribute to my teacher, my mentor, my client, and my friend, Doug Rendleman. I have known Doug since the Fall of 1977 when I began law school at William & Mary, and Doug was my Civil Procedure professor. Years passed before I no longer had flashbacks to “Mr. Birkhoff, what is the procedural posture of this case?” The exam that semester in Civil Procedure was my penultimate exam. I was feeling pretty good about law school. Then I finished Doug’s exam, and I remember thinking that I needed to register for the GRE and start working on my grad school applications. When the grades were posted, I got an A. Was I thinking like a lawyer as Doug told us we would learn to do? If yes, exactly what was I thinking? I enrolled in two more courses with Doug, Creditor’s Rights and Conflicts of Law. Doug made those dry-sounding courses intriguing and engaging.

During the summer of 1980, while studying for the bar exam, I worked for Doug as a research assistant on a substantial piece of legal scholarship on remedies, later published in the *Ohio State Law Review*. Working with Doug sharpened my analytical skills and opened new insights into depths of the law.

In the fall of 1980, while clerking at the Supreme Court of Virginia, I received a call from Doug informing me that he had recommended me for a clerkship at the United States Claims Court. The back story is too long, but Doug knew that I wanted to pursue an LL.M. in tax, and the judge at the Claims Court hired clerks who were interested in pursuing the LL.M. while clerking. I got the clerkship, and my career in tax law was launched.

After several years in D.C., I returned to my hometown of Roanoke to practice. After a few years, the dean at Washington & Lee Law School called and asked if I would be available to teach some tax courses. The dean informed me that Doug Rendleman recommended me. A short time later, Doug asked

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me to work with him and Carol on their estate plan. The student was now the attorney, and professor, now the client.

I owe so much to Doug Rendleman. Thanks for teaching me to think like a lawyer. Thanks for pushing me to look more critically and deeply at the foundations and policies of the law. Thanks for giving my career positive boosts at key moments. Thanks for encouragement, mentorship, and friendship.

Doug Rendleman is a great legal scholar, a great teacher, a great family man, and a great friend. We all need a Doug Rendleman in our lives. I am fortunate that I have had “the” Doug Rendleman in my life.

Tribute to Doug Rendleman

Daniel Friedmann*

I am greatly honored and delighted to pay tribute to Professor Doug Rendleman, a great scholar and a friend whose kind and warm personality always made my meetings with him intellectually stimulating and highly enjoyable.

I believe that I first met Doug Rendleman in 2002 when I was invited to become an adviser to the Restatement (Third) of the Law of Restitution and Unjust Enrichment.¹⁴ The reporter was Andrew Kull and the project had already been going on for a number of years. Doug, as a leading scholar in that field, had been an adviser from the very beginning of this project. I was one of four foreign advisers to this Restatement that included in addition to myself: John MacCamus from Toronto and my two late friends Gareth Jones from Cambridge, and Peter Schlechtriem from Freiburg. Restitution in the US has been swallowed by the law of remedies and no longer stands on its own feet. It has thus been a little neglected, and I assume that this was the reason for including advisers from other jurisdictions in which there is greater emphasis on this topic.

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14. RESTATEMENT (THIRD) OF THE LAW OF RESTITUTION AND UNJUST ENRICHMENT (AM. L. INST. 2011).

Hopefully the new edition of the Restatement (Third), Restitution to which Doug made an enormous contribution, is the harbinger of some change. After the completion and publication of the new Restatement in 2011, Doug was highly instrumental in spreading the knowledge of its principles and ideas and in discussing and analyzing the field.

When I joined the advisers group, I was very fortunate to meet Doug Rendleman, who immediately made me feel at home in places that were new to me. I believe that it was Doug who initiated my admission to the American Law Institute. He also encouraged me to join the Remedies Discussion Forum and to participate in its symposia, organized by Professor Russell L. Weaver. Doug told me that the only fee for participation is the submission of a paper, a cost which in my view greatly exceeds that of paying an ordinary monetary charge.

A symposium of this forum was held at Washington & Lee University. It provided me with the opportunity of visiting this fine university, enjoying Doug's very warm and kind hospitality, and learning from him the interesting history of this important institution. The symposium papers were published in the *Loyola of Los Angeles Law Review*.¹⁵ Doug's article *When is Enrichment Unjust? Restitution Visits an Onyx Bathroom*¹⁶ includes at its end an analysis of three cases.¹⁷ Their discussion shows Doug's unique ability to tell a story, to analyze it from every possible angle without losing sight of the broad issues.

Doug Rendleman is a great scholar with deep and thorough knowledge of the law coupled with a clear understanding of its practical aspects. He has made a major contribution to the fields of remedies and restitution and has become a leading figure in both areas. It is always a pleasure to talk to him, to enjoy his humor and to learn from him. Doug is also a most generous, kind, and helpful person, always willing to give credit to other scholars' work, to assist colleagues in their work and to do his utmost to help them advance. I was fortunate to meet him and

15. Symposium, *Second Remedies Discussion Forum: Restitution*, 36 *LOY. L.A. L. REV.* 777 (2003).

16. Doug Rendleman, *When is Enrichment Unjust? Restitution Visits an Onyx Bathroom*, 36 *LOY. L.A. L. REV.* 991 (2003).

17. *Id.* at 1007–15.

though we live afar in distant lands and do not see each other very often, I always cherish the memories of our mutual professional experiences, the symposia in which we have been together and our work as advisers to the Restatement.

Upon his retirement I would like to wish him and his family all the very best and to say that his contribution as a scholar will always be greatly appreciated and that his charming personality, his kindness, generosity and help will continue to be treasured.

Tribute to Doug Rendleman

Thomas P. Gallanis *

Doug Rendleman joined the W&L Law faculty as Robert E.R. Huntley Professor and Director of the Frances Lewis Law Center in 1988, the same year that Randy Bezanson joined the W&L Law faculty as Dean. Both were graduated from the University of Iowa College of Law, Doug in 1968, Randy in 1971. Both embraced the vision of W&L Law as a community of nationally prominent scholar-teachers committed to a liberal arts model of legal education. That model emphasizes, as Professor David Millon rightly summarized it, “small classes, close student-faculty interaction, intensive writing instruction, and interdisciplinary inquiry.”¹⁸ It also encourages faculty to be national leaders in their respective fields.

Doug was the exemplar of the nationally prominent scholar-teacher. He rapidly established himself as one of the country’s leading authorities on remedies, civil procedure, and complex litigation. His articles and books set the “gold standard” for these fields. Even as he approached retirement, his scholarly voice remained strong, evidenced by the publication in 2020 of his eighty-nine-page article on the nationwide injunction,¹⁹ written with his characteristic verve, insight, and expertise.

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18. Peter Jetton, *W&L Mourns Former Law Dean Randy Bezanson*, WASH. & LEE UNIV. (Jan. 28, 2014) <https://perma.cc/UU7F-YXQQ>.

19. Doug Rendleman, *Preserving the Nationwide National Government Injunction to Stop Illegal Executive Branch Activity*, 91 U. COLO. L. REV. 887 (2020).

As a teacher, Doug was revered by his students for his combination of high standards and an engaging sense of humor. His broad smile and the twinkle in his eyes, often accompanied by his lightning-fast wit, gently encouraged his students to perform their very best.

Beyond W&L, the organizations to which Doug was most devoted were the American Law Institute and the American Association of University Professors. Within the ALI, Doug served as an Adviser to the Restatement (Third) of Restitution and Unjust Enrichment and currently serves as an Adviser to the Restatement (Third) of Torts: Remedies. He also was an enthusiastic and generous sponsor of new ALI members. Within the AAUP, Doug chaired the National Committee on Government Relations and served as President of the Virginia Conference.

I had the very good fortune to be Doug's colleague at W&L Law from 2003 to 2007. On a faculty with many positive role models, Doug was the colleague I most admired and whom I most miss. He was everything one could hope for in a senior mentor: accomplished, supportive, principled, fair-minded, generous, and humane. We talked about everything—from Toby Milsom's *Historical Foundations of the Common Law*²⁰ to the ins-and-outs of university governance. Doug sponsored my election to the ALI, and he has been a source of wise counsel throughout my career.

Doug joined the professoriate in 1970 and has been the paradigm scholar-teacher for fifty years. I join with many others in celebrating his outstanding career and wishing him the happiest of retirements.

20. S.F.C. MILSOM, *HISTORICAL FOUNDATIONS OF THE COMMON LAW* (2d ed. 1981).

Tribute to Doug Rendleman

Claire Hagan Eller*

Professor Rendleman helped me move beyond thinking about the law in its theoretical aspects and got me thinking about its practical essence for lawyers—specifically, money. There’s a whole body of lawyer jokes that revolve around money for a reason; at the end of the day, our clients are fundamentally concerned with their recovery (or exposure). And that’s where Professor Rendleman came in. I took his Remedies course as a 3L, and my husband John helped him update his casebook, *Enforcement of Judgments and Liens in Virginia*.²¹ The ways of thinking about the law I learned from Professor Rendleman (election of remedies; tort vs. contract damages; different theories for measuring damages) are concepts I have used routinely as a law clerk and in practice. Professor Rendleman’s focus here was fantastic preparation for actual practice.

Of course, Professor Rendleman was much more than just a professor teaching courses and writing books. Like many of the amazing professors that have cultivated the unique, intimate Washington and Lee Law community, Professor Rendleman built relationships with his students outside the classroom. He was always available in his office, or around town. He and his lovely wife, Carole, came to my husband’s and my wedding in Pittsburgh. That is how dedicated Professor Rendleman is to his students, and illustrates how he views his role—not simply to teach, but to be a friend and mentor. I will value my relationship with Professor Rendleman (and keep his *Remedies* casebook and *Enforcement* treatise on my office shelf) throughout my own career.

Finally, I’d be remiss if I didn’t recount one of my absolute favorite memories of Professor Rendleman. His *Remedies* casebook includes a case about James Bond. With each edition

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21. DOUG RENDLEMAN, ENFORCEMENT OF JUDGMENTS AND LIENS IN VIRGINIA (3d ed. 2014).

that was reprinted, Professor Rendleman fought with the publisher to ensure that the case note #7 was properly labeled “007.”²² That dedication to maintaining a sense of humor about the law is truly admirable!

On behalf of my husband John and myself, congratulations to Professor Rendleman for all of his accomplishments, and best wishes to him and Carole for the next chapters of their lives!

Titan: A Tribute to Doug Rendleman

Brandon Hasbrouck*

My daughters and I were watching *Remember the Titans*²³ the other day. Harper, my six-year-old, accidentally picked the movie while navigating Disney+—she meant to select the movie before it, *The Princess and the Frog*.²⁴ Harper wasn’t happy about her misstep. I was. After showing little interest in the movie, Everly, my three-year-old, ghosted us—she went upstairs to dance with my wife, Jilliann, who had *Selena* on repeat. Harper tried to escape, too, until she heard the narrator say, “Virginia.” She excitedly remarked, “That’s where I live.” To my surprise, Harper lasted the entire movie. More than that, she was engaged and understood segregation, racism, and hate. A child of the Black Lives Matter Movement, Harper has marched, protested, and demanded that her and her father’s life matters. Herman Boone, head football coach, would successfully integrate the Titans, despite massive resistance. Carol Boone, his wife, remarked: “Whatever kind of ambition it took to do what you did around here, this world could use a lot more of it.”²⁵ Those words—words of resistance, words of affirmation, and

22. DOUG RENDLEMAN & CAPRICE ROBERTS, REMEDIES: CASES AND MATERIALS (9th ed. 2018)

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23. REMEMBER THE TITANS (Walt Disney Pictures 2000).

24. THE PRINCESS AND THE FROG (Walt Disney Pictures 2009).

25. REMEMBER THE TITANS, *supra* note 23.

words of transformation—ring throughout an email Professor Rendleman recently sent to me in support of my fight for racial justice and equality at Washington and Lee and in America.

As a law student at Washington and Lee, Professor Rendleman was a trusted mentor—he offered his support to me inside and outside the classroom. In the classroom, Professor Rendleman was the ultimate teacher. I had the great privilege to learn remedies, prior restraint jurisprudence, and injunctions from Professor Rendleman—the 23 in his expertise.²⁶ That knowledge was true power. As a federal law clerk to both Judge Emmet G. Sullivan and Chief Judge Roger L. Gregory, I had to grapple with difficult questions concerning appropriate remedies. I was prepared. I dusted off my outlines for Professor Rendleman's classes, read precedent, and went to work. It was those same outlines—built from the analytical tools and substantive base Professor Rendleman provided me—that made me the go-to-expert on all prior restraint matters at my law firms. It seemed like every other week a public-figure client wanted to sue Johnny Lawrence²⁷ to prevent him from blasting them on billboards. I would have to tell the client to chill out.²⁸

Outside the classroom, Professor Rendleman was both a partner and friend. As the editor-in-chief of the *Law Review*, we worked on a wonderful symposium together. Our coverage of the Restatement (Third) of Restitution & Unjust Enrichment had appeal to both old and new school scholars, practitioners, and jurists.²⁹ We also made it hip and cool enough for law students—

26. Yes, that is a reference to Michael Jordan. Full disclosure, and I have been on record saying this, I think LeBron James is the GOAT.

27. Johnny Lawrence is a fictional character from *Karate Kid* and *Cobra Kai*. I decided to use Johnny Lawrence in this hypothetical because I can imagine Professor Rendleman in retirement watching *Cobra Kai* on Netflix while enjoying Carol's award-winning chili. Because I know the *Law Review* editors are going to need to cite-check that fact, here is the source: me. That chili is so damn good. Speaking of Carol, thank you. For everything.

28. That's a solid joke, if I do say so myself. The Supreme Court has made it clear that prior restraints are highly disfavored because it chills speech.

29. Symposium, *Restitution Rollout: The Restatement (Third) of Restitution & Unjust Enrichment*, 68 WASH. & LEE L. REV. 865 (2011).

one student published a note on restitution!³⁰ The evening before graduation, my family invited Professor Rendleman to dinner at a small establishment that no longer exists—*Brix*. We had an awesome dinner; my family shared embarrassing stories about me while Professor Rendleman belted out his famous hearty laugh. Our relationship transcended Lexington, Virginia. Through time and space, we stayed connected—I sent him newborn pictures of Harper, Professor Rendleman sent me opportunities and advocated for me, and I ended up back at Washington and Lee as a professor. Waiting for me in my office was Professor Rendleman: “Brandon, do you want to go to lunch?” Yes, I do.

My story is not unique. Professor Rendleman poured everything into his students. He loved being a teacher, engaging with his students and the law. He encouraged all of us to be transformative thinkers—to challenge hierarchies, to champion access to justice, and to make our profession more equitable. It is only fitting that his latest email correspondence to me was in support of my efforts to build a better world—a world braided in equality, empathy, and justice.

I will end where I started. A titan is someone who stands out for greatness of achievement. Professor Rendleman, you are a titan.

Tribute to Professor Doug Rendleman

Corey Hauser*

It is an honor to pay tribute to Professor Doug Rendleman. For over twenty years, he has educated and mentored hundreds of law students here at W&L—including me. I had the privilege of being a student in Professor Rendleman’s final Remedies class taught in the 2020 Spring Term. With the COVID-19 pandemic worsening, W&L made the decision in March to move

30. See generally Mallory A. Sullivan, Note, *When the Bezzle Bursts: Restitutionary Distribution of Assets After Ponzi Schemes Enter Bankruptcy*, 68 WASH. & LEE L. REV. 1589 (2011).

* Class of 2021, Washington and Lee University School of Law.

all classes to a virtual format. With many aspects of daily life changing, our Remedies class with Professor Rendleman remained the same. Despite being on Zoom, we held our normal discussions with Professor Rendleman leading us through a deep dive of each case we covered. With much of our lives turned upside down, Professor Rendleman brought us a much-needed sense of normalcy. Even though we could not give Professor Rendleman a well-deserved standing ovation, we did our best to make sure his last class before retirement was memorable.

Whether it is revising his casebook, authoring journal articles, or serving as an Advisor to the American Law Institute's (ALI) Restatement of the Law Third Torts: Remedies, I know Professor Rendleman will continue to make meaningful contributions to the law of remedies. True "retirement" is something Professor Rendleman is not capable of. Even in these difficult times, Professor Rendleman was the first to offer to help the *Law Review* organize a symposium about his latest work with the ALI. Unfortunately, due to pandemic delays, we were unable to hold that symposium. I hope in the future the *Law Review* has the opportunity to explore his important work.

Thank you, Professor Rendleman, for mentoring me and so many other law students during your career.

Tribute to Doug Rendleman

Brant Hellwig*

In thinking of Doug Rendleman's tremendous career in legal academia in connection with his retirement, several thoughts come to mind. Taken together, they still fall short of capturing the dedication and devotion Doug displayed to the profession, to his colleagues both near and far, and to his students. Nonetheless, I will do my best to capture what I so admire about the portion of Doug's career I was privileged to witness here at Washington and Lee.

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Legend. Legendary status is a remarkably high standard to achieve, but there is no question that this laudatory word is appropriate in describing Doug's status in legal academia. While Doug has taught a range of subjects over the course of his lengthy career, he is one of the leading authorities in the fields of remedies and litigation procedure. He has not only authored leading casebooks in these subjects and regularly published law review articles exploring topics in these fields, he has participated in a range of amicus briefs advocating for proper application of legal principles in these fields while serving on high-level law reform projects. Both his teaching materials and published research in these fields are prolific, and Doug's level of scholarly productivity will be difficult for anyone to match. What is even more admirable is that Doug's productivity originates in genuine intellectual interest in the operative legal principles in these fields, their historical origins, and their development over time. In many respects, it is difficult to imagine a world in which Doug is not a fixture in his office, huddled around the computer in the corner, staring at the deep blue screen with one of the few remaining versions of WordPerfect that our technology team has miraculously continued to support, working on his casebooks, on article drafts, or on amicus briefs in these fields. His level of commitment to academic work in the broad realm of remedies is staggering. That work ethic, combined with his keen intellect, have rendered him a fixture—indeed a legend—in his field.

Doug's legendary status is not limited to his stature in legal academia. It applies to his reputation among decades' worth of students at our law school. One not-too-distant graduate of W&L Law noted that Doug was one of the few professors here to develop something of a "following," with students in this camp often referring to themselves as "Rendies" or "Rendleheads." The student noted that she and her classmates developed a sense of devotion to him, stemming not only from his skill as an instructor but also from the genuine care he displayed toward them. Another student commented that Doug's management of his Remedies seminar was closer to someone calling a baseball game rather than lecturing. The student noted that as Doug called on one student, he would read other students' facial expressions and audibly note their positions on the topic,

promising to include their contributions before moving on. These students not only noted a high degree of engagement in the course material, they felt heard, involved, and respected in the class discussions. Perhaps the greatest hallmark of legendary status among the student body is when Doug's small section of Civil Procedure—which also included a legal writing component—surprised Doug with a bobblehead replica of him wearing an Iowa Hawkeyes baseball cap.

Consistent. There are few things in life as dependable as Doug's schedule. Whether it is him and Carol walking in the morning, Doug riding his bike to the office (and, impressively, carrying the bike up and down the steps in front of Doremus gymnasium), his breaks in the faculty lounge to read the paper, or him toiling away in his office, Doug's consistent routines provided a sense of comfort to those of us in Lewis Hall. That level of consistency is what produced a framed piece of artwork in the library of a bicycle leaned against a pillar in the courtyard, with the caption of the work being "Rendleman's Bike." And of course, Doug's level of consistency was not limited to his schedule. It extended to his wardrobe as well. If you were to picture Doug in your mind right now, it is a safe bet the picture would include one or more of the following: his red windbreaker jacket, a blue oxford, and tan pants.

Advocate. Doug has been a consistent voice of advocacy on behalf of faculty governance and academic freedom. He has held numerous leadership positions (including President) in the Virginia Conference of the American Association of University Professors. These positions reflect his profound belief in the role that academics can and should play in the University governance and the critical importance of independence in permitting academics to fulfill their professional obligations. In addition to his advocacy on behalf of faculty as stakeholders in academic institutions, Doug's level of advocacy flowed to the individual level. He served as a frequent mentor to junior faculty here at W&L Law and at other institutions, he was generous with his time and expertise in reading article drafts and commenting on their work, he was quick to see the potential and promise in fellow faculty colleagues, and he frequently advocated on their behalf. Indeed, given Doug's overall unassuming nature, many people likely do not know the extent

to which Doug has served as an advocate on their behalf. But whether known or not, Doug frequently is in his colleagues' corners, providing a range of advocacy and support.

Generosity of Spirit. Doug is a remarkably kind and generous colleague. One of my lasting memories of my time on W&L Law faculty with Doug is his wandering the halls before the noon hour to see who may be interested in walking across campus to the dining hall for lunch. Many of the readers of this tribute will know exactly what I am talking about. My image is of Doug walking in front of my office door, hands behind his back, getting my attention with a fairly strong voice, stating "Hello Brant. Are you interested in lunch?" Whether I accepted or declined, the typical response was "Well O.K. then." I mention this interaction because it is indicative of the way in which Doug reached out to faculty colleagues and sought to include them in the more informal events where relationships grow. Doug was and continues to be generous with his time in mentoring junior faculty members, whether that involves reading and commenting on drafts or simply discussing ideas they may have. He takes seriously his role as a faculty member in assisting others in the profession, and he serves that role with pleasure and ease.

Doug has been the consummate faculty member, one who combines a well-honed work ethic with a deep and ever-expanding intellect. He has been a fixture in Lewis Hall during my time here, and he has contributed significantly to the degree of warmth and support that exists at our small school. He is a legend both near and far, and he has left a lasting imprint on our institution.

Tribute to Doug Rendleman

Margaret Howard*

I remember the occasion when I first met Doug, although not the year. All I can say on that score is that it was many years

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ago. Doug and I were among the guests invited to a large dinner gathering of law professors from around the country. It was arranged by a mutual friend, while we were all attending the annual meeting of the Association of American Law Schools. Carol, Doug's amazing wife, was there as well. Other than the hostess, I cannot now name even one other person at that table. They were not memorable. Doug and Carol were.

When I came to Washington and Lee, years after that dinner, I was delighted to find that Doug was also on this faculty. I knew little about him personally, except that he is a delightful dinner companion, even though we had greeted each other frequently at national meetings since that first dinner. But I already knew of Doug's keen memory and formidable experience in the law. (Indeed, what else could explain his broad grasp of so many disparate areas?) I since learned that Doug has taught more varied courses than most of us would dare to attempt. At the time I joined this faculty, he was one of the few who had a background in Commercial Law, and he was the colleague who could talk most knowledgeably about the Bankruptcy issues that formed the heart of my interests. Anyone else might have rued the day I found out about that wealth of knowledge, because I tapped it so often. But I was saved—Doug clearly delights in discussing legal issues, as we did over too many lunches to count.

Doug's contributions to the law and the legal academy are too numerous to recite, unless I turn this Tribute into a curriculum vitae. The respect Doug commands is evident, however, in the hundreds and hundreds of times his voluminous body of work has been cited by courts and other academics. In fact, the astonishing number is in the range of 1,000, the most recent of which was by the Virginia Supreme Court.³¹ In addition, Doug has been asked countless times to write letters for tenure committees across the country, evaluating the work of young scholars seeking promotion. Although each of those letters requires hours of work, each request reflects Doug's high standing in the community of scholars.

31. See *Jones v. Phillips*, 850 S.E.2d 646, 649 (Va. 2020); *Sheehy v. Williams*, 850 S.E.2d 371, 374 n.4 (Va. 2020).

Two other contributions deserve more particular mention (even though they are most likely lifted up by others on this occasion). First is Doug's work with the American Law Institute and the Restatement (Third) of Restitution and Unjust Enrichment. That project took years to bring to fruition and Doug was there every step of the way, offering guidance, advice and comments. The pivotal nature of that role was recognized when the ALI came to Washington and Lee Law School to roll out its completed project.

The second of Doug's contributions I want to highlight is Doug's work with the AAUP—the American Association of University Professors—and, in particular, its efforts to assure fairness when faculty members become involved in issues of academic freedom and tenure. Doug has never shied away from fighting the good fight, which requires a willingness to maintain the courage of one's convictions. He has not only had that courage when other universities are involved, but in his home institution as well, when his own interests could have been directly affected. For example, Doug has spoken up on issues of salary inequity, most likely becoming a thorn in the side of more than one dean. I admire him for it.

None of this could have been as fully realized without Carol, who has been at his side since they were both barely adults. Despite her own notable career, she has done much of the management that freed up Doug's time for his academic work. For example, Doug's numerous invitations to give lectures and to participate in conferences have included several international meetings, requiring travel to Europe, South America and elsewhere. Carol has inevitably accompanied Doug on those trips, doing the bulk of the planning. (One of them, on occasion, has even gone so far as to learn snippets of the destination country's language, to help them get around. Guess which!) To Doug's great credit, he knows how much he owes her.

For many years, both Doug and Carol could be seen around town, riding their bicycles almost everywhere. Both of them had an accident or two along the way, but Doug always resisted any call to give up the wheels. His typical comeback captures his philosophy of life in a nutshell: "I prefer the risks of activity to the risks of inactivity." These days, however, with the bicycles largely parked, Doug and Carol generally walk wherever they

need to go. On cool days, Doug is inevitably in his signature red Patagonia jacket, the years of service obvious. But Doug knows what works and he stays with it.

We can all take comfort in knowing that, despite formal retirement, Doug will not disappear from the Law School or the academy.

Tribute to Doug Rendleman

Alexandra L. Klein*

I've had the privilege of knowing Professor Doug Rendleman as both a student and a colleague on the W&L Law faculty. Doug is an outstanding educator, scholar, colleague, and friend. I enrolled in Remedies, having heard it might be useful. After a few short weeks learning from Doug, I became convinced that Remedies should be a required course in every law school. It's possible that my opinion is biased based on Doug's ability and brilliance. Anyone who has had the opportunity to listen to Doug teach, especially in the realm that he's devoted his scholarship to, understands exactly what I mean. His enthusiasm and unmatched expertise brought the subject alive. I know I am not alone in my gratitude for Doug's patience and brilliance as an educator. During one summer internship while I was still a law student, I mentioned something I had learned from Doug to my supervisor, who informed me with delight that she had been a student of his when he was at William & Mary. Many of his former students feel the same way.

It is unsurprising, given his own significant achievements in legal scholarship that Doug has consistently encouraged law student scholarship. One day, when I was a law student, I was sitting in the Law Review Office when Doug appeared, holding a stack of papers. He had, he informed me, come by to deliver several possible note topics for new Staffwriters. Finding a topic for a student note can be difficult, and we all appreciated his generosity. The possible topics were, of course, outstanding suggestions that would be significant contributions to legal

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scholarship. He also advised many student notes, offering thorough and helpful feedback to students who grapple with difficult topics. With his advice, many of them went on to develop interesting, innovative, and useful student scholarship.

After law school, while clerking, I was profoundly grateful that I had the opportunity to learn from Doug. As I read through lengthy briefs discussing injunctive relief, contract damages, statutory remedies, or detailed applications setting out requests for attorney's fees, I often thought of Doug's careful and thorough approach to those issues. They proved to be some of the most enjoyable and interesting issues that I worked on as a law clerk. I suspect I occasionally irritated my fellow clerks with my unbridled enthusiasm for remedies problems. But who *wouldn't* enjoy applying the lodestar method for calculating attorney's fees or considering inherent judicial authority to sanction parties?

When I returned to W&L to teach, Doug welcomed me back. Without fail, at least once a month during my first year on the faculty, I would hear a knock, or my name. I'd look up and see Doug in the doorway, asking me if I would like to go get lunch with him. I was always delighted to accept. No matter what the weather was like, we would walk over to the Marketplace together. During the walk, we'd talk about travel plans,³² the articles we were each working on, interesting cases we had read, holiday plans, our families, or teaching strategies. Doug was always willing to offer thoughtful advice if I had a question and encourage my scholarship. Inviting a former student turned colleague to lunch is a simple gesture. Yet it reveals so much about who Doug is, and how much he has contributed to the collegiality and academic life of this law school.

Our semi-regular lunches have ceased. As I write this tribute, we are in the middle of a global pandemic that has put a hold on everyone's lunch plans for the indefinite future. Doug has retired, and I am certain that he has interesting plans for his retirement, especially once he can travel again. But I am hopeful that sometime in 2021, Doug and I will be able to have lunch together soon.

32. Usually Doug's, which were far more interesting than mine.

Doug Rendleman and the Law of Remedies

Douglas Laycock*

Doug Rendleman's retirement will be a large change in my legal landscape. Doug and I share the often-neglected field of Remedies. Clients rarely care about a liability determination. The remedy is the bottom line of justice, as we once titled a symposium,³³ and the plaintiff hasn't recovered anything until she gets an effective remedy.

I never served on the same faculty with Doug, so I never knew him in his usual habitat. But I have known him from a distance for more than forty years. We would always get together, often for lunch but at least for a drink or a conversation, at the annual meetings of the Association of American Law Schools and the American Law Institute. We shared not just an interest in remedies, but in injunctions and equity in particular. For fourteen years, we served together as Advisers to the Restatement (Third) of Restitution and Unjust Enrichment, which brought us together a third time each year.

Doug is a link to the early days of remedies as a field. He began his career at Alabama in 1970, and taught a course called Remedies, from a casebook assigned to him by his senior colleagues.³⁴ The book began with the forms of action—the pleading rules of the writ system, abolished by then in every U.S. jurisdiction, but still taught into the 1970s at a handful of American law schools.³⁵

He took over the York and Bauman casebook and made it better. York and Bauman was not the first remedies casebook, but it was the dominant book in the field and the first to be widely adopted.³⁶ That book is now in its ninth edition, and in

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33. Symposium, *Remedies: Justice and the Bottom Line*, 27 REV. LITIG. 1 (2007).

34. Douglas Laycock, *How Remedies Became a Field: A History*, 27 REV. LITIG. 161, 179 (2008).

35. *Id.* at 171, 179.

36. *Id.* at 256–57.

the sixth edition by Doug. The first Rendleman edition came out in 1985, the same year as the first edition of my remedies casebook. Few scholars specialize in remedies, but nearly every law school has someone who teaches it, and many bar exams test it. The result is that most major remedies scholars are on a casebook. But whatever competition that entails has not prevented warm friendships and frequent collaborations.

Doug was a productive scholar. He did important work on injunctions, on restitution, and on enforcement and collection of judgments. His early work on compensatory contempt³⁷ and on the surprisingly complex problem of who is bound by an injunction³⁸ are still the leading articles on those issues.

Doug was a persistent and practical-minded scholar, willing to dig out facts. It was Doug who uncovered the missing facts in *Drake v. National Bank of Commerce*,³⁹ which is a great teaching case. A two-man corporation in Norfolk suffered a fire that destroyed its business.⁴⁰ The president of this corporation—the Drake in the case name—collected \$20,000 in insurance proceeds.⁴¹ He cashed the insurance check on a Friday, and he paid some of the corporation's smaller debts in cash the following Monday.⁴² That Monday was a banking holiday.⁴³ Drake put the remaining \$18,000 in cash in his pocket, allegedly for safe keeping, and went bird hunting.⁴⁴ At the end of the day's hunt, he discovered that the cash was gone.⁴⁵ Diligent search through the woods did not retrieve it.⁴⁶

37. Doug Rendleman, *Compensatory Contempt: Plaintiff's Remedy When Defendant Violates an Injunction*, 1980 U. ILL. L.F. 971; Doug Rendleman, *Compensatory Contempt to Collect Money*, 41 OHIO ST. L.J. 625 (1980).

38. Doug Rendleman, *Beyond Contempt: Obligors to Injunctions*, 53 TEX. L. REV. 873 (1975).

39. 190 S.E. 302 (Va. 1937).

40. *Id.* at 306.

41. *Id.*

42. *Id.* at 307.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

The trial judge did not believe this unlikely story. He ordered Drake to turn the cash over to the receiver for the defunct corporation, held him in contempt of court when he failed to do so, and confined him to jail until he complied.⁴⁷ The state supreme court affirmed, clearly implying that it did not believe the story either.⁴⁸

It is a long-settled part of the law of civil contempt that a contemnor can be jailed until he complies. As the saying goes, he has the keys to the jail in his pocket.⁴⁹ But if the money were really lost, the keys to the jail were lost with it. Must he spend the rest of his life in jail for failing to do what was now impossible?

This is a longstanding conundrum. It has no good doctrinal solution, but it has informal solutions. There are reported cases of contemnors staying in jail for periods as long as fourteen years. But no one has found a U.S. case where a contemnor stayed in jail for the rest of his life. So what happened to Drake?

Drake's case was old, decided in 1937. But Doug went to Norfolk and got the clerk's office to dig out the file. Eight months after the Supreme Court's decision, the trial judge decided that if Drake really had the money hidden somewhere, he would have eventually produced it rather than stay in jail. Maybe his bird-hunting story was true after all. We can never know what really happened, but Drake was quietly released in an unpublished order.⁵⁰

This investigation in Norfolk grew out of one of Doug's longstanding interests: the risk of abuse inherent in the powers of equity, and especially in the contempt power. He advocated forcefully on behalf of Dr. Elizabeth Morgan, a D.C. physician who spent two years in jail for contempt of court because she refused to produce her young daughter in litigation over the father's visitation rights.⁵¹ She accused the father of sexually

47. *Id.* at 304.

48. *Id.* at 307.

49. *In re Nevitt*, 117 F. 448, 461 (8th Cir. 1902).

50. OWEN M. FISS & DOUG RENDLEMAN, *INJUNCTIONS* 1091 (2d ed. 1984).

51. Doug Rendleman, *Enough Is Enough: Set Dr. Morgan Free*, *LEGAL TIMES*, Sept. 12, 1988, at 19; see Doug Rendleman, *Disobedience and Coercive*

abusing the child, but no court ever believed those accusations, and a jury didn't believe them either.⁵² While Dr. Morgan was in jail, her parents took the child to New Zealand.⁵³ Congress took Dr. Morgan's side in two statutes, one of which was held to be an unconstitutional bill of attainder against the father.⁵⁴ By that time, the little girl had become an adult.

What Dr. Morgan had in common with the careless bird hunter was lengthy imprisonment based on a court's best guess about essentially unknowable facts. And Doug thought that was a risk our legal system should not take. I think that he has always suspected me of not being sufficiently concerned about the risk that equity powers can be abused.⁵⁵ But we never disagreed about the risk; we disagreed, if at all, about how to address the risk.

And that brings me to another investigative story, about Doug and one of my books. The irreparable injury rule says that a plaintiff cannot get an equitable remedy if a legal remedy would be adequate.⁵⁶ I said that this rule had become a makeweight that never actually determines the results of cases.⁵⁷ And I said, but unfortunately, not in the same book, that such an illusory restriction on the front end, at the stage of issuing injunctions, would never control a judge inclined to abuse his power on the back end, at the stage of enforcing injunctions with sanctions for contempt.⁵⁸ I believe that Doug thinks we need restraints at both stages.

The irreparable injury rule is also known as the adequate-remedy-at-law rule. But that's a bit of a mouthful, and

Contempt Confinement: The Terminally Stubborn Contemnor, 48 WASH. & LEE L. REV. 185 (1991).

52. *Foretich v. United States*, 351 F.3d 1198, 1203, 1206 (D.C. Cir. 2002).

53. *Id.* at 1206–07.

54. *Id.* at 1207, 1216–26.

55. See Doug Rendleman, *Irreparability Irreparably Damaged*, 90 MICH. L. REV. 1642, 1671 (1992).

56. DOUGLAS LAYCOCK, *THE DEATH OF THE IRREPARABLE INJURY RULE* 4 (1991).

57. *Id.* at 4–7.

58. DOUGLAS LAYCOCK & RICHARD L. HASEN, *MODERN AMERICAN REMEDIES: CASES AND MATERIALS* 800 (5th ed. 2019).

I followed my teacher and Doug's co-author, Owen Fiss, in using the shorter name.⁵⁹ The book was titled *The Death of the Irreparable Injury Rule*.⁶⁰ And that turned out to be a mistake.

When I got the final page proofs, they had the Library of Congress cataloging information, and they had cataloged this book with physical injuries to the person. *Death? Injury?* Must be about personal injury cases. I went ballistic. I told them the book would be lost forever, miscataloged electronically and in the wrong part of every library physically. But the book was already being printed.

The publisher, to its credit, got a new and correct number, printed stickers with the corrected number and other corrected cataloging information, and pasted them on to the back of the title page of every copy of the book. Doug, to his credit, peeled that sticker off to see what was underneath.⁶¹ No other reviewer took that initiative, and so far as I am aware, no other reader ever took that initiative. Doug found the original cataloging a "humbling" indicator of the current standing of equity and of remedies.⁶² Doug probably would not have been so troubled by one lazy cataloger if he had not regularly encountered less dramatic indications of failure to understand the law of remedies and the essential role that remedies play.

I have recounted a few incidents that may be of some interest and that give a glimpse of Doug's character. They are tiny vignettes peeking into a long and successful career. It is a career to be proud of.

I hope and believe that this retirement is mostly an accounting formality, and that Doug will remain active in the scholarly world for a while longer yet. He recently signed on as an Adviser to the Restatement (Third) of Torts: Remedies, and he just sent the Reporters a detailed set of comments on Preliminary Draft No. 1. As I write this, he is teaching a seminar on a new topic. So Doug is retired, more or less. May he live long and prosper.

59. OWEN FISS, *THE CIVIL RIGHTS INJUNCTION* (1978).

60. LAYCOCK, *IRREPARABLE INJURY*, *supra* note 56..

61. Rendleman, *supra* note 55, at 1669.

62. *Id.*

Tribute to Doug Rendleman

Judith L. Madison*

Benjamin V. Madison III**

Paying tribute to Professor Doug Rendleman is an honor. We first met him in 1984 at the Marshall-Wythe School of Law, College of William and Mary as students in his Injunctions class. (We were engaged to be married at the time.) Judy, who Ben likes to joke “obviously showed her superior intellect,” then served as a Graduate Assistant to Professor Rendleman. After Judy convinced Professor Rendleman that Ben could be trusted, he allowed Ben to help her update his invaluable book, *Enforcement of Judgments and Liens in Virginia*.⁶³ After the Injunctions class, Judy recalls thinking, “I want to take every class that Professor Rendleman teaches.” Those classes included Debtor/Creditor and Remedies.

We came to know what most of his students learn: Doug Rendleman is the consummate professor and scholar. He was the most passionate, thoughtful, and authentic professor we had in law school. He loved what he taught, and one could tell that without him having to say it. His thoughtfulness was clear not only in his casebooks and many other publications but also in handling each class discussion. Moreover, he is that rare law professor who knows how to carry on a Socratic dialogue. Every question he asks has been thoroughly considered and means something. He does not seek to mystify students, as many using the Socratic method tend to do. He would let a question hang for some time, allowing students to carefully consider it before an answer. His questions were a form of art to him and to those of us who came to appreciate them. Often what emerged from those dialogues was not just a legal principle to be memorized but an ethical challenge to ponder. For example, how far is the reach of a judge’s contempt power? Or, more specifically, do we

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63. DOUG RENDLEMAN, *ENFORCEMENT OF JUDGMENTS AND LIENS IN VIRGINIA* (3d ed. 2014).

want to jail indefinitely a journalist who refuses to divulge a source? When do remedial actions taken against a debtor start to resemble the archaic debtor's prison? Professor Rendleman wanted his students to wrestle with the ethical underpinnings of substantive and procedural law. That desire stemmed from his own integrity and authenticity.

Authenticity is something a professor cannot fake. Authentic professors, one study has concluded, are approachable, attentive, respectful, and knowledgeable.⁶⁴ They also laugh, both at the ironies of life and themselves. We both distinctly recall Professor Rendleman's laughing during class. We may have had other professors who did so, but none who taught as intently even as he laughed with his students. Professor Rendleman displayed all the characteristics of authenticity—as a teacher, as a mentor, and as a role model.

Outside of the classroom, Professor Rendleman often could be spotted on his bicycle. The proximity of his home to the law school allowed him to commute by bike. He was well ahead of the curve in doing his part to combat climate change and global warming. He also had a smile for anybody he encountered on his bike rides. His kindness went with him.

We stayed in touch with Professor Rendleman after entering practice—Judy with Willcox & Savage and Ben with Hunton & Williams. Judy continued to help Doug with updating *Enforcement of Judgments and Liens in Virginia*. Ben, who seemed to attract injunction cases, sought out Doug's thoughts on many occasions. We always enjoyed the hospitality of Doug and Carol when we visited Lexington.

It was not until Ben entered the legal academy, however, that we appreciated the depth of Doug Rendleman's willingness to give of himself. He guided Ben through the process of becoming a law professor, of writing his first articles, and ultimately of writing his first casebook. Doug's prolific scholarship has inspired both of us. He later served as an

64. See generally Zac D. Johnson & Sara LaBelle, *An Examination of Teacher Authenticity in the College Classroom*, 66 COMM'N EDUC. 423 (2017). See also GERALD HESS, MICHAEL HUNTER SCHWARTZ & SOPHIE SPARROW, *WHAT THE BEST LAW TEACHERS DO* (2013) (listing many of the attributes we have identified in Professor Rendleman, including authenticity).

outside reviewer when Ben sought tenure and, even later, promotion to full professor.

We have a difficult time capturing our degree of gratitude for Doug Rendleman. We can only hope that he will continue teaching and publishing in some capacity. After all, he is and always will be to us the most outstanding teacher and scholar we have known.

Tribute to Professor, Not Doug, Rendleman

Kyle McNew*

I cannot claim to have known or worked with Professor Rendleman for as long as many of my fellow contributors. And I will, under no circumstances, refer to him as “Doug.” He was, is, and always will be “Professor Rendleman.”

And I think that’s the whole point. Professor Rendleman is the consummate law professor. Go to central casting and request a law professor. Professor Rendleman will arrive on set, promptly, via bicycle. We’re not talking about the sometimes intimidating, master-of-the-Socratic-arts type like ~~Professor Howard~~ ~~Professor Shaughnessy~~ ~~Professor Groot~~ the guy from *Paper Chase*, who are all great in their own right. Professor Rendleman is the perfect professor because he flat-out loves the material, and relishes sharing it with others. When he poses a question in class and no one responds, a grin fills his face. This is not a gloating grin for having stumped everyone, or the type of schadenfreude-driven grin that precedes picking some unlucky sucker out of the crowd for follow-up. It is a grin of appreciation, an acknowledgment that this is tough, interesting stuff, and isn’t it great that we can all be here exploring it together.

That type of intellectual excitement is inspiring and contagious. While remedies or injunctions might not make everyone’s socks roll up and down, every student in the class knew it did for Professor Rendleman. Even those students who

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typically found themselves on the low end of the gunner curve could not stand the thought of raining on Professor Rendleman's parade. That ability to teach students not from the top of the mountain looking down, but by locking arms with them and making the climb together is rare. I'm thankful to have gotten my share.

To sharpen the point even further, Professor Rendleman is the consummate W&L law professor. He is the type of professor who—by virtue of his accomplishments, scholarship, and expertise in his field—could have gone anywhere, anytime, who could have climbed the rankings ladder, chased prestigious chairs, or larked away on visiting professorship boondoggles, but who instead has chosen to devote almost his entire career to our little school in our little town.⁶⁵ For thirtyish years' worth of alumni, he is as much a part of Sydney Lewis Hall as are the Mid-Century Modern architecture and quirky wall art.

It has been more than just his presence; it has been his participation. Professor Rendleman could always be relied upon to show up at admitted student events, making his infectious love of school and subject the first impression for many who would eventually matriculate.⁶⁶ Current students could always rely upon his cheery hello as he walked the halls and the reading

65. I never took a writing seminar from Professor Rendleman, so please do not hold this monstrosity of a sentence against him.

66. I cannot help but tell the story that crystallizes this for me. A few years after graduating I had returned to Lexington for an Admitted Student Weekend. I was in the middle of a clerkship and had a case involving injunction bonds in labor disputes under the Norris-LaGuardia Act (which most will have to look up to confirm isn't something I'm inventing for story-telling purposes). There was no authority on point, and the cases that came the closest to being helpful were between thirty and seventy years old. It was not simply that I could not see the forest for the trees; I could not even see the trees. Standing on the law school lawn that spring afternoon, with a handful of Pre-Ls listening on, Professor Rendleman walked me through the issues, highlighted some things we should think about, and provided historical context on the subject. His guidance was vital to the ultimate resolution of the case. See *Mich. Am. Fed'n of State Cnty. & Mun. Emp. Council 25 v. Matrix Hum. Servs.*, 589 F.3d 851, 859–60 (6th Cir. 2009) (quoting DOUG RENDLEMAN, *COMPLEX LITIGATION: INJUNCTIONS, STRUCTURAL REMEDIES, AND CONTEMPT* 360–61 (2010)). The conversation ended and Professor Rendleman moved on to another group, or perhaps the *hors d'oeuvre* table. This group of Pre-Ls had no idea what kind of gobbledygook they'd just listened to, but you could see that the wise among them knew they wanted some more of it.

room, with a genuine interest in what they were working on and an unapologetic disregard for library *sotto voce*. And for so many alumni who found reason to return home, no trip to Lex was complete without running into Professor Rendleman and catching him up on all things professional and personal.

That is what makes the W&L Law experience so great for so many—a core group of incredible professors who could be anywhere, but who devote themselves to our school and to us. With his retirement, Professor Rendleman joins the pantheon of institutional characters that have defined the school and have, each in their own way, set the example for the future. It is a retirement well-earned. But I will selfishly miss seeing his bike leaning against the pillars of Sydney Lewis Hall as I approach from the lawn, knowing that his booming hello awaits within.

Tribute to Doug Rendleman

Linda Mullenix*

I cannot remember when I met Doug Rendleman, but it was a long time ago. I'd like to believe that this great son of the great Midwest (Iowa) by way of the Deep South (detours through Alabama, North Carolina, and finally roosting in the Commonwealth of Virginia) bonded immediately with me (a rather direct and shocking native New Yorker). However, since that seems a highly unlikely story, I suspect we bonded over time, over civil procedure and complex litigation. Civil procedure has this great way of bringing together the most unlikely people—and to bridge their cultural differences—through a common bond of refined appreciation for rules minutiae. Civil procedure accomplishes this because, quite frankly, none of our spouses, partners, siblings, children, or grandchildren want to hear us talk about this stuff. Enter wonderful and understanding colleagues to save the day. It is somewhat difficult to communicate the manifest relief afforded when someone—anyone—will lend an attentive ear to one's

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riveting discussion of the collateral order doctrine or the irreparable injury rule.

I join with my colleagues in celebrating Doug Rendleman's extraordinary academic and professional career spanning five decades. While many academics would have rested on their scholarship laurels several years ago, Doug Rendleman instead has continued his engagement with pressing legal issues of the day. Hence, I was surprised—but not really surprised—on May 4, 2020 of this pandemic year to receive an email from Doug, attaching his most recent article concerning national injunctions.⁶⁷ Such behavior makes one feel, in comparison, like a slouch. He explained that the article addressed “the controversial, challenging, and complex topic of whether a federal judge may grant a plaintiff an injunction against the United States executive that forbids the defendants’ misconduct in the whole nation.” The true intellectual, Doug noted that “working on this article was demanding and engrossing.”

Doug Rendleman is a one-man virtuoso in the fields of remedies and procedure. As is well-known, he has been the author three major and popular casebooks on remedies, complex litigation, and injunctions (the last, with the renowned Owen Fiss). Over the years I have received a continual stream of Doug's articles dealing with complex issues concerning remedies, injunctions, the irreparable injury rule, restitution, punitive damages, and procedural due process (and more). As a fine colleague, Doug just as consistently has returned supportive comments on my stuff.

Doug has not isolated himself as an ivory tower scholar but has engaged as a litigant in major Supreme Court litigation. As recently as September 2015, he co-authored a Brief of Restitution and Remedies Scholars⁶⁸ as amici curiae in support of the respondent in *Spokeo, Inc. v. Robins*.⁶⁹ The lawsuit

67. See Doug Rendleman, *Preserving the Nationwide National Government Injunction to Stop Illegal Executive Branch Activity*, 91 U. COLO. L. REV. 887 (2020).

68. Brief of Restitution and Remedies Scholars as Amici Curiae in Support of Respondent, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) (No. 13-1339).

69. 136 S. Ct. 1540 (2016).

involved the defendant's contention that plaintiffs, in order to have standing, must plead "injury in fact."⁷⁰ Doug's amicus brief reviewed numerous long-standing restitution claims that did not involve any "injury in fact," and argued that claims to recover a wrongdoer's improper profits, or to set aside a transaction tainted by a wrongdoer's conflict of interest, are crucial parts of restitution jurisprudence.⁷¹ In support of consumer rights to fair access to courts to seek restitution for wrongdoing, Doug asked the Court to stand up for restitution.⁷² In other words, Doug was on the side of the good guys.

The profession at large has long recognized Doug Rendleman's enduring contributions to scholarly and institutional life. One of the highest honors the profession can confer is appointment as an adviser on a Restatement project by the American Law Institute. Advisers to ALI projects are recommended to the ALI's Council by project Reporters, the Director, and the Deputy Director—all prestigious ALI members. In 2020, Doug was named as a new adviser to the American Law Institute's Restatement of the Law Third Torts: Remedies. He previously had served as an adviser for the ALI's Restatement (Third) of Restitution and Unjust Enrichment from 1998–2010.

Doug has long been a model of active institutional engagement. He has served as chairperson of several sections of the Association of American Law Schools, including the sections on remedies, civil procedure, and its courts committee. He has served on the AALS government relations committee and as a representative to the coordinating council of national court organizations. More broadly, he has served in various capacities within the American Association of University Professors, including as chair of the national committee on government relations, and president of the Virginia conference and the William and Mary chapter.

70. Brief of Restitution and Remedies Scholars as Amici Curiae in Support of Respondent at 1, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) (No. 13-1339).

71. *Id.* at 4–24.

72. *Id.* at 1–2.

Okay: so now for some good non-academic stuff. I began by saying the Doug Rendleman and I have had a longstanding somewhat odd friendship, given our regional pre-dispositions and upbringing. As the years passed, Doug made attendance at the AALS meeting in January worth attending. At some point Doug and his equally accomplished wife Carolyn and I began meeting at AALS for free breakfast in the vendors' hall. I would like to think that this was because of our mutual interest as procedure scholars, but I think this was more likely explained by the lure of free breakfast. Well, at least on my part.

And so, like the swallows returning annually to Capistrano, Doug, Carolyn, and I reconvened every year for breakfast. This was the occasion for catching up on our lives, professional gossip, grievances, congratulations, children, grandchildren, more gossip, and general commentary on the state of the world. I also was impressed at the large number of faculty who made their way to our table to talk to Doug (no, not me) and how well-known and well-liked he was by a stream of seemingly endless friends and colleagues.

A word about Carolyn. To my astonishment, Carolyn accompanied Doug every year to AALS, setting a really high bar in spousal devotion. But even more surprising, Carolyn—a non-lawyer—would attend AALS sessions that interested her. As I carefully parsed the AALS program to isolate the very few panel discussions of interest to me, Doug and Carolyn filled out their dance cards with multiple AALS sessions. I also learned of the Rendlemans' civic and political engagement in Lexington, Virginia, her work as town registrar, and their bicycle rides and gardening adventures. I can only assume—I am very confident—that they have done wonderfully well together in our pandemic lockdown. On the one occasion when I immodestly boasted (in New York fashion) about the birth of my sixth grandchild, the Rendlemans, with Iowa good manners, graciously noted that they had lapped me in the grandchild department several grandchildren ago. I had a good laugh.

I finally must note Doug Rendleman's continued devotion to the Field Family Forum, an ad hoc group of somewhat rogue civil procedure teachers who—about thirteen or fourteen years ago—began hosting an annual dinner at AALS for civil procedure scholars. For those of you not procedure

enthusiasts—or who do not remember first year civil procedure—the Field Family Forum was named after the patron saint of proceduralists: David Dudley Field (of Field Code fame). The dinner has been hosted by Professors Rich Freer of Emory and Steve Subrin of Northeastern and concludes with a nonsensical debate. The Field Family Forum dinner has long been billed as the only reason for attending the AALS meeting. Doug was an inaugural member and an enthusiastic attendee of the Field Family Forum.

At Field Family Forum dinners, Doug also exhibited his fine character as a very good sport. In the first-ever Field Family Forum debate, on the topic of Beignets versus Burritos, Doug graciously agreed to serve as my wingman in advocating on behalf of burritos, utilizing props to illustrate the snobbery of beignet advocates. This involved Doug agreeing to pull a large number of illustrative hats out of a shopping bag. In subsequent debates, Doug always readily agreed to stand by as my assistant and debate support. Perhaps Doug's finest hour at the Field Family Forum—the last one pre-pandemic, was when Doug stood and issued a lengthy recitation of Spoonerisms. Who knew Doug was the master of Spoonerisms?

So, on the occasion of Professor Doug Rendleman's official retirement from the Washington and Lee Law School—and in the spirit of twenty-first century pandemic communication, I'm posting a virtual, imaginary suite of emoji accolades: an appreciative thumbs up, a bunch of *de rigueur* smiley faces, a heartfelt gratitude, and a “well done” salute. As a perpetually youthful member of the legal academy, Professor Rendleman is more than worthy. And I hope he and Carolyn keep coming to AALS.

Tribute to Professor Doug Rendleman

Rami Rashmawi*

Professor Doug Rendleman is the kind of Professor that every law student hopes to learn from at some point in their

* Class of 2021, Washington and Lee University School of Law.

legal education. He is what I call, a legal musician. His mastery in directing a class discussion is rivaled only by the lead conductors of the most prestigious symphonies. However, his art form is not classical music, but freeform legal jazz. There may be a baseline on which every number begins but there is no set map for the road ahead. It is up to the collaboration between him and the students to forge a brand new piece of art that will be unique from the last. A piece of art that will attempt to capture a new conception of something that has been pondered thousands of times before. A piece of art not of stagnation or complacency but of adventure and exploration. In one legal number he may find that the demands and interests of his band members, the students, make it necessary to bring out more of the trumpets, or the saxophones, or the clarinets, while in another he may find it better that the percussion take the grand stage. He constantly scribbles notations into the margins of his teaching manual, much like the way a composer adds and subtracts sharps and flats to a music score. However, though the music created through his direction is beautiful, the true masterpiece is how it transforms his partners in this venture.

Professor Rendleman uses his art not only to teach students how to comprehend, analyze, and dissect legal arguments and principles, but also to push students to understand and begin to develop their own opinions and methodologies about the law. He challenges students to never accept their own or others' propositions at face value—just saying it is not enough. You must push yourself to think deeper and broader, and to attempt to understand the justifications and logical consequences of the proposition. He dares students to doubt and to question and to wonder about the law, not only in response to what a judge might say in an opinion, but in response to your own inner ideas and your fellow student's musings. There is no such thing as a correct answer, only a well-reasoned one. And even then when a student may believe that they have come up with the perfect explanation for their proposition, Professor Rendleman is always ready with a question that puts everything into doubt. There is no end to his ability to see a new and unique way to think about a concept, and to get the students to grapple with it.

Importantly however, Professor Rendleman does all of this conducting and challenging and collaborating with an air of assurance and kindness. He never negates, disparages, or belittles a student's thoughts, only ever encourages, questions, and induces a student to challenge themselves. He frequently would respond to a student's thoughts with a wry smile, a gentle lean on the blackboard, and a question to the class, "Well, what does everyone else think?" He truly makes the students feel as if they are a part of a greater collaborative project, an experience. He often gives the impression that he is learning just as much from the students as we are learning from him. And learn from him we do.

Professor Rendleman will always be remembered as a master of the craft, a legend of the law, and a partner to the student. My only sadness is that future law students will not have the privilege of being a part of his creative, imaginative, and inspirational jazz ensemble.

Tribute to Professor Doug Rendleman

Caprice Roberts*

*Don't judge each day by the harvest you reap, but by
the seeds that you plant.*⁷³

Whatever retirement means, Professor Doug Rendleman defies the definition. And rightly so, what a strange phenomenon it is to have professors like Doug still at the top of their game, slip quietly into zooming their last classes during a global pandemic. Celebratory dinners and final walk-throughs indefinitely postponed. Fortunately, Doug's enduring legacy from five decades of teaching will continue through his former students, who are now leading lawyers, academics, and judges.

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73. ROBERT LOUIS STEVENSON'S ADMIRAL GUINEA: "DON'T JUDGE EACH DAY BY THE HARVEST YOU REAP BUT BY THE SEEDS THAT YOU PLANT" (A Word to the Wise 2013) (1892). *Admiral Guinea*, coauthored with W.E. Henley, was originally published as *Three Plays*, along with *Deacon Brodie* and *Beau Austin* in 1892.

Doug remains a lifelong scholar-teacher. He continues to research and write on matters of pressing import. Doug embodies the life of the mind, but also is a genuinely giving scholar. He has dedicated his lengthy career to excellence in all academic pursuits.

In the law of remedies, there are tangible and intangible harms for which the law does its best to remedy. The law often falls short. It does so most with the intangible injuries. They cannot be easily quantified. Their loss is immeasurable. Some are so hard to measure that the harm is irreparable. Doug's departure from the legal academy has this intangible, irreparable quality. He will have plenty to show for his time well spent in the legal academy. But the chasm left behind is not replaceable because Doug is one-of-a-kind. He brings razor-sharp analysis coupled with wry wit to every class and exacting revisions to every publication. In tribute, I offer this ode to begin to tell the story.

An Ode to Professor Rendleman

A bicycle.

A yellow rainslicker.

Wry humor.

*Actively participating
in all facets of life and law.*

And always,

a long, close read.

Detailed comments.

Pressing questions.

Revisions. Revisions.

Publications. Last Classes.

Ovations (Virtually).

Humble and generous

to the end.

Doug Rendleman has been instrumental in creating the field of remedies. He has toiled long hours and planted countless seeds to secure the field. He is a tremendous inspiration to all who care about the theory and practice of remedies. He is a leading contributor to the development of the law of remedies. His care and toil are evident in his varied publications ranging

from private to public law and from legal to equitable remedies. For fifty years, Doug has brought a human approach to remedies and encouraged critical thinking in every remedies class, article, and book.

As a scholar, Doug's impact is profound, practically and theoretically. It is fitting that this year the American Association of Law Schools (AALS) Remedies Section honors Doug with its *Lifetime Scholarly Achievement Award in Remedies* for demonstrating sustained commitment to advancing the field of Remedies.⁷⁴ Doug has published sixty law review articles and chapters as well as leading casebooks and treatments on Remedies, Structural Injunctions, Complex Litigation, and Enforcements. He has coauthored amici briefs that have influenced the direction of remedies in the Supreme Court. Through teaching and writing, Doug has enriched understanding and refined doctrines and theories of relief. His scholarship has ignited debates and altered perspectives on the law of remedies—across the domain as well as with particular remedies. In addition to contributing sustained research and thoughtful writing, Doug also has served as a scholarly mentor and commentator to newer and seasoned professors to ensure continued development of the law of remedies.

All along the way, Doug has served the academy again and again. He ably served (three times!) as chair of the Remedies Section, Adviser to the American Law Institute, and mentor to so many. Even as the sun sets on his decades of teaching and service, Doug continues to model the ideals of the academy with his rigorous scholarship and passion for teaching students, judges, and attorneys about the finer points of remedies law.

To be in Doug's midst, your curiosity and intellect grow. It's contagious because his practice is so methodical. At first, it's subtle. An acquired taste. But then addictive. I regret that I will be unable to sit in Doug's classes, be in the audience as he presents on academic panels, exchange suggested edits, and engage in our frequent dialogue on the law of remedies—though I expect with Doug much of this will continue as long as possible.

74. Peter Jetton, *Professor Doug Rendleman Receives Lifetime Achievement Award from AALS*, WASH. & LEE UNIV. (Jan. 5, 2020), <https://perma.cc/2PUK-DXPX>.

Doug changed the course of my future. That's what the best teachers have the power to achieve. He inspired me to teach law and specifically to teach courses like Remedies that honor a human approach to law—to care deeply about the law's goals and its delivery on its promises. He enhanced my critical thinking with every class session. As a continuing mentor and academy colleague, he continues to enrich my writing and teaching in every dimension. His approach has always been incredibly disciplined, thoughtful, and interdisciplinary. Through demonstration, Doug sets the bar extremely high for consummate preparation, attention to detail, and depth of research. I continue to aspire to emulate all that he continues to accomplish in his impressive career.

Short on pages, long on learning. During a lengthy class, Doug slowly and deliberately questioned students on the meaning of what they misunderstood to have been a simple opinion. Doug had an influential professor of literature who taught students from the New School perspective to read and interpret slowly and methodically parsing out layers of meaning living in the author's text. He applied this pedagogy to law teaching. His classes were refreshing and enlightening in unparalleled ways. Every moment, including the final essay examination, was a learning moment because Doug presented the material in a way that required independent critical thinking to make the interpretive move to garner the deepest understanding.

My relationship with Doug is complex and rewarding. It is a rare find for a person to evaluate another person based purely on merit at all stages of a relationship. I had the great fortune of learning from Doug in every class I could take at Washington and Lee University School of Law. The first, Property Law, was memorable for our engaging class discussions. Doug's teaching method required meticulous preparation. As a first-generation student, the task and law school atmosphere was foreign and daunting. Doug inspired each student to aim for the greatest heights and take nothing for granted. No matter how prepared one was, Doug had a way of revealing the deeper riddles of the law. Epiphanies during his exams were commonplace. The essay prompts propelled me to write several bluebooks worth of arguments citing a Justice Mosk dissent to argue in favor of

enhancing rights to property—conceptually and tangibly: “Ownership is not a single concrete entity but a bundle of rights and privileges as well as of obligations.”⁷⁵ I still remember the whole argument. I booked the class. The course pushed my understanding. I felt truly challenged and heard. Everything resonated. I was hooked. Hoping to be challenged more, I next took Remedies and Advanced Contract Remedies with Doug. He delivered. These smaller classes opened new dimensions of my thinking about the law. The experience enriched everything that came before and would come after those classes.

Years later, these grounding academic moments, along with Doug’s enduring support, inspired me to enter the legal academy. We knew it would be close to impossible to cross the divide into the academy even with federal clerkships and big law. Doug provided meaningful recommendations to every school, and I landed a post. After that, Doug did not favor me. He never walked one of my articles down a hallway as many mentors do today. Instead, he introduced me to articles, to conferences, and to countless professors. I recall my first overwhelming AALS conference. Doug encouraged me to go to the exhibition hall. I didn’t know many people. We met at the top of the escalator, and everyone we passed said, ‘hello Doug.’ He introduced me to all of them. Doug encouraged me and waited with hopes that I would earn a place as a respected scholar and teacher. The rest is history. I earned tenure and an Associate Dean of Research position. Then and only then, a decade ago, I had the great honor of Doug asking me to join him as a coauthor on the Remedies casebook for the eighth edition—now in its ninth edition!⁷⁶ Years later, Doug’s teaching and dedication echoed in my mind, propelling me to continue his legacy by completing the third edition of Dobbs’s Law of Remedies treatise.⁷⁷

Doug lives and breathes the law and imbues his passion into his students and his peers. His scholarly work shows the

75. *Moore v. Regents of Cal.*, 793 P.2d 479, 509 (Cal. 1990) (Mosk, J., dissenting).

76. DOUG RENDLEMAN & CAPRICE ROBERTS, *REMEDIES: CASES AND MATERIALS* (9th ed. 2018) (with accompanying Teacher’s Manual).

77. DAN B. DOBBS & CAPRICE ROBERTS, *LAW OF REMEDIES: DAMAGES—EQUITY—RESTITUTION* (3d. 2018).

breadth of his expertise as well as his concern for access to justice. In addition to publishing books and articles every year and teaching full loads, Doug's academic career shows his commitment to students, the institution, and the legal academy writ large through service in local and national organizations.

Professionally Doug is a hard act to follow. Personally he cannot be matched. No matter how busy Doug is, he always attends national conferences and shepherds new teachers into the fold of such organizations as the American Law Institute and the American Association of Law Schools. He is considerate and never arrogant despite his impressive accomplishments. He and his wife Carol have mentored countless new faculty by setting a remarkable example thriving on every level: bicycling, gardening, volunteering, and laboring as ends onto themselves. Labor as the labor of a love of learning, all marching toward progress in each endeavor. Doug contributes meaningfully to each person, place, and institution in his life.

I am fortunate to have traveled with Doug and Carol to conferences across the country and around the world. We have shared family meals, long fast walks, and more. Our conversations have ranged from politics to prose. As we stood overlooking the extraordinary vista from the coast of Auckland, New Zealand, I knew then that we had only just begun our journey.

Tribute to Doug Rendleman

Victoria Shannon Sahani*

I distinctly remember meeting Doug Rendleman during my 2012 callback interview for my tenure-track position at Washington and Lee University School of Law. The interviews involved groups of faculty filing in and out of the Dean's Conference Room at various times of the day, while I sat in the "hot seat" preparing to answer whatever questions may be directed my way. I was nervous, but Doug made me feel right at

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home. His confidence and jovialness were infectious, and I immediately knew I had met a lifelong friend.

When I was a junior faculty member at W&L, I remember that Doug was always incredibly supportive of my fellow juniors and me. I also distinctly remember Doug's positive impact on my scholarship as a member of my tenure support committee. He gave me excellent comments and helpful sources to cite for one of my first articles, which was eventually published in the *UCLA Law Review*,⁷⁸ no doubt in part due to his excellent comments on my drafts. He has always been exceedingly kind to me, inviting me to attend the civil procedure dinner at the American Association of Law Schools (AALS) Annual Meeting each year, as well as making sure he introduced me to top scholars in the civil procedure field. When I accepted a position at Arizona State University's law school, where I now teach, Doug was very magnanimous and kind in congratulating me on the position. I really appreciated his collegiality, especially in that moment.

Doug is the opposite of a shrinking violet; perhaps he could be called a "speaking violet" if I had to coin a phrase to describe him. Doug has been tremendously outspoken and steadfast in his convictions about faculty governance and the right thing to do. Even in situations in which the majority might be interested in in a particular course of action, Doug is not afraid to speak up—even alone—to voice his convictions about what he thought was proper and whenever he perceived injustice. He also has a wonderful sense of humor and was often seen silently chuckling to himself at faculty meetings. This may have seemed like a *non sequitur* at the time, but when I look back, I realize that his demeanor reflected his timeless sense of wonder at the jobs that we had. He would often say that being a law faculty member is the best job in the world, and he is quite right about that. And I know that he has thoroughly enjoyed being a law professor.

Over the years, I have noticed that Doug has taken very good care of his health. I remember that he used to ride his bike to and from the law school daily, until he had a severe foot injury; after he recovered, he still took frequent, long walks. I

78. See generally Victoria Shannon Sahani, *Judging Third-Party Funding*, 63 UCLA L. REV. 388 (2016).

remember a few times when I was driving around Lexington when I saw Doug walking with a pep in his step and his headphones in his ears. He would always stop and chat and say hello. I think that those of us who are younger can learn a great deal about longevity and aging gracefully from how well Doug has kept himself healthy and active, both physically and mentally, over the years.

Doug is a very generous and genuine person. He is always the same human being. To use a techie term, “what you see is what you get” or WYSIWYG with Doug Rendleman. That is rare in today’s world in which so many people engage in constant self-editing and have a mask or public persona that they most often present to the world. Doug is authentic, like it or not. He is unapologetic about being himself, and that is very admirable. He is a true role model for those of us coming behind him in the field.

Thank you for shepherding me, guiding me, advising me, and reviewing my early drafts. Thank you for always being a friendly face and a supportive voice when I was a junior faculty member, and for showing me what an active, engaged, and principled voice in faculty governance sounds like. Thank you for all that you have given to the practice of law, to the field of civil procedure, to the field of remedies, and for all the other contributions that you have made to legal academia. You will be greatly missed, and I know that your legacy will continue to enrich the careers of other faculty, long after you have moved on to the next chapter of your life. Congratulations on your retirement, my friend!

Tribute to Doug Rendleman

Joan Shaughnessy*

Justice is the means by which established injustices are sanctioned.

-Anatole France

* Roger D. Groot Professor of Law, Washington and Lee University School of Law.

“Sanctioned” is an interesting word. It is a contronym—it has two different and opposite meanings. To sanction can mean “to permit authoritatively” or “to justify as permissible.”⁷⁹ In contrast, it can mean “to penalize” or “to enforce by attaching a penalty to transgression.”⁸⁰ This quote from Anatole France can be read optimistically to describe the justice system as a resource to which victims of injustice can turn for relief. Pessimistically, it can be read to describe the justice system as just another vehicle for systemic oppression.⁸¹

Doug’s work shows his awareness of both perspectives on the justice system. He was actively involved in attempting to obtain the release of Dr. Elizabeth Morgan,⁸² who was imprisoned for over two years on contempt charges in connection with a child custody dispute in which Dr. Morgan refused to deliver her five-year-old daughter for an unsupervised visit with her father, who Dr. Morgan believed had sexually abused her daughter.⁸³ Similarly, the injunctions casebook which Doug co-authored with Owen Fiss contained a case study of litigation involving the notoriously horrific conditions in Alabama’s prisons.⁸⁴ So Doug has had ample opportunity to see oppression imposed by the legal system. He is not naive.

However, I see Doug as a stubborn optimist. Over the arc of his career, he has retained his faith in the ability of the legal system, and in particular the federal courts, to act to correct

79. *Sanction*, OXFORD ENG. DICTIONARY ONLINE, <https://perma.cc/Z5AC-64YS>.

80. *Id.*

81. This particular translation of the quote, from France’s short story *Crainquebille*, can bear both meanings. In context, France’s meaning was the latter, pessimistic view. See James D. Redwood, *The Conspiracy of Law and the State in Anatole France’s “Crainquebille”; or Law and Literature Comes of Age*, 24 LOY. U. CHI. L.J. 179 (1993). For the original French, see ANATOLE FRANCE, *CRAINQUEBILLE PUTOIS, RIQUET ET PLUSIEURS AUTRES RÉCITS PROFITABLES* 38 (39th ed. 1905).

82. Rendleman, *supra* note 51, at 19.

83. David Harmer, *Limiting Incarceration for Civil Contempt in Child Custody Cases*, 4 BYU J. PUB. L. 239, 239–40 (1990).

84. OWEN FISS & DOUG RENDLEMAN, *INJUNCTIONS* 528–752 (2d ed. 1984).

“established injustices.” Doug’s recent work provides two examples. Last year he published an exhaustive study of the reach of federal court’s injunctive powers entitled *Preserving the Nationwide Government Injunction to Stop Illegal Executive Branch Activity*.⁸⁵ Three years ago he published *Rehabilitating the Nuisance Injunction to Protect the Environment*.⁸⁶ These are only two examples of Doug’s sustained efforts to provide scholarly support for activists’ efforts to use the courts to challenge injustice, particularly injustice perpetrated by institutions.

There is another example of Doug’s work to protect individuals from institutional injustice. Throughout his career, Doug has been actively involved in the American Association of University Professors. In that capacity, he has worked to ensure that teachers are protected from injustices inflicted by their institutions. He has been a public voice for academic freedom and a private, supportive advisor for faculty facing institutional difficulties.

Doug would not be the influential advocate for reform efforts through the courts that he is were it not for his deep knowledge and careful, thorough scholarship. Doug has written widely on a vast array of topics in the law of remedies—from restitution to punitive damages and beyond. He is one of the foremost scholars internationally in his field. As a member of the American Law Institute, he served as adviser to the Restatement (Third) of Restitution and Unjust Enrichment and currently is adviser to the Restatement (Third) of Tort Remedies. His work with the Institute has brought his scholarship to the attention of leading jurists, academics, and lawyers.

He has trained generations of students to the same standard of care and thoroughness to which he aspires. The students he mentored have gone on to careers as leading lawyers, jurists, and academics. He is a deeply admired colleague and teacher as exemplified by the Lifetime Scholarly

85. Doug Rendleman, *Preserving the Nationwide Government Injunction to Stop Illegal Executive Branch Activity*, 91 U. COLO. L. REV. 887 (2020).

86. Doug Rendleman, *Rehabilitating the Nuisance Injunction to Protect the Environment*, 75 WASH. & LEE L. REV. 1859 (2018).

Achievement Award he received this year from the Remedies Section of the American Association of Law Schools. His influence is wide and enduring. I would say that Doug will be missed but he is not going far. As I write, he is preparing to teach a seminar for Spring 2021 on Remedies. We hope to keep Doug a presence in Lewis Hall for a long time to come.

Tribute to Doug Rendleman: Teacher, Scholar, Reformer of the Law

Barry Sullivan*

When I first visited Washington and Lee as a candidate for the deanship on a cold, wintry day in early 1994, it was obvious to me that there was something special about the university. Where else would the president of the university drive more than 50 miles to the nearest airport to greet a candidate for the law deanship? Where else would the dean search committee consist of the university president and virtually the entire law school faculty?

On that first visit to Washington and Lee, I sat with President John Wilson and most of the law school faculty in a pleasant room in Leyburn Library, discussing the state of the law school, legal education, and the legal profession. I remember fielding many questions, but I also remember listening carefully as President Wilson and various members of the faculty expressed their aspirations and ambitious plans for the law school. Even in those first, tentative exchanges, it seemed to me that there was something quite special about the law faculty.

For one thing, the faculty seemed to take seriously the claims of justice and the essential, necessary connection between law and justice. If law and justice were only “distant cousins,” and not on “speaking terms,” as Marlon Brando’s

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character put it in *A Dry White Season*,⁸⁷ that was something that needed fixing, and the work to be done started with the law schools. Indeed, that was the mission of the Frances Lewis Law Center, the visionary and transformational gift of Sydney and Frances Lewis.

I knew beforehand that the members of the law school faculty were serious and accomplished scholars. I had read the work of many and knew others by reputation. But I soon learned in that meeting that the faculty was equally serious about teaching. As Gilbert Highet observed in his famous book on teaching, many scholars are “interested in a subject without wanting to teach it to anyone else.”⁸⁸ And even for those who want to share their subject, the task is not easy. To teach effectively, teachers must know and like their subject, but they must also know and like students. The good teacher, as Highet suggests, must have the quality of “kindness”:

It is very difficult to teach anything without kindness. . . . [I]n nearly all . . . kinds of learning the pupil should feel that that the teacher wants to help them, wants them to improve, is interested in their growth, is sorry for their mistakes and pleased by their successes and sympathetic with their inadequacies. Learning anything worthwhile is difficult. Some people find it painful. Everyone finds it tiring. Few things will diminish the difficulty, the pain, and the fatigue like the kindness of a good teacher.

This kindness must be genuine. Pupils of all ages . . . easily and quickly detect the teacher who dislikes them, as easily as a dog detects someone who is afraid of him. It is useless to feign a liking for them if you do not really feel it. . . .

Still, the kindness must be there. It may be the kindness of an elder brother or sister, even of a parent. It can be the kindness of a fellow-student. . . . But if the teacher feels none of these emotions, nor anything like them, if he or she regards the students as a necessary evil, in the same way as he regards income-tax forms, then his or her job will be far

87. A DRY WHITE SEASON (Davros Films 1989).

88. GILBERT HIGHET, THE ART OF TEACHING 72 (1950).

more difficult to do, far more painful for the pupils, and far less effectively done.⁸⁹

It was obvious to me from that first meeting in Leyburn Library that my future colleagues were teachers in the “thick sense” that Highet described. They did not think of teaching only in terms of imparting doctrine and skills, or even values. They liked students. They mentored and befriended students, gloried in their achievements, and supported them in times of trial; and they saw their mission, in the closing years of the twentieth century, as nothing less than preparing students for a lifetime of lawyering, citizenship, and living in a future only dimly to be seen. They wished to empower students for lives as ethical, centered, reflective practitioners and individuals.⁹⁰ Importantly, the faculty did not look down on practicing lawyers or on the work that their students would one day do. That may seem unremarkable, but many law school faculties saw things differently (and some, of course, still do). In the early 1990s, there was much discussion within the profession about what Judge Harry T. Edwards of the District of Columbia Circuit, a former practicing lawyer and law school professor, had recently called out as “the growing disjunction between legal education and the legal profession.”⁹¹

It was not surprising, perhaps, that the Washington and Lee faculty would approach their work in a different spirit, one that understood and valued the essential connections between legal practice and law teaching and scholarship. Many members of the faculty had practiced law, and some had done so for a substantial period of time—long enough to have carried the burden of ultimate responsibility for someone else’s life or liberty or property. Others continued to practice law, combining a life of serious scholarship with work in one or more of the law

89. *Id.* at 71–73.

90. See, e.g., DONALD A. SCHON, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1983); DONALD A. SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS* (1990).

91. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992); see also Brian C. Murchison, *Law, Belief, and Bildung: The Education of Harry Edwards*, 29 HOFSTRA L. REV. 127 (2000).

school's exceptional clinics. Others immersed themselves in subjects that were of great practical importance to practitioners, and therefore maintained close contact with the practicing bar through their scholarship and work on law reform.

These reflections on the character of the law school faculty, as I knew it in the late twentieth century, might seem beside the point. I was asked, after all, to contribute some reflections on Doug Rendleman's outstanding career, not to reminisce about the ethos of the law school. But any criticism along those lines would be mistaken, I think. I have attempted to describe the animating spirit of the law school faculty in those days because it is not only helpful, but essential, if we are to appreciate fully Doug's career as a teacher, scholar, and advocate for justice. Doug's voice was integral to that spirit. He was part of an extraordinary group of teacher-scholars, who productively and respectfully disagreed about many things, but were of one mind when it came to an understanding of their role and that of the law school. Doug not only contributed greatly to the mission, work, and ethos of the law school, his career has embodied those values.

Doug first came to Washington and Lee in 1988 as the Frances Lewis Scholar-in-Residence—one in a now long line of distinguished scholars from around the world to have held that position—and he stayed on as the Director of the Frances Lewis Law Center (1988–91) and the Huntley Professor of Law (1988–2020). It seems fitting that Doug should have come to Washington and Lee through the generosity of Frances and Sydney Lewis. Among other things, they were deeply committed to social justice, and they saw quality legal scholarship in aid of progressive reform as an essential means to that end. That was the vision that gave rise to their transformative gift; it is a common factor that runs through Doug's work as a scholar, teacher, and law reformer.

As one of the nation's leading scholars in the field of remedies, injunctions, and complex litigation, Doug has contributed immeasurably to the development of the law. It is trite—but true—to say that he has made the field his own. In doing so, he has also contributed greatly to the scholarly reputation of the law school. Doug's law review articles have appeared regularly, and over a period of many years, in the

nation's leading law reviews; his casebooks on injunctions (with Owen Fiss),⁹² remedies (now with his former student, Caprice Roberts),⁹³ and complex litigation⁹⁴ have been widely used and admired. He has filed amici briefs relevant to his areas of expertise in important Supreme Court cases, and he has been an effective advocate for progressive reform within the American Law Institute. He has written with deep insight about teaching and the necessary connection between teaching and research.⁹⁵

Doug's work on remedies has provided a sturdy bridge between the world of scholarship and the world of practice, or, as Edward Levi might have put it, between the world of ideas and the world of problems to be solved.⁹⁶ In the fields of litigation, where I labored for many seasons, there are few subjects more important—or more mysterious to most lawyers—than the law of remedies.⁹⁷ After all, a trial lawyer can master the law of procedure, the law of evidence, and the substantive law relevant to the case at hand—be it securities or antitrust or civil rights or domestic relations—but, at the end of the day, all will have been in vain if they do not know what remedies might be available in the event that their client prevails. Indeed, no matter how meritorious their client's claim might be, there is no point in filing a complaint unless one knows that an efficacious remedy is available. The time to think about possible remedies is during the initial client interview,

92. OWEN FISS & DOUG RENDLEMAN, *INJUNCTIONS* (2d ed. 1984).

93. DOUG RENDLEMAN & CAPRICE ROBERTS, *REMEDIES* (9th ed. 2018).

94. DOUG RENDLEMAN, *COMPLEX LITIGATION: INJUNCTIONS, STRUCTURAL REMEDIES, AND CONTEMPT* (2010).

95. See generally Doug Rendleman, *Remedies: A Guide for the Perplexed*, 57 ST. LOUIS U. L. REV. 567 (2013); Doug Rendleman, *Remedies—The Law School Course*, 39 BRANDEIS L.J. 535 (2001).

96. See EDWARD H. LEVI, *POINT OF VIEW: TALKS ON EDUCATION* 65–67 (1968).

97. See Rendleman, *Remedies: A Guide for the Perplexed*, *supra* note 95, at 581 (“Only law professors specialize in Remedies as an overarching topic. Lawyers specialize in substantive areas along with the remedies in that area. A lawyer, high in her specialized silo, often doesn’t understand the law outside. When lawyers wander out of their specialties, they are frequently lost in a remedial wilderness.”).

not at the end of discovery or at the end of the trial. What is it, after all, that the client wishes to achieve, and is that possible, even if the facts and the substantive law line up in her favor? Doug's work has been of great interest and importance to the practicing bar.⁹⁸

Doug's scholarship has also been attentive to the rights of the marginalized and the need for the powerful to be held accountable to law. In his recent article on nationwide national government injunctions, Doug quoted these lines from *Measure for Measure*: "O, it is excellent/ to have a giant's strength; but it is tyrannous/ To use it like a giant."⁹⁹ The quotation appears in the context of Doug's argument that judges "with broad subject matter jurisdiction to grant an injunction should exercise self-restraint and be careful when and how to exercise that power."¹⁰⁰ But the quotation bears on a larger theme in Doug's work: law must tame the powerful to protect the powerless. The rule of law demands an even playing field.¹⁰¹ For example, one

98. See *id.* at 574–75

Remedies, what a winning plaintiff gets, is among the most practice-ready and practical courses in a student's law school experience. A lawyer's client is interested in results, not the procedural and substantive dance to reach those results. Remedies is client-centered and outcome-oriented. Remedies make a difference in people's lives. . . . A Remedies student learns the lawyer's skill of choosing and advocating a client's 'best' solution and predicting the result.

99. See Doug Rendleman, *Preserving the Nationwide National Government Injunction to Stop Illegal Executive Branch Illegality*, 91 COLO. L. REV. 887, 936 (2020) (quoting WILLIAM SHAKESPEARE, *MEASURE FOR MEASURE* act II, sc.2).

100. *Id.*

101. See Rendleman, *Remedies: A Guide for the Perplexed*, *supra* note 95, at 572–73 ("Remedies scholars would be more pleased if the distinction between right and remedy did not introduce a remedy that is narrower than the right. For although a plaintiff's remedy is separate from her substantive right, her remedy should advance the substantive goal, or at least not frustrate it."). Further, Doug has observed:

Remarking on a personal injury lawsuit, one court wrote that "[o]f course, the State does not have any interest in the question of who wins this lawsuit, or the extent to which one party prevails over the other." That court's narrow approach should be rejected. A court's personal injury damages decision affects the distribution of wealth,

point of the class action device is to dissuade powerful interests from taking advantage of an “optimal” level of rights violations, perhaps by cheating a large number of consumers or others in a small enough way that seeking redress as individuals is not practicable.¹⁰² And the structural injunction has provided a mechanism for remedying violations of civil rights to which racial and ethnic minorities, prisoners, the poor, and other disfavored groups have disproportionately been subjected.¹⁰³ These are the areas of scholarship to which Doug has devoted his career.

Good teaching has also been important to Doug. I know that first-hand. During my time at Washington and Lee, Doug would sometimes invite me to participate in one of his classes, especially when his class was discussing a case that I had argued or otherwise knew something about. The classroom was always lively. Doug was always prepared, engaged, thoughtful, and respectful in his interactions with students; he was as passionate in the classroom as he was in print. He mentored students and took a personal interest in their success. He wanted his students to learn, and they did. Indeed, one of his students—Caprice Roberts—carries on the tradition and is herself one of the nation’s leading experts on remedies.

the government’s social welfare budget, the deterrence value of potential defendants’ standard of care, and the jurisdiction’s business climate. A decision reprobating misconduct and setting a tortfeasor’s payment to its victim affects its moral climate. “We the people,” the late Leon Green wrote, “are a party to every lawsuit and it is our interest that weighs most heavily in its determination.”

Id. at 573–74.

102. See, e.g., Barry Sullivan & Amy Kobelski Trueblood, *Rule 23(f): A Note on Law and Discretion in the Courts of Appeals*, 246 F.R.D. 277, 277 (2008)

The class action device is regularly applauded for its potential to compensate many victims who individually suffer harm on a relatively small scale at the hands of one defendant who would not otherwise be held to account for that multitude of small harms which may, because of their number, translate into large profits.

103. See generally, e.g., Doug Rendleman, Brown II’s “*All Deliberate Speed*” at Fifty: A Golden Anniversary or a Mid-Life Crisis for the Constitutional Injunction as a School Desegregation Remedy?, 41 SAN DIEGO L. REV. 1575 (2004); OWEN FISS, *THE CIVIL RIGHTS INJUNCTION* (1978).

For all the years that Doug has lived in the South, he retains the character of a plain-spoken midwesterner. He is not bashful about letting you know when he disagrees with you about something that matters. I know that for a fact. He sometimes disagreed with some decision I made as dean, and he always let me know. When he did agree with me on some controversial point, he let me know that too. I found that refreshing. Doug has been a good citizen of the university. He has been active in the American Association of University Professors. He takes seriously the privileges and obligations of academic freedom, and he has always been vigilant in ensuring that the university's central administration does so as well. He and Carol, his partner in all things, have religiously attended lectures and other events across the campus. When my wife Winni gave the Tucker Lecture in 2005,¹⁰⁴ they were there; and again, when she gave the keynote address at the Status and Justice in Law, Religion and Society Conference in 2019,¹⁰⁵ they were there. Outside the law school, Doug has been a dedicated and proficient gardener, who regularly shares the bounty of his labor with his neighbors and colleagues. When we lived in Lexington, I would often find a bag of freshly picked vegetables or some new plants that Doug and Carol had thinned out from their garden on my front porch. Gardening, like civil rights remedies, was an interest that we shared and often discussed and from which we both derived much pleasure. Many of our discussions occurred on Saturday afternoons when Doug, usually in his stocking feet, would do a circuit of the second floor to clear his mind and wander by my office on his route. I did not hear him come, of course, since he was in his stocking feet, and it was always a pleasant surprise.

After I read Doug's article on nationwide national government injunctions this summer, I wrote to tell him how much I liked the article and to express the hope that there would be many more, notwithstanding his impending "retirement." He assured me that he would continue to write, that he would serve

104. See generally Winnifred Fallers Sullivan, *Comparing Religions, Legally*, 63 WASH. & LEE L. REV. 913 (2006)

105. See generally Erica Turman, *Status and Justice in Law, Religion and Society Conference Presents Two Keynote Speakers*, WASH. & LEE UNIV. (Oct. 29, 2019), <https://perma.cc/C3FW-BZMK>.

as an advisor for the Restatement of Torts, Third, and that he would be teaching a seminar on tort remedies. He made clear that he would continue to contribute to scholarship and law reform. In addition, it appears that he will also continue to encourage others to do so. When I suggested in my letter that some objections to the nationwide injunction might be overcome by reinstating the device of three-judge district courts, he responded: “If we have to depart from ‘ordinary’ litigation procedure for constitutional matters, a revived three-judge court overcomes forum shopping and provides expedited access to the Supreme Court. Federal Courts scholars with long memories can contribute to this subject.” I took that as a nudge.

We wish Doug and Carol many productive and rewarding years. May the sunshine warm upon their faces and the rains fall soft upon their fields.

Tribute to Doug Rendleman

Martha Vázquez*

It is a great honor and privilege to contribute to this Tribute to Professor Rendleman—just as it is a great honor and privilege to know him as a professor, a mentor, and a legal mind.

I first met Professor Rendleman at one of the many orientation receptions we attended as new first year law students in 2015. While he may not remember our brief interaction, it occurred to me then that this was a professor I had to take a class with. And so I did, enrolling in Remedies the following year. I decided to take Remedies mostly because, knowing what I knew then about Professor Rendleman, I thought it would be interesting, and also because it sounded vaguely like a class that might be offered at Hogwarts. Little did I realize that the topic would become something of an obsession of mine and that I would spend the next two years fumbling my way through the philosophical side of the law as Professor

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Rendleman's research assistant, helping him update his textbook and publish articles on nationwide injunctions, nuisance injunctions and the environment, and prior restraint. I also did not realize at the time how much Professor Rendleman would shape my law school experience and the way I practice law.

So much of law school, especially in the first year, is learning what is and is not actionable; from identifying the elements of torts, determining whether a contract exists or was breached, or learning how to read criminal statutes. The focus is always on the wrongful parties' conduct—what did they do that hurt another person? Is it actionable? What is the right claim for the situation? Of course, we touch on damages, but in a way that makes the result feel very uncomplicated. But the first thing I learned in Remedies is that damages are often very complicated, and equitable relief even more so. And, in many ways, what the proper remedy is in a case is *more* important than the merits of the case itself. Oftentimes when my cases go to trial, the argument is not over whether the plaintiff has been injured, but rather what the damage has been. The measure of damages is very often the issue that keeps the case from settling.

But remedies are more than complicated—sorting out how to properly make a plaintiff whole can be philosophical and it can require a creative and different way of looking at legal issues. My favorite example is the case of the Jehovah's Witness who was injured in a car accident. She refused a surgery that would have allowed her to go back to her normal self from before the accident; without the surgery she was never able to walk again. There is no doubt that the other driver was at fault for her injury, but what is the proper measure of damages? Should he be forced to pay for her disability and loss of the use of her legs for the rest of her life when that was a decision she made? Or is refusing to order damages to cover that amount a form of punishment for her religious beliefs? Everyone I have ever asked has a different answer and rationale to that question—I honestly do not even remember the court's ruling, but I vividly remember the argument it sparked in class, one that Professor Rendleman enthusiastically moderated.

Because at the end of the day, that is how Professor Rendleman approaches the law. He does not approach it like it is etched in stone, as an equation that adds up to an answer. Through our work together and many conversations about nationwide injunctions (a topic on which we do not agree, but have always been able to push one another on), I came to know Professor Rendleman as a legal mind that is always thinking about the law from every angle, pushing back on the “right answers,” and challenging his students to question whether a court came to the right conclusion. Even the Supreme Court. At the end of the day, the legal system exists to enforce societal norms—are we doing it correctly? Are these remedies really righting the wrongs?

There is no answer to those questions, but the world changes so the law (and the remedies available) must change with it. Professor Rendleman had me questioning the outcomes of cases in class, and I still question outcomes now. As a litigator primarily focused on employment law, I am often dealing with cases involving injunctive relief and punitive damages. In the employment sphere, the kind of conduct warranting punitive damages in the 1980s is frequently completely different from the conduct that warrants punitive damages today. Similarly, with injunctive relief, courts that look to the public interest in determining whether an injunction is appropriate are looking at different norms today.

Professor Rendleman showed me the philosophical side of the law, but he also showed me that the law can be fun, or even silly. We had fun in those Remedies classes, debating whether or not the remedy was appropriate or whether the Supreme Court got it right, Professor Rendleman acting as both a moderator and pot-stirrer, finding joy in his students’ growing passion for determining the proper measure of damages. I also had fun working with Professor Rendleman as his research assistant; Professor Rendleman gave me considerable latitude to dig into topics on my own (in particular the constitutionality of nationwide injunctions) and was always pleased to hear that I disagreed with his assessment. He’d gently tell me I was wrong but would entertain my opinion anyway. Without a doubt, some of my favorite memories of my third year of law school are sitting in Professor Rendleman’s office, chuckling at the one

degree he chose to hang in there—his fifth-grade graduation certificate, calligraphed by hand—and discussing the various things happening in the news, whether the law review is too gung-ho about citations (it is), and what was going on at school. I had a difficult third year for many reasons, Professor Rendleman knew this and helped me get set up with volunteering opportunities outside of school, but also always provided me a bit of a respite from the rest of the world while we worked on the Remedies textbook. The last time I was in Lexington we got lunch at the Marketplace (of course) and he asked me with a smile if I was ready for the Virginia bar exam. Little did I know that the exam would feature a question on remedies. I am sure that Professor Rendleman did know, however, and couldn't resist another chance to have some fun with me.

To Professor Rendleman: Thank you for everything you have done for me, as a student, lawyer, and person. W&L will not be the same without you, but I know you will take full advantage of retirement, which I am sure will include many bike rides around Lexington, and wish you all the best in the world!

Doug Rendleman in Brazil

Edilson Vitorelli*

When an American thinks about Brazil, she probably thinks about white sand beaches and the waves of Copacabana sidewalks. Not an image one would immediately associate with Professor Doug Rendleman. The master of injunctions, complex litigation, remedies and enforcement would probably be more associated with a library than with a swimsuit.

Nevertheless, this first impression would be wrong, for two reasons. Doug Rendleman is not only about civil procedure and Brazil is not only about beaches. We have a considerably

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developed court system, which adjudicated about twenty million cases in 2020. It has, for sure, its problems, such as delays and low incentives to settlements, but it is considerably affordable (much more affordable than the American Court system) and regarded by the people as trustworthy. Brazil has also a very developed system for adjudicating class and representative actions. In 2017 alone, more than fifty thousand new class actions were filed by the state and federal prosecution offices, which are the main plaintiffs, instead of the members of the group, as it happens in the United States.

Moreover, our legal scholars are progressively being more recognized abroad. Professor Humberto Avila has written one of the most impressive books on legal principles worldwide;¹⁰⁶ Professor Luiz Guilherme Marinoni has published tens of books in Spain and in Italy. And I received, last year, the Mauro Cappelletti Book Prize, awarded by the International Association of Procedural Law every four years for the best book on Procedural Law worldwide.¹⁰⁷ Many others could be mentioned.

It comes as no surprise, therefore, that we would want to have Doug Rendleman in Brazil. I first came to know him because of his paper *The New Due Process: Rights and Remedies*,¹⁰⁸ published by the Kentucky Law Journal, in 1975. Although the paper had less than 150 pages, it displayed 798 footnotes, showing how deep and careful Doug's research is.

A colleague Marco Jobim and I host a yearly International Seminar and I had no doubt that Doug should be invited. In previous years, we also had received Francis McGovern (who sadly left us so suddenly), Linda Mullenix, Yulin Fu (China), Michelle Taruffo ("il maestro" from Italy, who also sadly departed the day before the one I was writing this text) and many others. I was thrilled when Doug accepted the invitation.

When I first met him and Carolyn, in Porto Alegre, it was delightful. Carolyn told me that this was the longest vacation

106. HUBERTO AVILA, *THEORY OF LEGAL PRINCIPLES* (2007).

107. *Young Proceduralists*, INTERNATIONAL ASSOCIATION OF PROCEDURAL LAW, <https://perma.cc/NYA3-Y5JP> (announcing the winners of the second edition of the Mauro Cappelletti Book Prize).

108. Doug Rendleman, *The New Due Process: Rights and Remedies*, 63 KY. L.J. 531 (1975).

period that they had ever taken and that she was, at first, a bit apprehensive to say yes. But Doug was very excited. This excitement became apparent when he vigorously talked about the nationwide injunction and how it has been important to fight Trump's policies, "the President our founding fathers feared."

We had an interesting exchange, because in Brazil nationwide injunctions do not present themselves as a problem. The Supreme Court has established that, as the federal government acts nationwide, it must be susceptible to court orders that interfere with its behavior everywhere. It was quite curious to note how the United States and Brazil have similar problems, as they are both federal states with continental dimensions, but similar topics do not become controversial in the same way. Our hypothesis is that, in Brazil, the appeal system is much more generous than the one in place in the United States, therefore, the federal government does not have to immediately comply with the first instance's ruling. It can take it quickly on appeal and maybe that is why we are not so worried about nationwide injunctions.

After the lecture, eating a generous Brazilian barbecue (*churrasco*), we talked about everything and I was able to grasp how fascinating that couple was. Married very soon, they were clearly still in love. Carolyn drank a beer with me and talked about her many talents, their home, their plants. And politics. It was amazing to see how concerned and involved they are with the current developments in the country and worldwide. It quickly became apparent that Doug Rendleman is much more than injunctions, class actions, and litigation.

After that, Doug and Carolyn went to Rio, where they were alone, before coming to São Paulo, for their second venue with me. As I came to discover afterwards, they had not only been to the beach, parks and museums, but also had some adventures with a lost cell phone and trying to communicate with an Uber driver that did not speak a word of English. Carolyn recovered her phone, but to this day I do not know if she was able to unlock it to see her photos.

Afterwards, they arrived in São Paulo and we met again. Professor Rendleman spoke at a special event at my university, which was celebrating its 150th anniversary, and at the Federal

Prosecutor Office. With the federal prosecutors he talked about the Emoluments Clause and how Donald Trump had violated it. This was also a fruitful exchange, as we have laws in place that try to punish this kind of behavior, but they are also controversial, so much as in the United States.

After all these conversations with Doug and Carolyn, I was even more reassured about a project I am now finishing: to publish a book in English, to explain to American readers how the Judiciary works in Brazil. The book, *A Supreme Court Made in Brazil* should be available by February 2021, and will be dedicated to Doug and all the American professors with whom I have studied with in these last few years.

Doug and Carolyn's trip was coming to an end in São Paulo. But I had saved the best for last. My wife Fabiana is a music professor and, in their last night in Brazil, we took Doug and Carolyn to see the São Paulo Symphony Orchestra. It is not only ranked as one of the best in the world, but it seats at a train station from the nineteenth century, that has been converted into a concert hall. There I found out that, when Doug and Carolyn got married, he worked in a movie theater, operating the projector. It was amazing to think about how far he had come, not only teaching in one of the most prestigious universities in the United States, but also teaching in Brazil.

Doug was really thrilled to listen to Elgar's Enigma Variations. Listen is maybe not a proper word. He conducted the orchestra from his seat, most of the time, visibly carried out by the music. As much as he is carried out by law and by teaching. It was a remarkable visit for us and I hope for them as well. May the next one be soon!

Postscript: Professor Rendleman Receives the ALLS Remedies Section Lifetime Scholarly Achievement Award

In January of this past year, Professor Rendleman was honored as the 2021 recipient of the ALLS Remedies Section Lifetime Scholarly Achievement Award. Professor Rendleman has been instrumental in creating the field of remedies. He is a tremendous inspiration to all who care about the theory and practice of remedies. He is a leading contributor to the development of the law of remedies. His care and toil are evident

in his varied publications ranging from private to public law and from legal to equitable remedies. For fifty years, Professor Rendleman has brought a human approach to remedies and encouraged critical thinking in every remedies class, article, and book. He also has ably served as chair of the remedies section, adviser to the American Law Institute, and mentor to so many. Even as the sun sets on his decades of teaching and service, Professor Rendleman continues to model the ideals of the academy with his rigorous scholarship and passion for teaching students, judges, and attorneys about the finer points of remedies law.

Description of Award—The recipient has demonstrated sustained commitment to advancing the field of remedies. Through teaching and writing, the professor has enriched understanding and refined doctrines and theories of relief. The professor's scholarship has ignited debates and altered perspectives on the law of remedies—across the domain as well as with particular remedies. In addition to contributing sustained research and thoughtful writing, the recipient also has served as a scholarly mentor and commentator to newer and seasoned professors to ensure sustained development of the law of remedies.