

# A Set of One

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In every respect, Emeritus Distinguished Professor of Law and Horace O. Coil Chair in Litigation, Richard Marcus—“Rick” to everyone who knows him—is the quintessential academic. Indeed, if one were writing a movie that required a law professor archetype, they could do no better than to have Rick as their leading man. He is a commanding presence in the classroom, a highly accomplished scholar, and deeply respected by his colleagues. He is also endearingly quirky, as a professor ought to be. His fashion aesthetic might be called *couture du Goodwill*. He often strolls the halls of the school barefoot, having left his Birkenstocks behind in his office. In those hallways, he is quick to engage in substantive conversation, but has little patience—indeed, outright disdain—for small talk or gossip.

I have known Rick for over thirty years, and there is no one I have more respect for as a professional. It is an honor, privilege, and true pleasure to celebrate Rick in this special issue.

Although Rick might be the quintessential law professor, he is, strangely enough, also unique. His uniqueness comes from the full combination of his mind, his personality, his voice, his style, and his presence. He could easily have been conceived as a protagonist in a Charles Dickens novel. Brilliant and endearing, a celebrated scholar and a colossal presence in the classroom, he is an experience, and, for anyone who has encountered him, it’s a memory long to be cherished.

In his scholarship, Rick is a proceduralist. By necessity, therefore, his scholarship is practical and aimed at real-world effects. He has built his career around that fundamental focus. He is the lead author of the casebook *Complex Litigation*,<sup>1</sup> author of several volumes of *Federal Practice and Procedure* (aka “Wright & Miller”),<sup>2</sup> and is Reporter to the Advisory Committee on Civil Rules of the Judicial Conference of the United States. He has published numerous law

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1. RICHARD L. MARCUS, MARTIN H. REDISH, JAMES E. PFANDER & DIEGO A. ZAMBRANO, *COMPLEX LITIGATION: CASES AND MATERIALS ON ADVANCED CIVIL PROCEDURE* (7th ed. 2021).

2. *See, e.g.*, CHARLES ALAN WRIGHT, ARTHUR R. MILLER, MARY KAY KANE & RICHARD L. MARCUS, *FEDERAL PRACTICE AND PROCEDURE* (3d ed. 2011).

review articles on a variety of procedural subjects. The sum of his more than forty-five years in the academy has been procedure.

Rick is old-school in the very best way. His scholarship harkens back to the great proceduralists, including such notables as Charles Alan Wright, Jack Weinstein, Mary Kay Kane, and Margaret Berger. These are scholars that saw their mission as serving the intellect of the academy and the practical needs of the courts. The former had to inform the latter; but the latter could not be sacrificed for the former.

Yet, while Rick's scholarship is procedurally focused, it is fully in service of substance. Invariably, rules guide outcomes and must be informed by objectives. It is sometimes asserted that scholars who are long on procedure are short on substance. This is an unfortunate misconception. Rick's scholarship proves the error. His scholarship fully explores the substantive impacts of the procedural rules he considers. Rules of procedure are sources of social engineering no less than substantive law; Rick's scholarship is a model for scholarly analysis of rules against the empirical impacts of those rules. He is generally less interested in advocating for certain effects, but is assiduous in evaluating whether some rule will have the effects that its authors or advocates intend.

As a treatise and casebook author, Rick is naturally inclined to examine the current state-of-the-art of civil procedure. In this, he has few peers. His scholarship excels in contemplating the effectiveness of current doctrine and envisioning what changes will improve procedural performance. His articles, however, evince a somewhat different aspect to his scholarly character. In standing on the shores of current doctrine, he repeatedly demonstrates the ability to see the waves of change breaking upon those shores.

Two articles with resonant titles illustrate this talent well, both contemplating whether those waves would be evolutionary or revolutionary in their impacts. In a 2008 Northwestern University Law Review article, Rick considered whether computers would truly revolutionize legal practice.<sup>3</sup> In the second, published in 2018 in the North Carolina Law Review, he asked whether the 1990s amendments to Federal Rule of Procedure 23, which governs class actions, would cause revolutionary change in what was concededly a revolutionary enactment in 1966.<sup>4</sup> In both articles, Rick brings sober reflection to the questions presented, placing them in the broader context in which they exist. Neither computers nor class actions exist in a vacuum, and Rick brings considerable skill in evaluating them respectively in their broader contexts.

Of some importance to Rick and the answers to the questions he poses, is that computers and the information age were largely thrust upon the law, whereas the rules of class actions were internal to the law and applicable to

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3. Richard L. Marcus, *The Impact of Computers on the Legal Profession: Evolution or Revolution?*, 102 NW. U. L. REV. 1827, 1828–29 (2008).

4. Richard Marcus, *Revolution v. Evolution in Class Action Reform*, 96 N.C. L. REV. 903, 905 (2018).

societal events. In the case of computers, a key issue concerned how the law would respond to the technological revolution brought about by the computer, which was not only impacting the law but all of society. In regard to the rules governing class actions, they are essentially products of courts and scholars seeking efficiency and fairness. Whereas the law had to respond to changes in society wrought by technology in the case of the computer, the law sought to adjust the rules of class actions to affect changes in society. Rick's work is exemplary in considering computers and class actions in their separate spheres, assessing computer impacts from the outside-in, and class actions from the inside-out.

Another important aspect of Rick's scholarship evidenced by these two articles was his early treatment of subjects that echo in importance to this day. In the case of computers, a crucial issue of today that parallels much of Rick's 2008 article is artificial intelligence. The broad set of criteria that Rick considered then in relation to the likely impacts of computers could be refashioned and applied productively to artificial intelligence. And the debates about class actions have hardly abated since Rick explored the subject in 2018—the debate, in fact, has expanded into unlikely domains, including by implication to Article III of the U.S. Constitution.<sup>5</sup>

Rick is old-school in the classroom as well. He is intellectually demanding of his students and that expectation has not changed with the changing generations of his students. Those students paying close attention recognize the value of his demanding classroom while still suffering its throes. The others come to recognize the value of his methods when they begin to practice. The rigor he brings to legal analysis is the currency that will help distinguish his students in the courtrooms and boardrooms in which they will spend their time.

Rick's rigorous analytical mind is not limited to his scholarship or to his classroom. It is well evidenced in faculty meetings as well. And his booming intellect is always accompanied by his booming voice. No microphone is needed when Rick raises his hand in a faculty meeting.

On a personal note, I have been inordinately benefitted by having Rick as a colleague. Together with Mary Kay Kane, there is no one beyond Rick Marcus that has had such an influence on my career as a scholar. He likely doesn't know

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5. See, e.g., *Barbara v. Trump*, No. 25-CV-244-JL-AJ, 2025 WL 1904338, at \*16 (D.N.H. July 10, 2025) (The court granted class certification to challenge President Donald Trump's order purporting to end birthright citizenship for children born to undocumented parents, as follows: "All current and future persons who are born on or after February 20, 2025, where (1) that person's mother was unlawfully present in the United States and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) that person's mother's presence in the United States was lawful but temporary, and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth."); see generally David Marcus, *The Class Action After Trump v. CASA*, 72 UCLA L. REV. DISCOURSE 2, 2 (2025) ("A district court's decision certifying a birthright citizenship class exemplifies how courts should treat many challenges to Trump Administration policies going forward. Only the radical, unprincipled reinvention of class action doctrine—a reinvention wholly at odds with rule text, history, structure, and governing precedent—could deny the benefits of class action procedure to victims of President Trump's illegal policies.").

the effect he's had on me and so many others. But his example of rigor, fair-mindedness for alternative points of view, and, perhaps most of all, his attention to detail, have all made their impression on me. I cannot claim to have mastered the craft of being that quintessential law professor, as has Rick, but it provides a lodestar to which I aspire.

Rick has had an enormous impact on the profession of law. His influence has been and will continue to be felt indefinitely, internationally, nationally, and locally. He is a model of what we do as scholars and teachers. As such, Rick represents the set of professionals to which I am so proud to be a member. At the same time, Rick is completely and utterly unique, as a scholar, teacher, colleague, and person of impeccable intelligence and character. He is a set of one.

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