

"As Time Goes By - A Rose Without Thorns"

by Dale Carlson

In our last column, we considered Past President Giles Rich's role as part of a two-person drafting team that framed the Patent Act of 1952. The other person on that team was a gentleman named Paul A. Rose. Mr. Rose passed away on October 29, 2004 at the ripe old age of ninety-seven.

The drafting team for the 1952 Act bridged two cities - Giles Rich being a New Yorker and Mr. Rose being a Washingtonian. Although physically located in Washington, Mr. Rose had an influence on many of our members above-and-beyond the obvious impact of the 1952 Act on us all. First, he taught "patent practice and procedure" at George Washington Law School for many years. Second, he was, at the time, the manager of the Washington office of the patent branch of Union Carbide Corporation.

Back in those days, companies like Union Carbide, GE and DuPont, to name a few, had extensive training programs as a means for introducing new patent lawyers to the profession, and offering them well-rounded practical experience. Paul Rose played an instrumental role in the training of new patent lawyers at Carbide. Since Carbide was based in Manhattan then, he was effectively enhancing the skill-set of lawyers who would become members of our Association.

One of our Association's retired members, Larry Kastriner, vividly remembers taking Mr. Rose's course at GW Law, and, upon joining Carbide, being accompanied by Mr. Rose to his first interviews with Patent Examiners. Larry recalls that Mr. Rose "seemed to know everybody" at the Patent Office.

The tutelage by Mr. Rose served Larry well. Larry went on to become chief patent counsel for Praxair in Danbury, and to serve a twenty-year stint teaching patent law at Pace University Law School in White Plains. Our Association's Henry Renk has succeeded him in the teaching post at Pace.

Twelve years after completing his role in framing the 1952 Act, Mr. Rose gave a forceful speech before the Georgetown Patent Law Club in Washington. It was given on December 17, 1964, and entitled "U.S. Patent Examination System - Why Change a Good Thing? (For the Wrong Reasons)".

In the opening of his speech, Mr. Rose alluded to the popular opinion back then that the patent examination system was about to collapse under its own weight absent some drastic change - due the mounting backlog of patent applications attributable to the "techni-

cal explosion" purportedly occurring back then. In addressing this popular opinion, Mr. Rose minced no words in stating that "this theme has been stated as fact so many times that even members of the Bar and Committees of Congress are beginning to believe it and repeat it."

In the same speech, Mr. Rose addressed the possibility of introducing "deferred examination" into our patent system, a policy that had been previously adopted by the Dutch back before the European Patent Office came into being. Again, he didn't mince words in stating "should we adopt the practices of a country where the policy is to restrict rather than to expand its patent system to make it truly an incentive system? The Dutch don't like patents because 80 percent of their patents issue to foreigners and only tend to restrict the local economy. That is why the Dutch have the best or most rigid examining system in Europe. It has been suggested that the Dutch probably wouldn't even have a patent system if it were not for the fact that not having one might cause other nations to [t]hink that they are backward. Therefore, the suggested imitation of the Dutch system is based on the wrong motivation. We should be thinking in terms of operating our system to increase its incentive force, rather than in terms of how we can amend it so as to operate it more cheaply and easily."

Those words ring as true today as they doubtless did when Mr. Rose gave his forceful speech over forty years ago. As we contemplate the current patent reform initiatives, we would do well to keep Mr. Rose's words in mind.

In addition, our Association should reflect on how well Mr. Rose and Giles Rich bridged any geo-political gap that existed between New York and Washington. We should consider how to best have our Association's voice added to those voices, regional, national, and international, that have already spoken on the various facets of reform. As we have done in the past, our Association can once again serve as a "voice of reason" in helping to insure that any changes made to

the system will, in fact, "increase its incentive force", not merely allow it to operate "more cheaply and easily".

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