Richard Marcus: An Encomium

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As long as I have researched, written, and taught complex civil litigation, Rick Marcus has been my go-to person to find out what new civil procedure rules are in the making, why, and in response to whose pleas. I am not certain when I first met Rick, but I think it was when I was still the research director of the RAND Institute for Civil Justice (ICJ), long before I joined legal academia. From the inception of the ICJ, civil procedure reform was central to its agenda, and discovery was high on the ICJ's sponsors' agenda. To many, particularly those who regularly found themselves on the defense side, discovery was (and is) the great bugaboo of United States civil litigation. It was too much. It took too long, cost too much, and required too much attention from corporate leaders; this was the mantra of those who sought to rein in the discovery practice by amending the federal rules.

I was not then very familiar with the Federal Rules of Civil Procedure, but I had seen the survey data and engaged in numerous conversations with defense counsel that articulated this view.[1] I read and listened with interest, but I was puzzled by the extent of concern, given that the available case-level data indicated that most civil cases had no discovery and those in which some discovery had taken place evinced little such activity. I was grateful, therefore, to be invited—by Rick or one of his associates—to attend a meeting on the federal discovery rules that I think took place at UC Law SF (formerly UC Hastings). My memory of that meeting is foggy, but what stands out is that it was the occasion of my meeting Rick. At the time, many law professors questioned what a non-law-trained, empirical social scientist like me could contribute to a discussion of civil procedure. Rick, however, welcomed me into the conversation. He answered my questions and engaged with me in an exchange about the meaning of the disconnect between the advocates' claims and the empirical data.

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1. *See generally* PAUL R. CONNOLLY, EDITH A. HOLLEMAN & MICHAEL J. KUHLMAN, JUDICIAL CONTROLS AND THE CIVIL LITIGATIVE PROCESS: DISCOVERY (Fed. Jud. Ctr. 1978); DAVID M. TRUBEK, JOEL B. GROSSMAN, WILLIAM L.F. FELSTINER, HERBERT M. KRITZER & AUSTIN SARAT, CIVIL LITIGATION RESEARCH PROJECT: FINAL REPORT (Univ. Wis. L. Sch. 1983); Judith A. McKenna & Elizabeth C. Wiggins, *Empirical Research on Civil Discovery*, 39 B.C. L. REV. 785 (1998).

Thus, began what has been a decades-long scholarly and personal relationship. Over the years, Rick and I have served on numerous panels together, read and critiqued each other's work, discussed the politics of civil procedure reform, and shared too many late nights at airports, awaiting delayed flights, after daylong academic meetings. Notwithstanding our separate career paths and different institutional homes, Rick has become a treasured colleague. I am no longer quite so perplexed about the ongoing furor over discovery, understanding now—in part because of Rick's work and in part because of my own involvement in civil procedure reform research—that while discovery is not the bane of the average civil litigant's experience, it is a source of immense expense and some considerable risk for repeat corporate defendants who dominate the rule reform process.

My perspective on civil procedure shifted when I joined Stanford Law School's faculty and began to teach complex litigation. Although my focus remained how civil litigation proceeds "on the ground," I needed to learn the rules and understand the rule-making process. Rick's journal articles and conference contributions were important sources of my education. And over time, my students and I were grateful beneficiaries of his guest lectures. When my attention shifted to legal policy developments outside the United States, the fact that Rick too was casting a careful eye on those developments turned out to be particularly useful. At that time, about a decade-and-a-half ago, Rick and his colleague Geoffrey Hazard were among a very few American scholars of civil procedure who were following, analyzing and contributing to civil procedure developments outside the United States. Through Rick and Geoff, I learned about the efforts of the then-nascent European Law Institute's UNIDROIT initiative to compare and perhaps someday integrate common and civil law procedural regimes. After Geoff's death, Rick brought news of European and Asian developments back to the U.S. legal community and, as Associate Reporter to the Civil Rules Advisory Committee, to the U.S. rule-making process. I have been grateful for Rick's efforts to broaden the perspective of U.S. law students and faculty to include not just an interest in comparative law theory, but knowledge of global practice.

Compared to my younger law faculty colleagues, Rick is somewhat of a throwback to the *Paper Chase* era of a rather formal and somewhat gruff law professor, pressing interlocutors with sharp questions and not suffering fools lightly. But his past students' stories about his mentoring long after they left law school contradict this impression. I have been fortunate to experience Rick's generosity and care for others. I have come to consider him a friend, as well as a professional colleague. And now, as I approach my mid-80's, I have a new reason to treasure Rick as a role model for emeritus life: officially retire, continue to teach, write, and serve as Advisory Civil Rules Committee Reporter. You almost make it look attractive, Rick! Thanks for your work over the years and cheers as you move into this next stage of your career.

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