

Geoffrey C. Hazard, Jr.:
Dear Friend, Eminent Scholar, and Director
Exemplar of the American Law Institute

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We have lost a dear friend, eminent scholar, and Director Exemplar of the American Law Institute. Geoff Hazard led the Institute for fifteen years. Among his many contributions to law reform, ethics, teaching, and scholarship, he strengthened the ALI as a prized institution in the life of our country.

We worked closely together, on ALI matters and other issues including the ethics of lawyers and judges, amicus briefs and an article urging that federal law and a “specific fairness” as well as a “system fairness” test of due process govern the recognition and enforcement of foreign judgments,¹ and his last labor of love, the book he edited on my father’s jurisprudence.² My introductory essay began:

My father would have liked this book. It focuses on his jurisprudence. It is edited by Geoff Hazard, Professor Emeritus at the Hastings College of the Law, a scholar whom he admired and collaborated with on the American Bar Association’s Model Code of Judicial Conduct. With Geoff’s encouragement and oversight, the book is written by his students. They are the successors to those my father loved to teach at a law school he held dear. Emphasizing analysis, this

[†] President Emeritus, The American Law Institute. Hastings College of the Law was the last law school at which Geoff taught. This *Hastings Law Journal* symposium in his honor and memory is a fitting and lovely tribute to him. Prior to joining the Hastings faculty, Geoff was a member of the faculty of the Yale Law School, and then the University of Pennsylvania Law School, and was honored in 2010 by an issue of the University of Pennsylvania Law Review. Symposium, *In Honor of Geoffrey C. Hazard, Jr.*, 158 U. PA. L. REV. 1283–1327 (2010). This Tribute draws in part from a tribute to him then, Michael Traynor, *Geoffrey C. Hazard, Jr., Director Exemplar of the American Law Institute*, 158 U. PA. L. REV. 1317 (2010), and in part from remarks in his memory at the ALI Council meeting on January 18, 2018 and at his memorial service at the University of Pennsylvania Law School on January 27, 2018.

1. Brief for Geoffrey C. Hazard, Jr., Michael Traynor, and Louise Weinberg as Amici Curiae Supporting Petitioner, *DeJoria v. Maghreb Petroleum Expl.*, 136 S. Ct. 2486 (2016) (No. 15-1033) (certiorari was denied); Brief for Geoffrey C. Hazard, Jr. and Michael Traynor as Amici Curiae Supporting Petitioner, *Tropp v. Corp. of Lloyd’s*, 564 U.S. 1046 (2011) (No. 10-1249) (certiorari was denied); Geoffrey C. Hazard, Jr. & Michael Traynor, *Foreign Judgments: Is “System Fairness” Sufficient or Is “Specific Fairness” Also Required for Recognition and Enforcement?*, 10 BERKELEY J. INT’L L. PUBLICIST 2 (2012). Recently, several amici urged the application of federal law in another amici brief, Brief of Scholars and Petitioners as Amici Curiae Supporting Petitioner, *World Programming Ltd. v. SAS Inst., Inc.*, No. 17-1459 (U.S. May 23, 2018) (certiorari was denied).

2. GEOFFREY C. HAZARD, JR. ET AL., *THE JURISPRUDENCE OF JUSTICE ROGER TRAYNOR: TWENTY-THIRD CHIEF JUSTICE OF CALIFORNIA* (Geoffrey Hazard ed., 2015).

book will elicit the interest of thoughtful readers.³

Immanuel Kant said, “To have a friend whom we know to be frank and loving, neither false nor spiteful, is to have one who will help us to correct our judgment when it is mistaken. This is the whole end of man, through which he can enjoy his existence.”⁴ Geoff was such a friend. For eighteen years, Geoff and his wife Beth and my wife Shirley and I were weekend neighbors at Stinson Beach and shared many moments and conversations. During a talk with Geoff there about the ALI’s constructive influence, he made the crucial point that our work is persuasive because it is not authoritative.⁵ It provides judges and lawyers with wisdom without compelling them to follow it.

Working with Geoff was a professional and personal pleasure. Sometimes we could anticipate each other’s thoughts. We shared an interest in seeking principles that would bring reason and order to the law. It was an honor to join Gerhard Casper, David Levi, and Neil Andrews in reviewing and praising *The Moral Foundations of American Law*, which Geoff wrote with his son Doug Pinto, Jr.:⁶

Beginning with the reality and challenge of modern Supreme Court confirmation hearings, Hazard and Pinto demonstrate the relationships and differences among law, morals, and politics, Hazard, a legal ethicist and scholar, and Pinto, a biblical historian, are a unique team. Their succinct and vital work draws from the wisdom of the ancients and the evolution of modern thought. Anyone concerned with the living law must understand its moral roots to sense when the old growth should be pruned and the new nurtured in light of evolving principles of liberty, equality, and morality.⁷

Geoff and I also shared a sense of skepticism (attended by bemusement) about occasional promotional claims by lawyers, for example, that they are “ethical.” Geoff’s view was that “Oh yes, and anyone who says I am ethical is obviously worrying about whether he or she is. The lady doth protest too much.”⁸

Professor Stephen Gillers has written that in “the law governing lawyers and judges,” Geoff’s “influence is unsurpassed by any scholar of his generation.”⁹ Geoff’s view was typically both pragmatic and wise. During a discussion of the Restatement Third of the Law Governing Lawyers, he said,

I think gray-area Illustrations are dangerous I would strongly urge the Reporters to give what I call “bookends,” one that is clearly, “You can’t do that,”

3. *Id.* at 2.

4. IMMANUEL KANT, LECTURES ON ETHICS 206 (Louis Infield trans., Harper Torchbook 1963) (1930).

5. Conversation with Professor Hazard in Stinson Beach, Cal. (Dec. 27, 2009).

6. GEOFFREY C. HAZARD, JR. & DOUGLAS W. PINTO, JR., MORAL FOUNDATIONS OF AMERICAN LAW: FAITH, VIRTUE AND MORES (2013).

7. *Id.* at back cover (comment by Michael Traynor).

8. Email from Geoffrey C. Hazard, Jr., Emeritus Professor of Law, Univ. of Pa., to Michael Traynor, President Emeritus, Am. Law Inst. (Nov. 26, 2007) (copy on file with author).

9. Stephen Gillers, Hazard, Geoffrey C., Jr., in THE YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW 259, 259 (Roger K. Newman ed., 2009).

the other one clearly, “You can do this,” and not try to go beyond that in nuance. You are just asking for trouble if you try to do that.¹⁰

Throughout his fifteen-year tenure as Director of the ALI, from 1984 to 1999, and thereafter as a member of the Council, Geoff consistently gave such incisive, cogent, and succinct advice at annual meetings, meetings of the Council, meetings of Advisers and Members Consultative Groups,¹¹ and in his critical consultations with Reporters and editing of their drafts to make them worthy of consideration.

Two illustrious bookends in Geoff’s ALI career bear noting: First, before becoming Director, he was the Reporter for the Restatement Second of Judgments. Our then-Director, Herbert Wechsler, in his Foreword to the first volume, stated that the “sole responsibility for the development and the completion of the work [was placed] upon Professor Hazard. That he has discharged that trust with high distinction will be evident to all who study the succeeding pages of these volumes.”¹² Second, after retiring as Director, Geoff, together with ALI Co-Reporter Michele Taruffo and Associate Reporter Antonio Gidi, and ALI/UNIDROIT Working Group Co-Reporter Rolf Stürner, completed the ALI/UNIDROIT Principles of Transnational Civil Procedure,¹³ with widespread acclaim.¹⁴ They and their colleagues synthesized the best elements of procedural law from the common law system and the civil law system, creating unifying principles for international commercial litigation.

At the Institute’s annual dinner in 1999, President Charles Alan Wright said, “I have for Geoff great respect, great admiration, great affection. The ALI has been wonderfully served to have him as our Director for 15 years.”¹⁵ In his

10. *Continuation of Discussion of Restatement of the Law Third, The Law Governing Lawyers*, 74 A.L.I. PROC. 388 (1997).

11. Members Consultative Groups for the ALI’s projects were a vital innovation and began under the leadership of President Perkins and Director Hazard. See John P. Frank, *The American Law Institute, 1923–1998*, 26 HOFSTRA L. REV. 615, 627 (1998).

12. Herbert Wechsler, *Foreword* to 1 RESTATEMENT (SECOND) OF JUDGMENTS vii (AM. LAW. INST. 1982). My first introduction to Geoff’s effective engagement and mentoring of able law students occurred one year when he was teaching at Yale Law School and I was interviewing students for summer clerkships and learned that he had enlisted nearly every one to help on the Restatement Second of Judgments project.

13. ALI/UNIDROIT PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE (2006), <https://www.unidroit.org/instruments/transnational-civil-procedure>.

14. See, e.g., Michael Traynor, *The First Restatements and the Vision of the American Law Institute, Then and Now*, 32 S. ILL. U. L.J. 145, 166–67, 167 n.120 (2007) (praising the “vision, promise, boldness, and potential influence” of the Principles and citing numerous sources discussing them). UNIDROIT and the European Law Institute are working on a transnational civil procedure project based on the ALI/UNIDROIT principles. See, e.g., Geoffrey C. Hazard, Jr., *Developing Civil Procedure Rules for European Courts*, 100 JUDICATURE 58 (2016); Symposium, *The ELI-UNIDROIT Project*, 19 UNIFORM L. REV. 171 (2014); *ELI-UNIDROIT Transnational Principles of Civil Procedure*, UNIDROIT, <https://www.unidroit.org/work-in-progress-eli-unidroit-european-rules> (last updated Dec. 4, 2018); *From Transnational Principles to European Rules of Civil Procedure (with the International Institute for the Unification of Private Law, UNIDROIT)*, EUR. L. INST., <https://www.europeanlawinstitute.eu/projects-publications/current-projects-feasibility-studies-and-other-activities/current-projects/civil-procedure/> (last visited Apr. 16, 2019).

15. Charles Alan Wright, *Introductory Remarks*, 76 A.L.I. PROC. 360 (1999).

contemporaneous written tribute, he said that at meetings Geoff often will lean forward, pull his microphone toward him, and make some remark that is exactly appropriate. Sometimes it will be to point out the fallacy in what Reporter or a member has just said. At other times it will offer a solution to a problem that has been giving difficulty.¹⁶

Conrad Harper described Geoff as the “rightful successor” of Herbert Wechsler, saying, “It has been a stunning 15 years.”¹⁷ In his Annual Dinner Address, Geoff remarked,

Being Director of The American Law Institute is the best job that a lawyer or legal academician can have, except, perhaps, being on the Supreme Court of the United States. Indeed, there are aspects of the Director’s job that are clearly superior to those of a Supreme Court Justice. The Director has more privacy, does not require the concurrence of four others to do anything official, and does not have to live in Washington.¹⁸

Geoff’s remark was accompanied by appreciative laughter, which often occurs, a welcome counterpoint to the solemnity of our deliberations.

Referring to our debates over legal formulations, Geoff developed the profound point that “interchanges about legal rules that appear as divisive disputes from one point of view are from another point of view affirmations of common ground across a wide range of opinion.”¹⁹ The ALI takes comparable account of all U.S. jurisdictions, does not pretend to restate the law of any particular state, and respects the constitutional responsibilities that courts and other institutions must carry out within their own frameworks. This sense of respect for the opinions and responsibilities of others contributes to the ALI’s influence. Just as members often request Reporters to “consider” a point, the ALI makes suggestions for courts and others to consider, which they do frequently, usually with approval, sometimes with countervailing views.

During Geoff’s tenure as Director, the ALI initiated, as well as completed, many projects.²⁰ Recognizing the growing international implications of our work, he started projects on transnational insolvency and international jurisdiction and judgments, and commenced consideration of international intellectual property. He, like his predecessors, also laid a strong foundation for future projects, which his worthy successors, Lance Liebman and now Richard

16. Charles Alan Wright, *The President’s Letter*, A.L.I. REP., Spring 1999, at 1, 3; see also HILARY MANTEL, WOLF HALL 470 (2009) (“When you are writing laws you are testing words to find their utmost power.”).

17. Conrad Harper, *Introductory Remarks*, 76 A.L.I. PROC. 360 (1999). Mr. Harper evoked the dedication by Felix Frankfurter of his lectures, entitled *Mr. Justice Holmes and the Supreme Court*, to “Mr. Justice Cardozo, rightful successor of Mr. Justice Holmes.” See *id.*

18. Geoffrey C. Hazard, Jr., *Address by Professor Geoffrey C. Hazard, Jr., Retiring Director of the American Law Institute*, 76 A.L.I. PROC. 361 (1999).

19. *Id.* at 362.

20. See Harry G. Kyriakodis, *Past and Present ALI Projects (as of April, 1999)*, 76 A.L.I. PROC. 505–09 (1999). Director Hazard reviewed the work and the process of the ALI in Geoffrey C. Hazard, Jr., *The American Law Institute Is Alive and Well*, 26 HOFSTRA L. REV. 661 (1998).

Revesz, have developed and augmented.

Among pioneering projects, two bear special mention in this tribute to Geoff: the Principles of Corporate Governance²¹ and the Principles of the Law of Family Dissolution.²²

Initiated during Herbert Wechsler's final years as Director and completed during Geoff's term, the Principles of Corporate Governance are invoked by courts²³ and significantly improve corporate behavior.²⁴ Illustrating Geoff's point that "precise formulation can make a difference,"²⁵ our members vigorously debated the standard of conduct applicable to a corporate director who invokes the business judgment rule in her defense and seeks the additional leeway a "rationally believes" test provides compared to a "reasonably believes" test.²⁶

Two noteworthy Forewords accompanied the published Principles, Geoff's as Director, and Rod Perkins's as President. Geoff emphasized that "Professor [and Chief Reporter] Eisenberg's persevering intellectual leadership was rendered with unfailing diplomacy" and "President Perkins's persevering diplomatic leadership was rendered with unfailing intelligence."²⁷ In turn, President Perkins, in his historic Foreword, stated that Director Hazard "has provided superb leadership in steering the Project over most of its life and in bringing it to completion."²⁸

In the Principles of the Law of Family Dissolution, the ALI reached beyond the customary subjects of private law addressed in the Restatements. With Geoff's leadership and encouragement in this innovative and far-reaching project, Professor Ira Ellman, Reporter, and his principal colleagues, Professors Katharine Bartlett and Grace Blumberg, provided workable solutions and

21. PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS (1994).

22. PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (2002).

23. See, e.g., *Cuker v. Mikalauskas*, 692 A.2d 1042, 1049 & n.5 (Pa. 1997).

24. See, e.g., Melvin Aron Eisenberg, *The Divergence of Standards of Conduct and Standards of Review in Corporate Law*, 62 FORDHAM L. REV. 437, 464 (1993) (asserting that legal standards of conduct "serve as a foundation for private standards of conduct" upon which "prudent lawyers" are "likely to give advice"); Roswell B. Perkins, *Thanks, Myth, and Reality*, 48 BUS. LAW. 1313, 1317 (1993) (stating that the Principles assist "in analyzing factual situations, in fitting those factual situations within the concepts articulated in the Principles, and in applying the applicable law").

25. Hazard, *supra* note 18, at 362.

26. *Discussion of Principles of Corporate Governance: Analysis and Recommendations, Tentative Draft No. 4*, 62 A.L.I. PROC. 146-217 (1985); *Continuation of Discussion of Principles of Corporate Governance: Analysis and Recommendations, Tentative Draft Nos. 4 and 2*, 62 A.L.I. PROC. 230-43 (1985). See generally 1 PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 4.01(c) (1994) ("A director or officer who makes a business judgment in good faith fulfills the duty under this Section ['the business judgment rule'] if the director or officer . . . (3) rationally believes that the business judgment is in the best interests of the corporation."). While recognizing the etymological ties between the words "rational" and "reasonable," the Principles draw a "sharp distinction" between them. *Id.* cmt. d.

27. Geoffrey C. Hazard, Jr., *Director's Foreword* to 1 PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS, at x (1994).

28. Roswell B. Perkins, *President's Foreword* to 1 PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS, at xxii (1994).

pragmatic approaches to perplexing problems of separation and relationship termination, child custody, and child support, including those that arise in relationships between persons of the same sex.

The ALI is known historically and currently for: (1) its Restatements, which “are primarily addressed to courts and aim at clear formulations of common law and its statutory elements, and reflect the law as it presently stands or might appropriately be stated by a court;” (2) its Principles, which “are primarily addressed to legislatures, administrative agencies, or private actors” but “can, however, be addressed to courts when an area is so new that there is little established law;” and (3) its Codes (model or uniform), which “are addressed to legislatures with a view to statutory enactment: and “are written in prescriptive statutory language.”²⁹ It also is known for its contribution to the Universal Declaration of Human Rights and for the Reporters’ Study entitled, “Enterprise Responsibility for Personal Injury.”³⁰ The ALI, with Geoff’s encouragement, remains open to new approaches to implementing the Institute’s mission “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.”³¹ For example, at our initial discussion of international intellectual property, Geoff suggested that the Institute might consider developing alternative terms of an intellectual property license, in a format that could identify reasonable ranges and negotiating options while alerting lawyers to avoid time-wasting outliers.³²

As a Council member, Geoff continued to give sage and welcome advice. As just one example, when a question arose about the role of judges in our debates, Geoff drew upon his years of experience and provided guidance.³³ He observed acutely that “in participation in this kind of activity, the judges have been extremely conscientious in not expressing ideas regarding politically sensitive issues,” and that “in the exploration and discussion of all issues, whether controversial or otherwise, the judges contribute useful perspective, specifically a broad view of the public interest and a strong sense of civic responsibility.”³⁴

In addition to being a leader, ethicist, scholar, and friend of the ALI and of our profession, Geoff was unpretentious and witty. Here are just a few

29. *How the Institute Works*, AM. L. INST., <https://www.ali.org/about-ali/how-institute-works> (last visited Apr. 16, 2019). See, by our esteemed late Treasurer, Bennett Boskey, *The American Law Institute: A Glimpse at Its Future*, 12 GREEN BAG 2D 255, 258–61 (2009).

30. *Id.* at 260; see also Traynor, *supra* note 14, at 161.

31. AM. LAW INST., CERTIFICATE OF INCORPORATION (1923), available at https://www.ali.org/media/filer_public/10/62/106284da-ddfe-4ff4-a698-0a47f268ee4c/certificate-of-incorporation.pdf (last visited Apr. 16, 2019).

32. According to my recollection, he made this suggestion at an early meeting in San Francisco.

33. Letter from Geoffrey C. Hazard, Jr., Dir. Emeritus, Am. Law Inst., to Michael Traynor, President, Am. Law Inst. (Dec. 20, 2000), in A.L.I. REP., Winter 2001, at 3, 3–4.

34. *Id.* at 4.

selections: to a Reporter, “the clock is your friend;”³⁵ “I will treat this [report] with the degree of routine that it fully deserves;”³⁶ “[M]aybe better than a motion we would have insight here.”³⁷ When a member addressed President Wright as “Your Honor,” Geoff interjected, “Your grace, not Your Honor.”³⁸ To President Wright, who reported he had slipped out during one discussion to survey the medicines available in the gift shop, Geoff said “I thought you were going to say you were looking for a medicine that would work toward clarification of thought. That would be very welcome for any of our projects.”³⁹ In response to a question “what does the Institute do in this case,” Geoff responded, “Make a sensible decision, I think.”⁴⁰ With the model of Geoff’s steadfast leadership and friendly guidance, that is what we usually accomplish.

Geoff enriched our lives. We miss him dearly and remember him with affection and appreciation for the chance that life gave us to know him.

35. Geoffrey C. Hazard, Jr., Comment at Council Meeting (Dec. 2009).

36. Geoffrey C. Hazard, Jr., *Report of the Director*, 75 A.L.I. PROC. 5 (1998).

37. *Discussion of Restatement of the Law Third, The Law Governing Lawyers*, 75 A.L.I. PROC. 45 (1998).

38. *Discussion of the Uniform Commercial Code, Revised Article 2A (Leases)*, 76 A.L.I. PROC. 377 (1999).

39. *Discussion of Transnational Insolvency Project (International Statements of United States and Canadian Bankruptcy Law)*, 74 A.L.I. PROC. 264 (1997).

40. *Continuation of Discussion of Restatement of the Law Third, the Law Governing Lawyers*, 75 A.L.I. PROC. 105 (1998). Geoff summed up his views about a sensible judicial decision in his Owen J. Roberts Memorial Lecture at the University of Pennsylvania Law School on February 19, 1986, when he identified four key dimensions “to the judicial process and to any particular judicial decision:” “the decision must be intelligible in terms of precedent . . . [T]he decisions in general must arrive at the right outcome . . . [T]he decisions indeed involve value choices by the judges . . . And, fourth, a decision entails a commitment to the future.” Geoffrey C. Hazard, Jr., *Rising Above Principle*, 135 U. PA. L. REV. 153, 190 (1986).
