

Learning from Geoffrey C. Hazard, Jr., by Example and Precept

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At the same moment in 1976 I first met two towering figures in American law: Geoffrey C. Hazard, Jr., and Charles Alan Wright. Our interests intersected in the realm of civil procedure, but their scope was wider than that. Each was truly a towering figure across the range of American law. These brief notes sketch fond and admiring memories of Geoff Hazard.

The occasion for that first encounter was a meeting of the advisers on the Restatement Second of Judgments. Hazard was the Reporter. The intimidation factor for me, a youngster less than ten years into full-time teaching and a late-comer to the advisers, was augmented by the full roster of advisers.¹ But Hazard made it easy to be drawn into the conversation. The tentative draft was clear. It addressed often perplexing questions, and at times openly recognized the perplexity. The advisers were fully prepared and completely engaged. Hazard was the equal of the entire group assembled. I was already hooked on *res judicata*. I came away from that meeting hooked on the American Law Institute and its procedures.

The Judgments project continued apace. Geoff showed up for one meeting within driving range in a BMW Bavaria, a source of envy and admiration.² My only disappointment with Geoff, ever, was my discovery, much later, that the Bavaria was his wife's car. I never did find out whether he was partial to still more exotic vehicles, but somehow I suspect not.

My connections with Geoff continued to come primarily within the framework of the ALI. He had become Director by the time of the Complex Litigation project. In that capacity, he participated in meetings with the advisers from a special vantage, easily playing a key role even with a larger advisers group and two outstanding procedure scholars as Reporters.³ This project provided an

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1. The full list included Bennett Boskey, Milton B. Conford, Oscar H. Davis, Ronan E. Degnan, Ruth Bader Ginsburg, Paul R. Hays, Benjamin Kaplan (a Reporter at the outset), Willis L.M. Reese, David L. Shapiro (also a Reporter at the outset), William Stix, Allan D. Vestal, and Charles Alan Wright. Herbert Wechsler attended as the Director of the American Law Institute.

2. Some readers may be too young to remember the Bavaria. Let one description suffice. It was designed to provide "a good stir and steer session on a patch of twisty road."

3. The Reporters were Arthur R. Miller and Mary Kay Kane. No more need be said. The structure of the

opportunity to observe Hazard at work as Director in all three stages of formal deliberation, stages that are repeated several times before final approval as the work of the ALI. After the advisers meet and the draft is revised, it goes to Council. Discussions in Council are different from adviser discussions in some ways. Not every member of Council is an expert in the subjects covered by any project. A Council agenda typically reviews several projects. But there is a wonderful interaction among experts and generalists. The Director has to be in full command of every project, however, to provide guidance and direction. After Council approval, a project goes to the Annual Meeting for review and, ultimately, approval by the full membership. The Director's role is still different in this setting, in part because constraints of time make it essential to allow opportunities to participate for as many members as possible. Watching Geoff through each of these stages on a single project was a revelation, not only of legal knowledge and skill, but also of the ability to keep discussions on track, or, when needed, to bring them back to the track.

Enjoying and continually learning from Hazard over several years of Council meetings continued. One of his habits was the source of a continually frustrated wish on my part. He could close his eyes on an active discussion, seeming to have gone sweetly to sleep. But when the discussion rose above a certain decibel level he would open his eyes, deftly summarize the points of contention, and then prescribe the outcome that became obvious only in his articulation. Many a time have I wished that I could do those two things at once—to indulge restorative, roborative sleep and at the same time think deep thoughts. Sleep is about the best I can manage.

Following his triumphant turn as Director, Hazard again became a Reporter, this time for the ALI/UNIDROIT Principles of Transnational Procedure. The end product is of course masterful. Almost as remarkable is the broad scale of the structures created to elicit international participation. Two other Reporters and the Associate Reporter hailed from Germany, Italy, and Brazil. There were U.S. Advisers, International Advisers, an ALI/UNIDROIT Working Group, and International Consultants from the world over. The influence of this project in stirring broader law-reform efforts in Europe on the ALI model can be illustrated by one anecdote. Hazard suggested that it would be useful to have a couple of the U.S. advisers—Mary Kay Kane and me—attend the first meeting of advisers in Europe. He explained that the European advisers would likely think it disrespectful to voice their doubts, reservations, and outright disagreements with the draft. Our job was to stir discussion, venturing to challenge every point. We started out. Soon other eyes started to twinkle. Then small smiles appeared. Small smiles gave way to big grins. Participation opened up, at first deferentially and then robustly. Hazard was right both in anticipating that some prompts would be useful and in understanding that not much would be needed to open the gates.

adviser group was different from most in that it had a chair—Justice Herbert P. Wilkins of the Supreme Judicial Court of Massachusetts.

Later on I came to know Hazard in a different enterprise when he became a member of the United States Judicial Conference Standing Committee on Rules of Practice and Procedure. Five advisory committees report to the Standing Committee, one each for the Rules of Appellate Procedure, Bankruptcy Procedure, Civil Procedure, Criminal Procedure, and Evidence. It would be expected that he would contribute in many and valuable ways to examining proposals from the Civil Rules Committee. And so he did. But he was equally active and influential across the range of all these subjects. So much so that when he reached term limits he was asked to stay on as a consultant. As consultant he continued to make important contributions up to life's end.

One particular lesson I learned from Hazard will carry with me always. Once or twice, in one setting or another, I protested that it was too early to attempt to draft a rule or black letter, that more discussion was needed to figure out just what the rule should be. Not so, he rejoined. The discussion will be better focused, and group deliberations will advance further, with the focus provided by a specific target. A mere "cartoon" will do. That will prove out even if the first draft meets total rejection and adoption of a contrary approach. He was right. If there were nothing else, I would be in debt to him for that.

One final remembrance. Once, while walking nowhere in particular with Geoff, I offered one of my pet thoughts for discussion. The nature of law, I suggested, is such that it does not allow genius. It is too incremental. There may be room for a daring leap ahead by a step or two over current thought patterns, but not for wholesale revision of any particular branch of the enterprise. He disagreed. Genius is possible in the law. I did not persuade him. Nor did he persuade me. Still, he instilled a doubt. The doubt is simply explained. If there be room for genius in the law, Geoffrey C. Hazard, Jr., will be a leading candidate for recognition.
