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### Not Since Thomas Jefferson Dined Alone: For Geoff Hazard at 80


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TRIBUTE

NOT SINCE THOMAS JEFFERSON DINED ALONE:  
FOR GEOFF HAZARD AT EIGHTY

STEPHEN B. BURBANK<sup>†</sup>

It has been my happy task to organize this collection of tributes honoring the extraordinary (and continuing!) career of a gifted scholar, teacher, and institutional leader. They paint a vivid picture of a lawyer of immense and various talents and interests, one as comfortable excavating the etiology of complex procedural doctrine as negotiating the drafting compromises necessary to achieve consensus on proposed court rules or legislation. They paint an affectionate picture of a colleague, mentor, and friend whose relationships, collaborations, and influence—both in topical and geographical span—have been as broad as those talents and interests. The abiding image they leave with me is of a supremely effective pragmatist who has preferred a life of active involvement to the leisure of the theory class, ever willing, as

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<sup>†</sup> David Berger Professor of Law, University of Pennsylvania Law School.

he would say, to “rise above principle” when something of consequence hangs in the balance.

It is a blessing that Geoff Hazard has been willing and able to participate in or lead the work of so many institutions dedicated to the advancement of knowledge and progress in and through law. Most mortals would rest content with a career as an eminent scholar, informed commentator, much sought-after lawyer, or creative institutional leader. Yet these have been merely some of the activities—often pursued at the same time—in Geoff’s amazing career. Not often has a single lawyer achieved such distinction in so many roles, and not often has the administration of justice had such an incisive and knowledgeable champion working for its benefit in so many ways.

A reader of these tributes may pause over the image of a retiree moving on to serve as an active member of another faculty for fifteen years. It is not just the *U.S. News and World Report* rankings that have made so many law schools want to claim Geoff as their own (and at the same time). The schools bask in and benefit from his reflected glory. He has made each of them better, not just through his concrete contributions as a member of the faculty but also through the foundations he has laid, the standards he has set, and the example he has furnished.

To scholars, Geoff is a figure of immense influence in procedure and judicial administration, as well as in the legal profession. His books and articles have shaped the course of doctrine, and hence the administration of justice, in matters ranging from the structure of a lawsuit and the jurisdiction of the court to the law governing lawyers. Here, as elsewhere, however, Geoff has refused to cabin his activities within one role, thus bringing his formidable intelligence and learning to the business of law reform. He has sought solutions for difficult practical problems, whether as Reporter for the *Restatement (Second) of Judgments* or as a member of the Standing Committee on Rules of the Judicial Conference of the United States. Geoff’s erudition, pragmatism, and willingness to run the marathon that reform in judicial administration usually requires have perhaps been most evident in his efforts to find sufficient common ground among different legal systems to fashion workable rules of procedure for the resolution of transnational commercial disputes.

To lawyers, Geoff is no ordinary professor. In his work for the American Bar Association and the American Law Institute, he has been instrumental in the redefinition of professional roles and the rules of professional responsibility. These endeavors, like others, reveal Geoff as

someone sympathetic to, and deeply versed in, the tensions and dilemmas of the practice of law. Rather than join the many law professors who bite the hand that feeds them, Geoff has been willing to work hard, without blinders, to assist the profession in attaining its highest ideals.

To colleagues fortunate enough to have served with Geoff—whether at the University of Pennsylvania, Yale, the American Law Institute, or many other institutions—his is the model of an informed, tough-minded approach to challenges intellectual or institutional. Short on nostalgia and on patience for foolishness but very long indeed on creative accomplishment, Geoff is a person whose commitments to facts, rigorous thinking, and efficiency serve both as example and prod.

Penn Law is justifiably proud of its record of accomplishment and of its reputation in civil procedure and judicial administration. Geoff has been an important part of that record and reputation for thirty years—in other words, since long before he joined the faculty. When I was a junior member of the faculty, my revered colleague, Leo Levin, was on extended leave (and very busy) at the Federal Judicial Center. As a result, I had no resident senior colleague with whom to discuss either thorny questions that arose in the classroom or my research agenda. That was a lonely professional time. Fortunately, having met Geoff at meetings of the American Law Institute, I summoned the courage to ask him if he would read the (very long) draft of my first article.<sup>1</sup> Not only did he agree, but within two weeks he had sent me a (very long) letter with detailed comments, striking just the right balance between encouragement for the project as a whole and skepticism about some aspects of the draft. Still today, decades later, his example inspires me to regard nurturing talent in the field as part of my calling and thus to welcome rather than resent requests to read the draft articles of other scholars, including those from junior scholars at other schools.

Geoff thus played an important part in getting me started as, and in shaping my views of the work of, a scholar. He continued to provide important influences on my subsequent work, both in personal communications and through his own scholarship.<sup>2</sup> As important as

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<sup>1</sup> Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015 (1982).

<sup>2</sup> Geoff's influence on my scholarship has been profound even when our views have differed. One does not engage in a public debate with Professor Hazard unless one has done one's homework and is willing to take risks, including the risk of being shown to be wrong. Having been educated at Harvard Law School at the end of an era in which many professors published very little, I had wondered why that was so. Geoff's powerful counterexample contributed to my theory that professors' unwillingness to take that risk was one explanation.

his classic articles on particular legal phenomena, however, was his little-known study, *Research in Civil Procedure*, published in 1963.<sup>3</sup> This masterly, if disarmingly candid, assessment of the state of scholarship in our field<sup>4</sup> encouraged me to regard history as an important source of insight about current procedural dilemmas.<sup>5</sup> More generally, it persuaded me that although doctrinal research is important,<sup>6</sup> Judge Posner was correct in asserting, years later, the “epistemic shallowness” of doctrinal scholarship.<sup>7</sup> Geoff’s bleak assessment of the status quo but hopeful survey of vistas to be explored<sup>8</sup> encouraged me to seek perspective not just in history but in empirical study and political science. The same little book also taught me important lessons about rules<sup>9</sup> and legal theory<sup>10</sup>—including that I need not apologize for my belief in the importance of the former and about the limitations, at least in our chosen domain, of the latter.

Even after the communications revolution worked by e-mail, and much more so before it, long-distance collegueship is no substitute for the ability to walk down a corridor to a colleague’s office or to regularly participate together in the lunches, workshops, and other activities that forge close, lasting relationships. And so it was that a succession of Penn Law deans had to put up with regular communications from me urging them to find ways to lure Geoff from New Haven—communications that increased in number when he became director of the American Law Institute (which was founded here and is still cen-

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<sup>3</sup> GEOFFREY C. HAZARD, JR., *RESEARCH IN CIVIL PROCEDURE* (1963).

<sup>4</sup> For example, Geoff found that “[m]ost of the things one sees [in law reviews] only to scan and often not even that, for quick perusal shows that the burden of the article is light, a middle-range thesis that is expounded rather than explored and stated rather than supported.” *Id.* at 56.

<sup>5</sup> *See, e.g., id.* at 114 (“A few words should be said about historical research in procedure. Few words, indeed, are necessary, for there isn’t much to talk about. There is, however, much to be done.”).

<sup>6</sup> *See id.* at 57 (“[U]niversity legal researchers may have abandoned the exercise of the skills in doctrinal research in which they have been trained and at which they are expert in favor of adventures in non-technical methods, such as philosophical or psychological reflection, at which they are in varying degrees amateurs.”).

<sup>7</sup> RICHARD A. POSNER, *OVERCOMING LAW* 88 (1995).

<sup>8</sup> *See HAZARD, supra* note 3, at 98-114.

<sup>9</sup> *See, e.g., id.* at 9 (“[A] rule, to have cognitive and normative significance as such, must have an important degree of determinative content to the group to whom it is addressed.”).

<sup>10</sup> *See, e.g., id.* at 89 (“[T]heory in law as elsewhere is valid and defensible only if it adequately accounts for the events to which it has reference and only if it yields ideas by which to organize and deal with the problems which reality presents.”).

tered right up the street) and in urgency after Leo Levin retired (although for a long time Leo's was also a retirement in form only).

In the end, of course, those efforts bore fruit, and for fifteen wonderful years Geoff was my colleague in fact rather than just notionally. Apart from the professional enrichment and personal happiness that having Geoff just down the corridor brought me, his presence on the faculty surely played a major role in Penn Law's ability to attract and hire two of the most talented younger procedure scholars in the country, Cathie Struve and Tobias Wolff, whose fine tributes to Geoff are included here. Geoff's influence in attracting them is obvious, his influence in hiring them not so much so. Suffice it that, at a time when Penn Law had become, pound for pound, perhaps the most interdisciplinary law school in the country, the luminous example of Geoff's career and his advocacy of the appointments helped the faculty resist rigid insistence either on advanced degrees in other disciplines or on a monopoly of wisdom about what it takes to enable scholarship that avoids Posner's criticism.

Another important example of Geoff's continuing influence on an institution even after he has left it is his help making the faculty realize that Penn Law's real comparative advantage reposes in the fact that it is a self-consciously interdisciplinary law school that self-consciously cares about law. For this, as for so many other personal and institutional gifts, I am forever in his debt.