

**Remarks of**  
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**Acting Assistant Secretary of Commerce and**  
**Acting Commissioner of Patents and Trademarks**

**at**  
**Memorial Service for**  
**Judge Giles Sutherland Rich**

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In the early part of 1789, a delegate to the Constitutional Convention of that year, meeting in Philadelphia, penned a simple, yet potentially powerful phrase. “The Congress shall have the power. . . . . To promote the progress of science and the useful arts, by securing for limited times to . . . inventors the exclusive right to their . . . discoveries. James Madison, commenting on this phrase in Federalist Paper 43, stated: “The utility of such a matter can scarcely be questioned.”

Few phrases in the constitution have had a more long-lasting effect on the economic development and well-being of the United States, and few individuals have contributed more to breathing life into that simple notion and endowing it with the strength and facility to meet the challenges of the next millennium than the man we gather to honor today: Judge Giles Sutherland Rich.

As Acting Commissioner of the United States Patent and Trademark Office, and on behalf of the entire USPTO community, it is a distinct privilege to be here today to honor Judge Rich’s memory and his incredible lifetime of work and achievement.

I have been a patent attorney almost all my adult life. Like many in this room, it is my life’s work -- it’s all I know -- and I hope to continue in its service for the rest of my life. So, few experiences are as humbling than to attempt to honor the seminal figure of this great area of the law, but I am proud to make that attempt, because Judge Rich represented the epitome of what our work, and the grace and intelligence of how to practice it, was all about.

Others today will speak of Judge Rich’s contributions as a judge; let me take the opportunity to remind us how far technology and the intellectual property system which supports it has come in his lifetime and the impact of his career on it.

On April 18, 1951, Congressman Bryan of South Carolina rose and introduced a bill, H.R. 3760, which was the culmination of over four years work by a two person drafting committee composed of the Examiner-in-Chief of the Patent Office, P.J.

Federico, and the then-President of the New York Intellectual Property Law Association, Giles Sutherland Rich. This bill became the Patent Act of 1952, the most significant revision of the U.S. patent law since 1836.

This law, so, facile and enduring, so “robust” in the language of the computer software engineer, that it has easily been applied to technologies unimaginable at the time of its drafting, is one of the enduring legacies of Judge Rich. It informs our work and the work of our constituents daily, and continues to provide the basis for one of the world’s great intellectual property systems. It reversed the direction of the Supreme Court’s antipathy towards patents and the patent system at the time and for the first time codified such important principals as non-obviousness as a grounds for patentability. It provided the legal and pedagogical basis to allow this system to rise and meet the challenges of advancing technology. Most importantly, perhaps, it represents one of Judge Rich’s greatest contributions: his unflagging belief -- even when it was unfashionable -- that our system of intellectual property is one of the great instruments of technological growth and one of the economic bulwarks of our Nation.

Judge Rich was born on the dawn of new century, and his life spanned arguably one of the greatest, if not the greatest, period of invention in the history of humankind. Now, as we enter the next millennium, his work has helped spark what may be an ever greater age of innovation.

At the time of Judge Rich's birth, the Patent Office had only a few hundred employees, and it was still a subordinate agency of the Interior Department, housed in the Old Patent Office Building between 7th and 9th Streets, N.W. 2,500 registered practitioners filed about 42,000 patent applications, and the Patent Office granted 26,500 patents.

Today, the Patent and Trademark Office employs almost 6,000 people and occupies more than 18 office buildings across the river. This year, we expect to receive

about 270,000 patent applications and grant close to 145,000 patents from 20,000 practitioners.

At the time of Judge Rich's birth, more than one-third of all patent applications concerned bicycle technology. Just the previous year we had lifted the requirement that a model be supplied if one claimed a heavier-than-air flying machine, thought to be necessary to prove that it was technologically even possible. Today, we routinely examine patent applications in diverse technological areas developed almost entirely of this century, such as aeronautics, computers, and polymer chemistry, and we are striving to cope with emerging technological areas such as bio-informatics, expressed sequence tags, and Internet business methods.

The technological advancements in Judge Rich's lifetime have been truly breathtaking. By some estimates, 50 percent of the store of human knowledge has been produced in the last half-century alone. And this continues to accelerate.

And, so, as we prepare to enter the 21st century, we do so at a time of great promise and prosperity. The United States is currently enjoying the longest peacetime expansion in history. Many experts credit a large part of this economic boom to the enhancement of competition generated by new technologies. No harsher a judge than Wall Street recognizes and validates this work in its incredible capitalization of new corporations, the principal assets of which are intellectual property, some on technologies not even thought protectable until recent days.

One of the great pleasures, and occasional banes, of my job is that I get to travel. I have just returned, for example, from the opening sessions of the annual Governing Bodies meeting of the World Intellectual Property Organization in Geneva. It is no exaggeration to note that our system is admired, and even envied throughout the world. In just one telling example, our Trilateral Partners -- ourselves, the JPO, and the European Patent Office -- have asked to take up the question at our next regular meeting in November of Business Method Patents. Not the substance of them, mind you, but the

reality of them. How to search and examine them and how to share this information. This would not have even been conceivable without the work of Judge Rich.

As this example suggests, many of his subsequent opinions as a judge of the Court of Appeals for the Federal Circuit, also significantly affected the law of subject matter patentability – what is patentable in the first instance – and continue to keep the United States technological prowess on the cutting edge. For example, his landmark opinion in the 1979 *Chakrabarty* case, subsequently affirmed by the Supreme Court, that section 101 of the Patent Act extended to “anything under the sun, made by the hand of man” was the catalyst for our now booming biotechnology industry, one of the most important as we look forward into the new century. Similarly, his authorship of the 1998 decision in *State Street Bank vs. Signature Financial*, is helping to spur unprecedented growth in the electronic commerce and the Internet.

The *State Street* decision is perhaps the best example of the breadth of his vision and foresight. The Patent and Trademark Office had been issuing business patent methods for more than a decade, and yet it took Judge Rich’s cogent words in that case to move not only the law, but the world’s use and understanding of our system, in a new direction.

We are now experiencing unprecedented growth at the USPTO, especially in these two fields. So his work directly affects our work every single day, as well, although in some honesty, there are days when we might have hoped it wouldn’t have affected quite so significantly. It can be a little hard to keep up.

Judge Rich, like Madison, Pinckney, and the other early proponents of strong, uniform patent protection, knew that there is a quintessentially American spirit that drives us to challenge the scientific and intellectual status quo. He dedicated his career to ensuring that this spirit would benefit from the protection of a vibrant and consistent patent system -- and he clearly succeeded. The youthful vigor that earned him the

distinction as the country's longest serving active federal judge has likewise served as an elixir for our national economic well-being.

Exactly one hundred years ago this year, in 1899, one of my predecessors, Charles Duell, was credited, falsely as it turns out, with a quote which has, perhaps unfortunately, endured. He is said to have said, "We should close the Patent Office, because everything that could have been invented, has been invented." Few if any figures of this century have put the lie to that notion any more strongly than the life, and the career, of Giles Sutherland Rich. Among his many gifts -- boundless energy, an unwavering curiosity, and a passion for the law -- Judge Rich was blessed with the gift of long years. Fortunately for all of us, and as his name suggests, he gave richly of himself during his 95 years on this Earth. His legacy shall undoubtedly endure for at least that long.

Let me leave you with another quote, this time from a President, and patent holder, Abraham Lincoln. Lincoln said of the patent system: it "add[s] the fuel of interest to the spark of genius." It was the genius of Giles Sutherland Rich, which, in no small measure, has made that system the reality it is today.

Thank you.