

"As Time Goes By -

'A Richly Rewarding Association: The NYIPLA as His Spring-Board'*

by Dale Carlson

The late Federal Circuit Court of Appeals Judge Giles Sutherland Rich's dad, G. Willard, was well aware of the New York Patent Law Association (as our association was previously known) before his son may have even dreamed of following in his father's footsteps by becoming a patent lawyer. In fact, G. Willard Giles was one of 258 attendees at the NYIPLA's first annual dinner in honor of the federal judiciary at the Waldorf=Astoria on December 6, 1922. That dinner marked the beginning of a long and hallowed tradition of honoring federal judges each year at an NYIPLA dinner – a tradition that continues to this day.

At the first NYIPLA dinner, G. Willard was in good company. The guest list included luminaries from the federal bench, including Augustus and Learned Hand. It also included Archibald Cox, a member of the NYIPLA's Board of Governors and father of Archibald Cox, Jr., special prosecutor for the Watergate scandal. Perhaps not without irony, Archibald, Jr. began his legal career as a law clerk for Judge Learned Hand.

The first NYIPLA annual dinner must have been a spectacle to behold, replete with a menu in the form of a patent to co-inventors "Cook" and "Chef". The patent contained drawings of the menu items, including one depicting a cocktail glass containing an undisclosed beverage. By way of further description, the specification was short on details, noting only that the beverage "if not made by a 'secret process' is certainly made by a process in secret." Needless to say, the Prohibition in effect at the time did not put a damper on the festivities, nor the good humor of the participants.

We may wonder what effect the spectacle of that "judges dinner" may have had on G. Willard's psyche, and whether the effect was conveyed to his son, who at the time was just starting college at Harvard. In any event, by the time Giles had completed his law studies at Columbia, and was ready to join his dad's law firm, the roaring 20s had ended and the stock market was in the process of crashing.

Early on, Giles wrote with the logical mind of someone destined to one day become a judge. In a 1933 article entitled "The Wrong Clue, Sherlock", appearing in the Journal of the Patent Office Society, he critiqued another author's



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statements concerning the Constitutional mandate relating to inventions. The other author had commented that "an invention must promote progress in order to be patentable."

In dissecting Article 1, Section 8, Clause 8 of the Constitution, Giles concluded that the Constitutional restrictions are but two, namely that the exclusive right is for the benefit of the inventors, and the right applies only to their discoveries. He concluded that "we see no condition precedent to the granting of a patent requiring that the invention patented shall promote anything. Congress has the power to make laws which shall promote progress. The laws are to do the promoting..."

Less than two decades later, Giles was on the ladder toward becoming the NYIPLA's President. As NYIPLA Vice-President in 1948 and 1949, Giles was responsible for explaining to Congressional committees several bills that the NYIPLA had introduced in Congress to legislatively overrule the Supreme Court's *Mercoid* cases that effectively abolished the doctrine of contributory patent infringement.

During 1950 and 1951, Giles served as the NYIPLA President. He also worked on a two-person drafting committee, together with Paul Rose, to prepare what later became the Patent Act of 1952. Needless to say, he was in the national limelight for patent matters.

When Giles expressed an interest in becoming a federal judge, the NYIPLA stood ready to help. In an internal NYIPLA memo dated January 16, 1956, Virgil C. Kline, a past member of the NYIPLA's Board of Governors, wrote:

Mr. Floyd Crews [the NYIPLA's President, 1956-57] called me about a week ago and said that he was interested in securing some help for Giles Rich's attempt to become appointed a Judge of the CCPA....

Mr. Judson Morehouse, Chairman of the Republican State Committee, has his office in the National Republican Club. Perhaps I can approach him....

All they hope to have is for Mr. Morehouse to pass on the word that as far as the State Committee is concerned, Mr. Giles Rich would be satisfactory for the appointment....

On May 17, 1956, President Eisenhower nominated Giles to be an Associate Judge of the CCPA. Would this have happened without the NYIPLA's active support for the nomination? Perhaps, but not without the long Rich association with the NYIPLA that thrust him into the national limelight in the first instance.

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