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TRIBUTE

GEOFFREY C. HAZARD, JR.: SCHOLAR, LAW REFORMER, TEACHER, AND MENTOR

CATHERINE T. STRUVE[†]

I am very honored to be invited to place my remarks among those published here. I do not approach in eminence the authors of the other tributes. But, if the question be who among us has learned the most from Geoff Hazard, I am prepared to stake my claim. As I will explain, Geoff has profoundly shaped my understanding of procedure.

When, almost a decade ago, I arrived at the University of Pennsylvania Law School to start my teaching career, I hoped to study the intersection of civil procedure and professional responsibility, and I knew of Geoff's larger-than-life stature in both of those fields. My knowledge, however, was relatively abstract. I did not yet know Geoff himself.

My first task as a new teacher of civil procedure was to choose a casebook. Faced with a vast array, I chose Geoff's.[1] The choice was easy. Other books offered me a teacher's manual; with this casebook I had access to the senior author. Of course, I have no doubt that Geoff would have been equally generous with his time had I been teaching from another casebook; but it was a particular delight to talk with him about directions in which to nudge my class's discussion of his own book.

Though I had, of course, taken civil procedure and I had practiced law, it was by teaching the course that I really began to learn the subject. And in that endeavor my primary instructor was Geoff—not just in person (that semester I came to love meeting him and our fel-

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[1] At the time, it was in its eighth edition: GEOFFREY C. HAZARD, JR. ET AL., PLEADING AND PROCEDURE (8th ed. 1999).

low procedure teachers for coffee in the lounge after our morning classes) but through the casebook.[2] Its lucid and well-structured exposition broadened and deepened my understanding; its questions about litigants' motivations (why did the Robinsons care so much about keeping Seaway and World-Wide Volkswagen as defendants?)[3] encouraged me to press students to think about the realities of lawyering; and its focus on state as well as federal procedure brought home to me the web of connections between the two.[4]

My next task as a new law teacher was to write. Here, too, Geoff was always willing to provide his time and counsel. I soon perceived his genius for listening to a description of a nascent research project and cutting to its core, providing new insights for the project's structure and development. He did this with so many of my projects that to list them here would be tedious.[5]

I have seen Geoff give the same attention to others' work as well, and not only to that of colleagues. For the last four years I have had the pleasure of coteaching a seminar, Advanced Problems in Federal Procedure, with Geoff and Chief Judge Anthony J. Scirica.[6] They had previously been coteaching the course, but because Geoff was due to be away from the University during the 2006–2007 school year, they invited me to stand in for him that fall. I signed on eagerly. As it turned out, Geoff was able to participate after all—by videoconference, using a newly equipped classroom that was built in the summer of 2006 and completed mere days before the semester's start—but my co-instructors allowed me to stay on nonetheless.

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[2] I also frequently consulted the treatise that Geoff coauthored with Fleming James, Jr., and John Leubsdorf: FLEMING JAMES, JR. ET AL., CIVIL PROCEDURE (4th ed. 1992).

[3] *See* HAZARD ET AL., *supra* note 1, at 219.

[4] The casebook's focus reflects Geoff's interest in state procedure. Geoff's 1965 article on state-court territorial jurisdiction, Geoffrey C. Hazard, Jr., *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241, influenced the majority's analysis in *Shaffer v. Heitner*, 433 U.S. 186, 199-210 (1977), and was cited in both Justice Scalia's plurality opinion and Justice Brennan's concurrence in the judgment in *Burnham v. Superior Court*, 495 U.S. 604 (1990). *See id.* at 611 (plurality opinion); *id.* at 633 n.8, 636 nn.9-10 (Brennan, J., joined by Marshall, Blackmun & O'Connor, JJ., concurring in the judgment). More recently, Geoff deployed his knowledge of preclusion law in a trenchant critique of New Jersey's "entire controversy" doctrine. *See* Geoffrey C. Hazard, Jr., *An Examination Before and Behind the "Entire Controversy" Doctrine*, 28 RUTGERS L.J. 7 (1996).

[5] For just one example of a paper that benefited greatly from Geoff's early guidance, see Catherine T. Struve, *The FDA and the Tort System: Postmarketing Surveillance, Compensation, and the Role of Litigation*, 5 YALE J. HEALTH POL'Y L. & ETHICS 587 (2005).

[6] Chief Judge Scirica's remarks are published elsewhere in this volume. *See* Anthony J. Scirica, *A Wise Man of the Law*, 158 U. PA. L. REV. 1301 (2010).

Of my many fond memories from the seminar to date,[7] my favorite relates to the year when we decided to forgo one of the class meetings and hold joint office hours instead, meeting with our students seriatim to discuss their seminar research papers. As each student described his or her topic, I watched Geoff press for exploration of subtle points and reveal new directions in which to take the research. In other, very different fields of learning at earlier points in my life, I had on occasion attended master classes; watching Geoff's dialogue with the students reminded me of those.

Though my co-instructors are far too kind to admit it, one could argue that instead of a seminar with, say, fourteen students and three instructors, we really conduct a seminar with fifteen students and two instructors. The topics we study in the seminar relate to the great changes during the past few decades of U.S. complex litigation—changes that both of my co-instructors have done much to shape as well as to study.

In Geoff's case, his influence commenced even before the adoption of the 1966 amendments to the Federal Rules of Civil Procedure that overhauled the federal joinder provisions and ushered in the modern class action. The Committee Note to the 1966 amendment of Rule 19 relied upon Geoff's early article about the historical roots in equity of the indispensable-party doctrine when describing problems under the former rule;[8] likewise, the Committee Note to the 1966 amendment of Rule 23 cited the article when explaining the new Rule 23(b)(1).[9] And shortly thereafter, the Supreme Court cited the article when interpreting the recently amended Rule 19.[10]

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[7] Because the three of us are rarely in the same city, we frequently discuss course-related matters by e-mail. Geoff renders judicious guidance in characteristic style—for example this e-mail, following a note from me and a response from the Judge: "Hazard, P., concurs."

[8] FED. R. CIV. P. 19 advisory committee's note (citing Geoffrey C. Hazard, Jr., *Indispensable Party: The Historical Origin of a Procedural Phantom*, 61 COLUM. L. REV. 1254 (1961)).

[9] FED. R. CIV. P. 23 advisory committee's note (citing Hazard, *supra* note 8). In addition, the 1966 Committee Notes cited Geoff's casebook when explaining the need for Rule 23(b)(1)(A) class actions, *see* FED. R. CIV. P. 23 advisory committee's note (citing DAVID W. LOUISELL & GEOFFREY C. HAZARD, JR., PLEADING AND PROCEDURE 719 (1962)); the use of actions "by or against representatives of the membership of an unincorporated association," FED. R. CIV. P. 23.2 advisory committee's note (citing LOUISELL & HAZARD, *supra*, at 718); and the relation between intervention as of right and joinder of necessary parties, *see* FED. R. CIV. P. 24 advisory committee's note (citing LOUISELL & HAZARD, *supra*, at 749-50). The original coauthor of the casebook, David W. Louisell, served as a member of the Judicial Conference Advisory Committee on Civil Rules during the years leading up to the adoption of the 1966 amendments.

[10] *See* Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 110 n.5 (1968).

Over the years, Geoff has explored numerous aspects of procedural history: royal use of writs in twelfth-century England; interpleader in the seventeenth through nineteenth centuries; reliance on juries by courts of equity prior to 1791; the preclusive effects of decrees in various types of representative suits from the seventeenth to twentieth centuries; and seventeenth- through nineteenth-century views of attorney-client privilege, to name a few. But though Geoff's perspective is illuminated by legal history, it is also grounded in modern concerns and informed by broad experience.

Geoff perceived, early on, "The Effect of the Class Action Device upon the Substantive Law" (as he titled his contribution to a 1973 symposium).[11] Foreshadowing decades of debate over the merits and demerits of class suits, Geoff urged those who were disconcerted by Rule 23's "mass production remedy" to bear in mind "that the occasions generating the class suits were themselves mass production events."[12] Here Geoff drew upon his legislative[13] and law-reform[14] experiences to suggest the use—with respect to class suits—of "[t]he legislative viewpoint[,] [which] involves thinking in large numbers, in terms of large classes and of sub-classes; thinking of the boundary lines between classes or sequences of events; and thinking in levels and alternative concepts of legal fault and responsibility."[15] In these insights one might discern the germs of proposals twenty-five or thirty years in the future—views such as those outlined in Justice Breyer's *Ortiz* dissent[16] or in Senator Specter's effort at a legislative response to the problem of asbestos litigation.[17]

Geoff's institutional service has repeatedly placed him at the center of ongoing debates over class suits and other key aspects of procedure. He served as Reporter for the American Law Institute's *Restate-*

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[11] *See* 58 F.R.D. 299, 307 (1973).

[12] *Id.* at 308.

[13] Geoff had served as Deputy Legislative Counsel for the State of Oregon from 1956 to 1957 and as the Executive Secretary of the Oregon Legislative Interim Committee on Judicial Administration from 1957 to 1958.

[14] Geoff had already served as Executive Director of the American Bar Foundation from 1964 to 1970 and as a consultant to the American Bar Association Special Committee on the Code of Judicial Conduct from 1970 to 1972, and he was then serving as Reporter to the American Bar Association Special Commission on Standards of Judicial Administration.

[15] 58 F.R.D. at 310.

[16] *See* Ortiz v. Fibreboard Corp., 527 U.S. 815, 867-68 (1999) (Breyer, J., joined by Stevens, J., dissenting).

[17] *See The Fairness in Asbestos Injury Resolution Act of 2006: Hearing on S. 3274 Before the S. Comm. on the Judiciary*, 109th Cong. (2006).

ment (Second) of Judgments. As the Institute's Director from 1984 to 1999, Geoff oversaw the development of a wave of Third Restatements, including the *Restatement (Third) of the Law Governing Lawyers*. And as Reporter to the Institute's joint project with UNIDROIT on the Principles of Transnational Civil Procedure, Geoff pursued a pathbreaking effort to open a transatlantic dialogue on procedure. Since 1994 Geoff has served the Judicial Conference's Standing Committee on Rules of Practice and Procedure, first as a committee member and now as a consultant; and in the late 1990s Geoff served on the Judicial Conference's Ad Hoc Committee on Mass Torts.

If Geoff had limited himself to these activities in the field of procedure, he would have secured a place of eminence in American law. But somehow Geoff also found the time to play a foundational role in the development of modern legal ethics, serving (for example) as reporter for the ABA's 1983 Model Rules of Professional Conduct. That field lies beyond my own expertise, but it is impossible to overlook the influence of Geoff's work, including the casebook[18] and the widely cited treatise.[19]

All these aspects of Geoff's work are well known. But in addition to these very public roles as a scholar and a leader in law reform, Geoff has poured time and effort into his role as a counselor of younger scholars, including me. Since joining the academy, I have taken no major step in my career without first consulting him; and he has been invariably wise, kind, and careful in responding to my questions. While the American civil justice system is fortunate to have so visionary a scholar and law reformer as Geoff, I am even more privileged to count him as mentor, colleague, and friend.

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[18] GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING (4th ed. 2005).

[19] GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING (3d ed. 2001).