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A Rich Legacy

Janice M. Mueller

A RICH LEGACY

By Janice M. Mueller[†]

It was not unlike many other memorable afternoons spent in Judge Rich's company. One of several former law clerks who had come to visit the judge in Washington, I'd arrived that morning from Boston while others had traveled from as far as California. The judge seemed quite cheered by the law clerk mini-reunion gathered in a semi-circle around him and in a mood for talking and reminiscing. We chatted about recent developments at the Federal Circuit, the news in that morning's *Washington Post*, and updates on our respective lives—upcoming travel, new work responsibilities, spouses, friends, children, even pets. Always the center of attention, Judge Rich held forth for several hours, interspersing the talk with stories of drafting the 1952 Patent Act and tales of the Judge Worley days on the Court of Customs and Patent Appeals. When it was time to say our goodbyes I slipped out quickly, trying hard not to let myself believe that it could be the last time. I left the judge that day in his room at Sibley Hospital where he was undergoing cancer treatment, and departed for a two-week trip. The night I returned to Boston, Judge Rich passed away. The memory of that last magical afternoon in his hospital room is a gift that I and the others present will always cherish. I share here some other special remembrances of Judge Rich, many expressed in his own words.

I did not meet Judge Rich in person until 1990, but like many others in the intellectual property law community I had learned the better part of what I knew of patent law through his over fifty-year wealth of writings. Although numbered twenty-seventh in the judge's roster of law clerks, I had the fortuitous honor of being the first woman. I was initially taken aback when he introduced me to others as his "first girl clerk." At least, that is, until the day I heard Judge Rich refer to then-Chief Judge Helen Nies and Judge Pauline Newman as "the girl judges" of the Federal Circuit. From that moment on, being the "girl clerk" was a badge I wore with the greatest pride! I never learned why it was that Judge Rich had not hired other "girl clerks" before I came on the scene, but I'm delighted that following my departure he went on to hire six more.

Characterizing Judge Rich as a "mentor" or "father figure" hardly seems sufficient to describe the profound impact he had on his law clerks' lives. He entrusted us with a great deal of responsibility and was always

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† Associate Professor, The John Marshall Law School, Chicago, Illinois.

open to our thinking about particular cases. Having the father of modern patent law ask a twenty-something law clerk what she thought about a pending case was, needless to say, a heady experience. Our thoughts (and drafts) were always considered and examined by Judge Rich with the greatest respect and interest, although he did not, of course, always agree with them. Ultimately, his word ruled the day, and in time (if not immediately) we came to see the flaws in our former thinking. Judge Rich delighted in his clerks' achievements, and considered them part of his extended family:

> [May 19, 1998, on receiving an honorary degree:] I view the event, which, as you know, I have been through before, as [a former Rich law clerk's] great day. He has been working on this for several years and this was his big success.... As you well know, without these loyal law clerks I am nothing. Is it not clear why I love them?[1]

Judge Rich's passion for technology is well-known. In any given patent case, he wanted to know how the claimed invention operated (and often asked counsel to leave their exhibits and samples with the court clerk—who later sent them up to chambers for further examination). As a young person, he dreamed of a career in the burgeoning field of aviation, but was prevented from achieving that goal due to his less-than-perfect vision (how fortunate for patent law)! Appointed to the bench in the 1950s, when draft opinions of the CCPA had to be laboriously typed up with five carbon copies, Judge Rich in recent years welcomed personal computers and the efficiencies they brought. In 1996, at the adventuresome age of ninety-two, he learned how to use electronic mail and became an America On-Line subscriber. In his first e-mail message to me, Judge Rich wrote:

> [July 17, 1996:] I have had a hard time getting this marvelous machine to accept my password, after it had asked for [it] several times with an "!" in that humiliating triangle.... Tomorrow I have to go to my second training class on computers. Yesterday it was on Windows 95. Tomorrow it is on Word. I am the only male and the only judge.... P.S. This is great fun. Even easier than my Smith-Corona.

Some of my favorite memories of Judge Rich involve lunches. The judge liked to brown-bag it, so if there were no other more formal en-

1. E-mail communication from Judge Rich to the author. All correspondence quoted herein is on file with the author.

gagements on his calendar, we cleared the briefs from the conference table and gathered round to eat in chambers. The topics of conversation ranged from pending cases to courthouse gossip to politics to religion to pop culture—Judge Rich was fascinated by it all and viewed his clerks as windows into the thinking of the younger generation. Guests were always welcome at these in-chambers lunches and ranged from the Federal Circuit's Chief Judge to the newest law clerks from other chambers. The only criteria were a bag lunch and a willingness to share in the conversation. After leaving Judge Rich and going into teaching, I sometimes asked if a former student of mine could come by chambers to meet him. Here is a typical response from Judge Rich:

> [July 6, 1998:] Of course I'd like to meet her and give her a look around and maybe plant the seed of clerking. Fix it so she's not scared. You know the scene! What do you mean, "if it wouldn't be too much"? We all love to have people like that to eat in our chambers. Most every day somebody comes. You know there's no formality—they just have to bring their own food.... Tell her what we're all like. No telling what she'll hear. Today we got into a discussion of adoption, genetic defects, pregnancy, premature birth, and whatnot. We wouldn't mind doing 337 [19 U.S.C. § 1337] and we do know a bit of customs law. We also know a lot about relationships and other miscellany.

For all his remarkable achievements, Judge Rich was an approachable, humble man who remained quizzical throughout his career about why so many in the intellectual property community considered him a living legend. "What's all the fuss about?" he'd often ask. Whatever the reasons for the attention he received, he did not take the responsibilities of his position lightly:

> [February 14, 1997, regarding an upcoming speaking engagement:] Have I ever thought about "remarks"! That's the trouble with agreeing to say something. You have to think about what you'll say, day and night, until it's over or at least until it's "fixed" on paper. I have some tentative ideas and a few nothings by way of a starter which could become scrap on a pad. I really want to say a little something significant, to the bar and particularly the dozen or two judges who will be there. This is an opportunity. Hundreds will be there. And it has to be concise and understandable without too much talk because there is also a "speaker."

He rarely missed a chance to "get the message out" to the patent bar, even when the occasion was his own birthday celebration:

> [May 22, 1997:] The Inn [of Court] meeting was, I thought, one of the best. Dinner turned into a real birthday party. They wheeled the cake table up beside me and lit a bunch of candles and insisted I blow them out. Which I did after spreading a napkin over the cake. The meal had been great. I had asked for shrimp and we had shrimp. And perfectly cooked salmon. I sat there thinking, "this is the perfect audience on which to launch my campaign to change 'specification' over to 'written description' and I'll ask them to give me a birthday present by thinking about it."

Adaptability in all life's facets was a favorite Judge Rich theme. On the professional front he ardently believed in "progress in legal thinking," and would be the first to admit—sometimes in precedential opinions[2]—when his own thinking about a legal issue had changed over time. During the course of his career he enthusiastically (and sometimes not so subtly!) encouraged the patent bar and the judiciary to analyze and communicate the law with greater clarity and precision. At age ninety-three, he wrote:

> [July 17, 1997:] Yes, I do proselytize like mad, especially recently. I am on a binge of proselytizing: converting patent lawyers and judges from "specification" to "written description"; claims from "defining invention" to "defining scope of right to exclude," etc. I have completed "invention" to "nonobviousness"; "fraud on the Patent Office" to "inequitable conduct";

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2. *See, e.g.*, Kimberly-Clark Corp. v. Johnson & Johnson, 745 F.2d 1437, 1453-54 (Fed. Cir. 1984) (Rich, J.):

> [T]he courts, including our predecessor court as in Winslow, mentioned above, [*In re Winslow*, 365 F.2d 1017 (CCPA 1966) (Rich, J.)] decided cases on the basis of the axiom—the applicant (or patentee) is presumed to have knowledge of all material prior art—without giving the situation further thought. But a bad axiom is like a noxious weed, a thriving plant in the wrong place interfering with the growth of more desirable plants....
>
> Since we believe that progress in legal thinking is not only possible but highly desirable when it simplifies such thinking, we believe the time has come to discontinue this particular fiction of the patent law. Congress has given us in § 103 a substitute for the former "requirement for invention," which gave rise to the presumption, and that substitute, being statutory, should be used exclusively. We hereby declare the presumption that the inventor has knowledge of all material prior art to be dead.

> "undue breadth" to "lack of support under section 112, 1"; aggregations aren't patentable, only combinations; synergism is not necessary for a combination to be patentable. I have been having a great time proselytizing for a long time. Did you, perchance, mean to say "pontificating"?

Judge Rich was pragmatic about the role of the judiciary, holding a firm conviction that legal rules were rarely "bright line" and never "one size fits all":

> [July 21, 1998:] What is said in opinions depends a lot on what defendants argue to support invalidity defenses to charges of infringement. We discuss what's argued. We can't switch [public] use to [on] sale and vice versa.... Be not perplexed, and do not expect "precision." Cases' facts vary too greatly. We decide cases. The rules are in the statutes. Statutes are the skeletons onto which we try to apply the living flesh like anthropologists. Legislators can't foresee all fact situations so the rules are made general and some just evolve through time. You know [35 U.S.C. §] 102(b) goes back to 1836 and we didn't change it in 1952.

His enthusiasm for the law he was so instrumental in creating never waned, and his resolve that it be kept "on the right track" was steadfast. Judge Rich encouraged his law clerks to spread his message of clear thinking about the law:

> [January 25, 1997:] I'm pleased to hear that [your Trademark Law course] is going well. Did I ever tell you one of my favorite puzzlers: What is an invalid trademark? The answer is, of course, there is no such thing.... And here's a pet axiom of mine: It is not a question of whether people will confuse the marks but of whether the marks will confuse people.

He challenged us to think more clearly about the true function and purpose of patent claims:

> [June 14, 1998:] Yes, there's always something new to say about claims. You can push one of my current thoughts that I pushed at Fordham [Law School] which seems to take a lot of people by surprise because they are so used to hearing that the function of claims is to define the invention. What do we construe claims for, anyway? To find out what the inventor(s) invented? Hardly! Claims are frequently a far cry from what the inventor invented. In a suit, claims are construed to find out what the patentee can exclude the defendant from doing. CLAIMS ARE CON-

> STRUED TO DETERMINE THE SCOPE OF THE RIGHT TO EXCLUDE, regardless of what the inventor invented. I submit that that is the sole function of patent claims. I think this truism ought to be promoted in every seminar on the subject of claims.... Tell them to stop talking about claims defining the invention. It's a bad habit. And it seems to be almost universal.

Sometimes even the Supreme Court failed to learn Judge Rich's lessons:

> [August 16, 1997:] Reviewing a court opinion which cited *Bonito Boats v. Thundercraft*,[3] I read it again and it gave me ideas about the patent right which I pass on before teaching starts. (Not that I agree with the *Bonito* reasoning which is terrible in spots.) Of course the patent grants the right to exclude others from making, using or selling for the term of the patent (which is God only knows what at the moment). But my new idea is that you can also explain it as a temporary right to prevent the invention from going into the public domain notwithstanding its public disclosure and even commercialization, for the term of the patent. *Bonito* has a lot to say about the public domain and, erroneously I think, that it is due to "the federal patent laws."[4] The Court couldn't understand my statement in *Interpart Corp. v. Italia*[5] that "the 'patent laws' say nothing about the right to copy or use, they speak only in terms of the right to exclude," which happens to be true. [Justice] O'Connor seems to think the public's right to copy, use, etc. comes from patent law. It's there, however, from common law, unless interfered with by patent law. It would be there if there were no patent law. So how can it come from patent law? Another aspect of what we think of as "the patent" which should not be forgotten is that it is not only a grant of a right to exclude from the government; simultaneously, it is a publication, making (in principle at least) a full public disclosure of the invention due to section 112-1. So even if it does not go into the public domain during the patent term, the public gets the advantage of knowing what the invention is and how to practice it. ("*Literae patentes*" = "open letters," in short form, "patents.") That's my Saturday night lecture.

Judge Rich instinctively grasped the role of patents in our market economy:

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3. 489 U.S. 141(1989).

4. *Id.* at 151.

5. 777 F.2d 678, 685 (Fed. Cir. 1985) (overruled in part on other grounds by Midwest Indus., Inc. v. Karavan Trailers, Inc., 175 F.3d 1356, 1358-59 (Fed. Cir. 1999)).

> [September 6, 1998:] I was thinking yesterday that there is a point to be made on the basis of the *Chakrabarty*[6] case which the [Supreme] Court probably remembers. Even if they don't, it's their own case.... [The petition for *certiorari* is] talking about the "economic development of the Nation," the Constitution, and valid patents stimulating progress. Then they say: "Just as surely ... when improperly issued [patents] retard that progress, stifle technological and economic competition ...," which isn't quite so. Remember how the board [of Patent Appeals and Interferences] thought it was saving the world by refusing to patent microorganisms in both *Bergy* and *Chakrabarty* because they were alive, and fought patenting all the way to the Supreme Court on the [35 U.S.C. §] 101 issue? Would the world be better off today if the Judiciary had had to defer to the PTO "expertise" on that point... ? The weird fact is that invalid patents have the same effect as valid patents, while they last. And why not? They encourage their owners to invest risk capital, start businesses, and get products on the market. They also disclose the subject matter to the public. Nobody knows they are invalid until some court says so or some attorney faced with unpleasant facts realizes it and foregoes enforcement. Tell that to your class!

He was the consummate crusader for clear and concise language:

> [October 30, 1998:] Here is my latest thought for you to purvey to your students some day: With respect to the type of "invention" which is really a discovery, i.e., come upon by accident or unexpectedly. It is inappropriate to talk of its "conception" in the patent profession's common lingo, referring to its earliest date. The term "discovery" presumes preexistence—it was there before it was found. Discoveries, therefore, are not CONCEIVED, they are PERCEIVED and we should talk about their PERCEPTION, not their conception. My dictionary research of last evening confirms this and I am on my way to reforming the patent bar on this and I give it to you in advance for free. Pass it on. Launch a new generation of clear-speaking patent lawyers.... This points up another puzzle about the Constitution. What were the founding fathers thinking when they authorized giving "exclusive rights" to INVENTORS, for their DISCOVERIES? I think it never dawned on them that there is a difference between devising and discovering. They were just thinking about literary style.

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6. Diamond v. Chakrabarty, 447 U.S. 303 (1980).

A co-author of the 1952 Patent Act with his good friend Pasquale J. ("Pat") Federico, Judge Rich often shared candid first-person accounts of its drafting like this one:

> [August 8, 1997:] There is an interesting thing about the introductory clause of [35 U.S.C. §] 102. Pat originally wrote "An invention shall not be considered new or capable of being patented if...." As the drafting progressed, taking a tip from the Lanham Act, section 2, we turned it into the positive statement "A person shall be entitled to a patent unless..." as it reads today. We just felt like slapping down the detractors of the patent system, many of whom were in the judiciary.

All advocates appearing before the Federal Circuit will surely benefit from this practical advice:

> [April 11, 1998:] I'm just up. Just had a thought. (Shows mind is working.) This is a coaching tip in case you are still rehearsing your [moot court] team. It's something I noticed last week during hearings. Preliminarily, these young moot court arguers are generally so intense and intent on winning that they take themselves too seriously and tend to look pretty deadpan—a little bit "scared rabbit" if you know what I mean. This creates a sort of psychological barrier between them and the court. What I observed in a real argument the other day was that the first attorney was very intense and sort of combative in pushing his client's cause and rubbed me the wrong way. I felt as though he was fighting ME. The second attorney, on the other hand, was affable and had a slight smile on his face as though he knew he was on the right side and exuded an air of confidence, as though he were amused at his opponent's over-assertiveness. I empathized with him. You have probably guessed it already. The TIP is: kick your team in the pants and tell them to RELAX, that this is not a life and death matter, that they know they are on the right side and are really amused that the other side is so intense; anything to get a slight smile on their faces and keep it there during their arguments.

"Adaptability" was also Judge Rich's watchword in his daily life and interactions with others. He had an inspirational sense of equanimity and balance, rarely taking professional disagreements personally and accepting life's challenges and tribulations with an ever-optimistic world view. The work of judging buoyed and energized him. Years after he could have retired, the judge continued on full-time "active" judicial status, driving himself to court and carting home briefs for after-dinner reading almost

every night. These excerpts from our correspondence give some sense of his "miraculous vitality," a wonderfully apt descriptor borrowed from the Oxford philosopher whom Judge Rich quotes below:

> [August 21, 1996:] Had a big success today. A few weeks ago I wrote a trademark PTO opinion from which my good friend [ ] dissented with opinion. I let it cool for a good long time and then added an answer to the dissent and recirculated. Result: dissent replaced with concurrence plus thanks for putting him on the right track.

The judge took a flexible approach to all that life brought him:

> [August 22, 1996:] Tomorrow morning I get my new tooth which will be a removable accessory so that I won't swallow it in my sleep, like some others I know ... LIFE, it seems, consists of adjustments.

He was never one to be flustered by life's unexpected events:

> [July 11, 1997:] I've learned for the nth time that editing patent opinions and cooking are incompatible. Last evening I thought I'd hard-boil a couple of eggs for Helen [Judge Rich's wife, Helen Rich] and then settled down on the back porch to edit a draft. Some time later I heard a sound in the study like a block of wood falling on my desk. Then some time later I went to the front of the house and smelled something funny so I looked in the kitchen. Do you know that eggs explode like firecrackers? One blew all over the top of the stove and the other sizzled off quietly. Oh well! There is one left that I can watch. Grocery shopping tonight....

Even in his nineties, Judge Rich was relentless about keeping his backlog at bay:

> [August 10, 1997:] Saw the Post article about the [Kurt] Vonnegut [Internet] hoax published yesterday titled "A WEB OF LIES."[7] I'm glad we were in on the whole deception. It was good reading. Never trust anything you read. Was in [Politics and Prose Bookstore, Washington, D.C.] last night ordering the last two Fulghum books for Helen. Saw an interesting book on the "new books" table titled "A CIVIL ACTION,"[8] said to be non-

7. David Streitfeld & Michael Colton, *A Web of Lies; Vonnegut Hoax Shows E-Mail Must be Handled With Care*, WASHINGTON POST, Aug. 9, 1997, at B1, *available in* 1997 WL 12880503.

8. JONATHAN HARR, A CIVIL ACTION (1996).

> fiction and so exciting you can't put it down. Paperback. But I put it down because I don't have time to read opinions by others to say nothing of my own. After a non-hearing month of working down my backlog, the list came out longer than ever. Even when you get things done it takes forever to get them out....

He taught us that life's successes are often unpredictable:

> [February 17, 1997:] For your information, some guy I never met in Albany, New York once decided I was a "Republican." And so I am a judge. How does one get to be what one supposedly "is"? And who decides? It matters sometimes. Yet it is a lot of nonsense.

Judge Rich's historical perspective made even dentistry seem palatable:

> [July 31, 1998:] Unlike you, I really don't mind dentistry much. At times I have even found it relaxing compared to working. You see I got acclimated to it at an early age getting my teeth straightened when I was young. I used to spend whole days in the dentist's office where he let me play in his lab while he was building bands and stuff. Besides, pain is relative and something you don't relive in remembering it. Modern dentistry is comfortable compared to what it used to be, what with water-cooled high-speed drills, ultrasound, and reclining chairs. GO GET YOUR TEETH TAKEN CARE OF. Life gives you only two sets.

And finally:

> [February 7, 1999:] Here's something to add to my conclusion that "life consists of a series of episodes, mostly unpredictable, to which we adapt as they occur." (Rich) It was written at age 34 by a female Oxford philosophy don in 1954 in her first novel, "Under the Net":
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> > What is urgent is not urgent forever but only ephemerally. All work and all love, the search for wealth and fame, the search for truth, life itself, are made up of moments which pass and become nothing. Yet through this shaft of nothings we drive onwards with that miraculous vitality that creates our precarious habitations in the past and the future.[9]

Although he probably considered Rochester, New York, his true home, and spent most summers in his Newtown, Connecticut retreat, Judge Rich

9. IRIS MURDOCH, UNDER THE NET 275 (1954).

thoroughly enjoyed life in Washington, D.C. Lafayette Park, home of the Federal Circuit's courthouse, was especially dear to him. During the holidays, every new Rich law clerk received a copy—custom-framed by the judge—of what came to be known simply as "the snow picture," a pastoral scene of a freshly snow-blanketed Lafayette Park photographed by the judge from his chambers window in 1967.[10] With a telescope he later set up at that same window, we were treated to a bird's-eye view across the park of the White House reviewing stand for the 1992 Presidential inaugural parade. Judge Rich was proud to have played a role in the preservation of the architecture surrounding Lafayette Park:

> [August 19, 1997, in response to a description of the JFK Museum in Boston:] I'm very glad to know about the preservation of [Jacqueline Kennedy's] part in the saving of Lafayette Park and the designing of our courthouse and its twin, the New Executive Office Building. I was right in the middle of the whole thing. There was a guy in GSA named Knott who seemed to be in charge and the whole business was started by a guy named William Walton, I think, on the Fine Arts Commission who knew Jackie. Were they mentioned? Who lost out were two architect firms in Boston who had the courthouse job in the beginning and wanted to tear down Dolley [the Dolley Madison House] and Tayloe [the Benjamin Tayloe House] and even the State, War and Navy Building (Old Executive Office Building to you). That's who took me to the [Boston] Athenaeum and home to dinner in some suburb back when Vee [Judge Rich's daughter] was in Radcliffe. Nice people but confirmed modernists. The Park would have looked like 18th and K streets.

Those who did not know him personally may not be familiar with Judge Rich's marvelous sense of humor. Visitors to his chambers were likely to be shown the "obviousness detector," a spinning doorknob harkening back to the old "invention" standard of *Hotchkiss v. Greenwood*,[11] and "Yorrick," a human skull Judge Rich collected when he worked as a boy at a Rochester medical supply company. He frequently reminded us that "judges are people, too," and found joy in the small and simple events of daily life as much as in the many honors and accolades he attained:

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10. After Judge Rich's death, his colleague Judge Raymond Clevenger presented the last "snow picture" to Jacqueline Wright, the young woman lawyer who had been slated to clerk for Judge Rich beginning in the fall of 1999.

11. 52 U.S. 248 (1850).

> [August 20, 1997:] About cats: I had a beaut for 9 years. Name was just Puss. Great friend but could be quite annoying. Helen has a picture of Puss smiling at me in her room right now. In Newtown Puss used to chase the neighbor's boxer away! Dominant female.... Most of the cats I have known sleep on people's beds and the people in them. Puss liked to sleep on the thermostat of my electric blanket, which turned it off of course. We had a nightly routine. When I pulled down the counterpane Puss would fight my doing so by sitting on it until I covered her with it and then jump out and sit on it again. As I said, tried to dominate. Now I will go dorminate.

> [October 4, 1997:] Oh yes, the Promise Keepers. No, I have not joined. Personally, I have always done my share of the housework, without any promise.... I am not surprised to learn that the PK movement ... was founded by a former football coach, which would account for his fondness for stadiums. It's a men's' group and an interesting development [in that] a "support group" has been organized for the assistance of women married to men who have gone off to Washington to hug each other and lay their hands on one another's heads....

Consistent with his natural curiosity and love of learning, Judge Rich was a seasoned traveler and adventurer. At the age of ninety-four, he flew to Italy as the guest of honor at an intellectual property law conference in Florence. Upon return he wrote:

> [July 19, 1998:] I'll accept [a fellow conference participant's] appraisal of my "form" in Italy as "vintage," though the word has so many meanings and innuendoes when not applied to grapes and their products that it is not clear to me what he may have meant. Nevertheless, it is bound to evoke the image of a wine cellar and I'll take it at that; I have seen a few. Reasonably good wine, maybe even of a particularly good year (like 1952, the only one I had anything to say something about) and in a very old bottle, dust-covered, moldy and covered with cobwebs and certainly no longer attractive. That's just how I feel. Vintage!

As these excerpts from our correspondence show, the judge was a gifted writer with a felicitous skill for cutting through gobbledy-gook. He expressed himself with brevity, never using two words when one would do. Many were the times that a draft opinion was returned to me with what had previously been two or three rather plump sentences succinctly transformed into a single tight, crisp thought. He taught us the value of preci-

sion in writing and thinking, and the risk of saying more than was necessary to resolve any given issue. In an interview Judge Rich gave to the *ABA/IPL Section Newsletter* just a few months before his death, he commented that

> [t]he patent bar, unfortunately, has been talking a certain amount of thoughtless nonsense for generations. Words are tricky things. Habits are hard to break. Error gets passed on. Due to unapparent ambiguities, words are misunderstood by users. Often the meaning the user is thinking of is not conveyed to the listener, who assigns a different meaning.[12]

Much has been made of Judge Rich's legacy of over one thousand authored opinions.[13] But perhaps an equally important, if not even greater, contribution was his behind-the-scenes input. Precedential opinions of the Federal Circuit are circulated to all judges prior to issuance. Judge Rich's comments on the opinions authored by his colleagues, circulated in the pre-computer years via memos he personally typed in red ribbon on yellow paper, are legendary for their often razor-sharp critiques. Though always written in the spirit of constructive criticism, these "Rich-grams" must have struck fear (among other emotions) in the hearts of their recipients. He minced no words; viz.: "If there is anything to support the reversal here other than the *ipse dixit* of the panel, the opinion had better say what it is...." In a different case:

> The majority seems to have been led into this anomalous position of both not reaching a question and then proceeding to discuss the same question by a desire to answer the dissenting opinion. It should either stick to the proposition it is not reaching by keeping quiet, or give the issue full discussion. It did neither....

In the end, I believe Judge Rich's greatest legacy is that of teacher—of his judicial colleagues, his law clerks, the patent bar, and the technology community at large. In everything he wrote, spoke, and did, his ultimate love for and devotion to this law he helped create—the incentive system we call patent law—was his guiding force and spirit. It kept him on the court, never taking senior status and never missing oral argument, for over

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12. Janice M. Mueller, *An Interview with Judge Giles S. Rich, U.S. Court of Appeals for the Federal Circuit*, 17 ABA INTELLECTUAL PROPERTY LAW SECTION NEWSLETTER 1, 1 (Spring 1999).

13. *See generally* Nadine Cohodas, *The Founding Father of Patent Law*, LEGAL TIMES, July 10, 1995, at 1.

forty years. At the 1990 presentation of his portrait to the Federal Circuit, Judge Rich told his audience that "I don't suppose you'd be surprised that it's the pure enjoyment of being out here on the frontier with all these inventions all the time that has kept me going all these years in this chosen field of mine—patent law." He liked to show D.C. visitors the inscription over the door to the Department of Commerce: Abraham Lincoln's remark that "[t]he Patent System added the fuel of interest to the fire of genius." That fire burned bright in Judge Rich, and our world is now darker for his departure. Ninety-five years were not nearly enough.

The judge departed as he had lived—alert and focused and at the top of his game until the very end. In a note he wrote to me following the untimely death of his dear friend Judge Helen Nies in 1996, Judge Rich remarked that "I am really happy that Helen's wonderful life ended abruptly in full swing without any of the so common varieties of slow disintegration." When I read those words again in preparing these thoughts, it struck me that that is exactly how Judge Rich left us, and that that's exactly how he wanted to go. In this we can take some small comfort.

No legacy as unique and wonderful as Judge Rich's could ever be reduced to a single epitaph, but I offer this final thought. One day during my clerkship I needed to retrieve some papers from Judge Rich's desk. He had stepped away but left one of the desk's writing slides pulled out. There I saw that he had taped a copy of the following inscription:

> The purpose of life is to spend it at something that outlives you.

I quickly copied those words on a scrap of paper and filed them away for safekeeping. They sum up Judge Rich to me. His life's work has firmly set the foundations of modern patent law, and his boundless legacy of optimism, encouragement, and love for family, friends, and all those who make their life in this law is a timeless gift in which we all share.

Thank you, Judge Rich, our teacher.