TRIBUTE

HAZARD

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Geoffrey C. Hazard, Jr. Or as he calls himself, when he answers his phone, simply "Hazard."

His name, like his personality, connotes danger, taking a chance, boldness in the face of risk. Meeting or talking to him, whether for the first or umpteenth time, always feels a bit intimidating and hazardous. Intimidating because he is so accomplished, quick, and deep. Hazardous because it is so likely you might get something just slightly wrong, only to be gently but firmly set straight by one of the most knowledgeable lawyers, legal scholars, and law reformers of our time.

I first met Geoff a quarter century ago, when I was interviewing for a teaching job at Yale Law School. To prepare for my interview, I asked three friends who had attended Yale what each faculty member was like. Tellingly, each gave the same, celestial assessment of Hazard: "Hazard is a god!" But one called him the "God of Procedure"; another, the "God of Ethics"; the third, simply, the "God of Law." So how could I possibly be a colleague of this man?

Our actual interview was an absurd mismatch. I had not gone to Yale and knew only the legend. I knew of his reputation as "Yale's Kingsfield"—the teacher who tested his terrified first-year "darlings" with what he liked to call "tough love." I knew of "Hazard and James

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on Procedure";[1] of "Hazard, Tait, and Fletcher on Pleading and Procedure";[2] of Hazard's work as an American Law Institute (ALI) Reporter[3] and Director;[4] and of Hazard as our leading scholar of legal ethics and the law and ethics of lawyering.[5]

I had even watched Geoff for many hours, though he did not know it, when he presided over the public sessions at the Mayflower Hotel, finalizing the *Restatement (Third) of Foreign Relations Law*. Watching him drive sessions to closure taught me how a great lawyer can tighten and make rigorous any text—whether she is a life-long expert on international law or, in Geoff's case (and in his words), "just a damn good lawyer asking damn hard questions." When the moment came to summarize nearly an hour of intense and technical colloquy criticizing one of the most confusing sections, Geoff did so crisply by turning to one of the Associate Reporters and saying, with that classic Hazard swagger, "So what I think they're telling you is that you probably have enough water, but you just don't have enough in each bucket!"

When, in our interview, Hazard asked me if I planned to teach a first-year class, I answered, meekly, "procedure," and watched his eyes flare. It was, well, a hazardous answer to give to one of our greatest living proceduralists.

My anxiety deepened as I prepared for my first semester's class. I had heard that Yale had not one but two lines of procedure tradition—a doctrinal line that ran through James and Hazard, and a conceptual line exemplified in the "metaprocedure" teaching of Owen Fiss, Bob Cover, and, today, Judith Resnik and Bill Eskridge.[6] Determined to convey both strands to my students, I tried to read most of the procedure articles that Hazard had written, a daunting task that

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[1] For the current edition, see FLEMING JAMES, JR., GEOFFREY C. HAZARD, JR. & JOHN LEUBSDORF, CIVIL PROCEDURE (5th ed. 2001).

[2] For the current edition, see GEOFFREY C. HAZARD, JR., COLIN C. TAIT, WILLIAM A. FLETCHER & STEPHEN MCG. BUNDY, PLEADING AND PROCEDURE (10th ed. 2009).

[3] *See, e.g.*, RESTATEMENT (SECOND) OF JUDGMENTS, at v (1982).

[4] Hazard served as Director of the ALI from 1984 to 1999.

[5] *See, e.g.*, GEOFFREY C. HAZARD, JR., ETHICS IN THE PRACTICE OF LAW (1978); GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING (4th ed. 2005); DEBORAH L. RHODE & GEOFFREY C. HAZARD, JR., PROFESSIONAL RESPONSIBILITY AND REGULATION (2d ed. 2007); Geoffrey C. Hazard, Jr., *The Future of Legal Ethics*, 100 YALE L.J. 1239 (1991); Geoffrey C. Hazard, Jr., *Rethinking Legal Ethics*, 26 STAN. L. REV. 1227 (1974) (book review). Additionally, from 1978 to 1983, Hazard served as the Reporter for the American Bar Association Commission on Evaluation of Professional Standards, which drafted the Model Rules of Professional Conduct.

[6] *See generally* William N. Eskridge, Jr., *Metaprocedure*, 98 YALE L.J. 945 (1989) (reviewing ROBERT M. COVER, OWEN M. FISS & JUDITH RESNIK, PROCEDURE (1988)).

made me realize how simplistic was the mythical divide between the two. For in article after article, Hazard, the so-called Yale doctrinalist, showed that he could be every bit as conceptual as the paragons of Yale procedure theory. Preparing to teach *Shaffer v. Heitner*,[7] I read Geoff's *A General Theory of State-Court Jurisdiction*.[8] I realized, with a shock, that long before the Supreme Court, Hazard—fittingly, a native of Pennoyer's[9] Oregon—had anticipated the general triumph of *International Shoe*'s "minimum contacts" jurisdictional standard.[10]

But then, something funny happened. Once I joined the Yale faculty and began talking to the legendary Hazard, I found him to be the best of colleagues, far more avuncular than fearsome. I found him to be a marvelous listener, laser-like in his perception, precise in his analysis. Once, I asked him a hard question I had puzzled over for days. He paused and gave a cogent, one-sentence answer. For the next ten minutes, I tested his answer, asking, "But if I go that route, what do I do about this problem, or that one?" To each question, he responded gently, "My answer takes care of that," then showed me how his answer had already anticipated my very concern.

In our talks, I found him worldly, well-read, and wise on many subjects, from religion, to tennis, to world travel. And I found in Geoff a mentor deeply committed to civil rights, an insider outsider who instinctively empathized with the outsider and thus undertook without fanfare to nurture young faculty, without regard to gender or color. When I asked my colleague Stephen Carter who his mentor had been when he first came to the faculty, he instantly answered, "Hazard." And many years later, I found myself describing Hazard the same way to my own students: as the man whose door over a quarter century was always open, who always had time to talk and help, and who invariably (and incredibly) returned my every phone call, visit, or e-mail within—I do not exaggerate—one hour of receipt.

As I, like so many, sought his counsel again and again, Geoff never disappointed. He was thoughtful in so many ways—with a short note just after I got tenure, asking if I wanted to join the ALI, and with an

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[7] 433 U.S. 186 (1977).

[8] Geoffrey C. Hazard, Jr., *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241.

[9] Pennoyer v. Neff, 95 U.S. 714 (1878).

[10] *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (establishing that due process requires that a court may not assert personal jurisdiction over a party who lacks such "minimum contacts" with the state in which that court sits, so that the exercise of jurisdiction would "not offend traditional notions of fair play and substantial justice" (internal quotation marks omitted)).

invitation asking me to join the Advisory Committee of the Project on the Transnational Rules of Civil Procedure. How he managed to do so much fascinated me: he was so stunningly efficient and economical in his actions that just a word to him was enough to get something done. His connections were so deep that he cropped up everywhere. When my first child was born at Yale-New Haven Hospital, the saintly attending nurse, between my wife Christy's contractions, suddenly asked, "So you're from Yale Law School? Do you know my stepfather, Geoff Hazard?" And with that, the Hazard family even helped bring our Emily into the world.

I became so used to Geoff as my deus ex machina that it was no surprise that he came to my rescue not once but both times that I was nominated to a State Department position. After exhaustive and lengthy ethics investigations into whether I could work on issues relating to human rights or the rule of law because of my extensive work on such issues in the past, Geoff cut the Gordian knot. He dispatched the objections with crisp letters to the relevant government lawyers noting that what they were wrongly treating as my disqualifications were actually my *qualifications* for those positions.

About a decade after I got to Yale, Geoff retired and moved to Philadelphia and then San Francisco, while still working several full-time jobs. At a Yale retirement dinner thrown in his honor, I went expecting to feel sad and sentimental. But I left again educated by him: struck by how foresighted he was, moving briskly and unsentimentally in the prime of his life to new challenges, nominally retiring, without in any sense becoming retiring. In his farewell speech, he spoke lovingly of his dear wife Beth and of how, he noted wryly, she had sacrificed so much to support his "somewhat intense personality." And with that, he was gone from New Haven, though, if anything, even more present to me in print, online, and in the world of legal reform and scholarship.

Geoff used his nominal retirement to go global. He finished yet another pathbreaking, foresighted work: the ALI/UNIDROIT Principles of Transnational Civil Procedure.[11] They are a remarkable accomplishment by a master of procedure marshalling a lifetime of knowledge and skills. At the outset of the project, at a 1996 summer meeting in Paris, I heard a dozen lawyers from various countries tell Geoff that the project simply could not be done and should be aban-

[11] *See* PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE (2006). Geoff's fellow Reporters were Professors Michele Taruffo and Rolf Stürner.

doned. There were just too many differences, they claimed, between civil and common law views of procedure for one set of treatise-like rules to summarize them. But once again, Geoff proved that he was the master of compromise, with an impeccable capacity to see points of agreement where others saw only discord.[12] Rather than heed the skeptics' recommendation to give up the project, over the course of several years Geoff and his fellow Reporters listened carefully to each objection, added sentences here and there to address the concerns, enlisted UNIDROIT as the cosponsor, conducted hearings all over the world, and brought the project home, having made it both stronger and more credible. His leadership of the Transnational Civil Rules project made me realize that among Geoff's many gifts is his talent for diplomacy. And when I asked Geoff to guess how the project would affect the world of transnational procedure, he was surprisingly diffident. "What matters," he told me, in an affirmation of his own life's philosophy, "is that we proved that it *can* be done." The worlds of procedure can be bridged. The differences are not irreconcilable. "These were never my rules, they are the world's," he said, "and it is up to the litigants, not me, to decide whether and how they want to use these rules if they seriously want to resolve their disputes."

After Geoff left Yale, I was given the honor of teaching his procedure section. To this day, some students and faculty say that I teach the "Hazard Section." I decided I owed it to the school to let each new Hazard Section see the living legend, Hazard himself. And so we began a yearly tradition in which I would invite Geoff back to teach

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[12] With characteristic cogency, the introduction to the Transnational Civil Rules states simply,

> [A]ll modern civil procedural systems have fundamental similarities. These similarities result from the fact that a procedural system must respond to several inherent requirements. . . . The fundamental similarities . . . can be summarized as follows:
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> • Standards governing assertion of personal jurisdiction and subject-matter jurisdiction
> • Specifications for a neutral adjudicator
> • Procedure for notice to defendant
> • Rules for formulation of claims
> • Explication of applicable substantive law
> • Establishment of facts through proof
> • Provision for expert testimony
> • Rules for deliberation, decision, and appellate review
> • Rules of finality of judgments.

Id. at 4-5.

one of my procedure classes each fall. This became one of my favorite days of the year. I would pick Geoff up early and bring him to the school. After we grabbed a quick breakfast and caught up, I would watch him perform his magic, as without notes he would solicit, and then unwind, some of the most complex puzzles with which we had been grappling all semester.

What I noticed Geoff liked most was reconnecting with the school. He would come to the near-empty Yale Law School early, sit in the dining hall with a cup of coffee, and greet nearly every staff member, professor, or administrator who walked by. And as they saw him, each would have that same glow of admiration, affection, and comfort, knowing that if Sterling Professor Hazard was back in the Sterling Law Building, everything must again be right with the world.

And so, the irony: nearly three decades after I first met him, the gruff, tough-talking, exacting Hazard who had first intimidated me turned out to be the gentle, fatherly, worldly, and "moral Hazard" who has mentored me throughout my career. He taught me not just about procedure but about substance: how to approach life, how to treat younger people, and how to live a rewarding career as a teacher, scholar, legal reformer, and diplomat.

Will Geoff continue to live greatly in the law? That, I know, is a guess we all can easily hazard.