

My Teacher, My Friend

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In 1977, I think it was, the Yale law faculty considered whether to bar recruiters who discriminated against gays and lesbians—most notably the military—from interviewing students on campus. With the faculty then dominated by liberal giants, one might think the ban would have been a matter of little controversy. But the liberals thought the matter complex, so many interests to consider, nuance, nuance everywhere.

Geoff Hazard was not a liberal giant of that faculty. He was a titan and stood in awe of no giant, liberal or conservative—and there were conservative giants on the faculty then too, albeit fewer in number. Geoff was conservative, in the true and now oh-so-rare sense of that word. A man who believed in the conservation of core principles, those worthy of a decent and free society. In stark contrast to his colleagues, all tangled up in the supposed complexity of the matter before the faculty that day, Geoff saw past all that. As always, he spoke succinctly: “The matter is simple. First, it was blacks, then Jews. Irish, Italians. Now gays.” The discriminating entities should be banned from campus. And Geoff voted that way. Before I graduated in 1978, the measure passed.

I was my class representative to the faculty that year. And I am proud to say it was my two mentors, Geoffrey C. Hazard, Jr. and Robert M. Cover, who were the strongest advocates for the dignity of all people when this matter came up. Two great scholars of civil procedure, whose approach to that subject was so dissimilar one could plausibly wonder if they were writing about the same thing. Geoff, a Republican and Bob all but an anarchist. Both were alumni of Columbia Law, where Bob had been one of the students occupying Columbia’s offices in 1968. Geoff was not there then, but had he been, he would not have been sitting in with Bob—of that I’m sure. Both were somewhat outliers on the Yale faculty, albeit in very different ways. The liberal giants wanted to rein Bob in just a bit, so they might more easily call him their own. As for Geoff, he did not see them, they knew, as most of legal academia did—as towering figures whose every pronouncement merited the deepest respect. They’d have wished that were different, but they knew it would never be. So he was an irritant, too sure of himself, a man who went his own way, and they kept their distance, which did not bother Geoff at all. What they did not know and could not have imagined was the enormous respect the arrogant irritant and the near-anarchist

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had for one another. In fact, they read and admired each other's work and respected each other as men.

I knew because I was close to them both, a fact in itself that almost no one on the faculty could quite understand—first because the two were so different from one another, and second because they had trouble imagining what either of them saw in me: a disco dancing working class Brooklynite who knew almost nothing of grammar and very few big words. Not obvious Yale material, to say the least.

I met Geoff the first day of my law school career. I was late to school that first day, having noticed half way to the campus from my Orange St. apartment that I had left my textbook home. My first class was Civil Procedure with Professor Hazard, who had a formidable reputation as a tough guy, but I knew nothing of that then, having chosen to live off campus, which left me shut out of all the pre-start-of-school gossip. When I got to school I peered into the classroom thru the glass in the door and saw on the podium a non-smiling man with posture stiff as a board presiding over students who looked terrified. Normally, I'd have walked in—in Brooklyn lateness was no sin—but the mood I sensed through that window told me not this time. So I waited outside the door and when Professor Hazard finally exited I accosted him and started spewing forth in my Susan rambling way the story of my being late. And as I talked this man peered down at me with a clear message in his eyes: "You're making a fool of yourself. Grow up." Message received my story began to peter out until I stopped mid-sentence, standing now silently before this man. He said nothing for a good 10 beats, letting his message sink in deep. And then he spoke. "Make my class on time." He then turned and walked away.

He had me from that not-hello. This man had held a mirror up that helped me see myself: his eyes, 10 beats. 5 words. I knew right then this was a man who could teach me much, a man whose respect was worth winning as it would come, if it came, not from sucking up or playing weak but from growing up and being strong.

And so I set out to meet the challenge he had placed before me that first day. I did not try and change to impress him. When I did not understand I said so surely and directly, and when I had a point to make I spoke that way too. Despite my ignorance of grammar, in the second term of my first year I signed up to do a writing project under his tutelage, this tyrant who unlike his colleagues failed students who did not know their stuff. I took every class he taught.

By the end of my three years at school I thought of Geoff and Bob as my friends. Bob and I shared more in common. My politics were and are as left as his and we were both Jews, spent Jewish holidays together and shared a Jewish sensibility to being other in a Christian world. Geoff was a Republican and had been raised a Quaker, later joining the Episcopal Church. Far from an outsider, he seemed more than "of the establishment," he seemed to personify the establishment itself. But Geoff and I were more like each other than Bob and I.

Neither of us suffered fools lightly. We could be cutting and dismissive and could not be swayed, cajoled or shamed out of a position when we knew we were right—or more right than those on the opposing side. Geoff was amused by how few of our sentences got completed in conversation. He would cut me off as soon as he got the point and move on to what followed and I would cut him off just as much. It made working with him a joy.

Not having shed my Saturday Night Fever air, which still lingers to this day, I had trouble getting a job after law school, something almost unheard of at Yale. But I did not ask Geoff for help. I did not want to intrude on our friendship and ask Geoff to vouch for me in a world that was unlikely to see me as he did. I'd manage on my own. After nine years of jobs that were more secretarial than legal, for example, Assistant to the President of the ABA and CLE director, not having clerked or worked in a big law firm or done anything a would-be law professor should have done, I decided I wanted to join academia. Now it was time to ask for Geoff and Bob's help.

I had stayed close to both these men in the nine years since graduating from law school and neither had criticized my strange job choices, neither had told me to clean up my act, be more "professional." Both let me be.

When I called Bob he said "It's about time. I've been waiting for you to decide. I will call Tom Krattenmaker right now, his buddy at Georgetown, whom Bob was sure would help. I tried to tell Bob that Tom knew me and thought me a lightweight, but Bob would have none of it, until, that is, he talked to Tom. "Nothing I said had any effect on the man," Bob told me right after he'd placed that call. Unlike Geoff, Bob could never quite understand that the world did not see me as he did. Geoff, more worldly wise, knew calling around would do little good with my unimpressive resume combined with my so Brooklyn behavior. And, unlike Bob, he knew what the Georgetown faculty thought of their CLE director. In fact, a few years before Geoff had been invited to give a named muckety-muck talk at Georgetown; he told his invitees that he wanted me at the small dinner where the big shot faculty would get a chance to talk with Geoff. They were appalled, but he insisted and sat me next to him to the great chagrin of the others present at the dinner that night. More, when he saw how they refused to acknowledge my presence, look at or speak to me, he turned his chair toward me and spent the rest of the dinner speaking to me alone, which, of course, infuriated his hosts.

When I called Geoff to say I wanted to enter academia, he said, "Let's write a book."

And it was that book that got me my first teaching job. With one call from me and with no hesitation Geoff lent me all his credibility. Linked me to him, giving me an air of respectability, probity, a public pedigree, which would all help to balance out how not of the cloth I seemed.¹ By forever linking my name to his, he changed the course of my life.

1. GEOFFREY C. HAZARD, JR. & SUSAN P. KONIAK, *THE LAW AND ETHICS OF LAWYERING* (1990).

And for his act of generosity and faith in me, he demanded nothing of me in return. He never once asked me to behave myself, even though throughout my career what my many critics in academia called “my style” was despised and closed many doors that might otherwise have opened to me. Even more important, instead of expecting deference from me in private or public, he reveled in my continuing to call him out when I thought him wrong. I did not like how much expert witnessing he did because too often I thought he was being too clever by half. Finding some plausible argument to support a position unworthy of his or anyone’s support.

Instead of standing silently by when that happened, I would call to tell him how I saw through the nonsense he was spewing forth on behalf of some law firm that had hired him and this never ceased to amuse and delight him. He enjoyed having someone around who’d call him out. These disagreements stayed between us until the case that has come to be known as *Amchem*, but which we first knew as *Georgine*.² The case involved one of the biggest, if not the biggest, class action settlements to be proposed up to that time, purporting to resolve the claims of thousands upon thousands of people who had become, in many cases, deathly ill from exposure to asbestos and the family members of those who had died from such exposure. In order to increase their take in the settlement, the class action lawyers had kept their own clients out of the big settlement, arranging to settle those cases separately, which would yield much more money for the lawyers. The question for the trial court and ultimately the United States Supreme Court was whether that carving out of their own clients made the lawyers unfit representatives of the clients in the class for whom they’d negotiated a less favorable deal.

Geoff, who was hired by those plaintiff lawyers to opine on the ethics of the matter, said the arrangement was not disqualifying. A plaintiff’s firm opposing the deal called me to see if I agreed. There were many reasons for me not to take this matter on. I had never testified as an expert witness before. I knew nothing about class actions, was not a professor of civil procedure and had no practical experience lawyering. But I said yes, as I later explained in an article about the case,³ because Geoff was on the other side and in a matter of this much import I felt an obligation, as we were so closely connected, to try and speak for the side I thought was right. Geoff could not have been more proud or pleased. And that was true years later, when once again in a matter I saw as important—the behavior of Enron’s lawyers—I again agreed to oppose his position as the expert for the other side.

And in both instances, with the passage of years, it is much easier to understand why Geoff took the positions he did. It’s the same reason he didn’t

2. *Georgine v. Amchem Prods., Inc.*, 137 F.R.D. 246 (E.D. Pa. 1994), *vacated*, 83 F.3d 610 (3d Cir. 1996), *aff’d* *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997).

3. Susan P. Koniak, *Feasting While the Widow Weeps: Georgine v. Amchem Products, Inc.*, 80 CORNELL L. REV. 1045, 1045 n.† (explaining this connection).

call Tom Krattenmaker or anyone else when out of the blue I announced I wanted to teach law. Geoff was a pragmatist with a clear view of the world and how it operates. My position in *Georgine* was ultimately upheld by the Supreme Court, but that has made no difference at all. The lawyers found a way around that decision and class actions today settle with lawyers putting their own interests above that of the classes they purport to represent every day. Geoff's point: As a practical matter, given the institutions involved, no matter what it's going to work this way. Similarly, many top tier law firms behave today much as Enron's lawyers did, especially given how the courts and Congress have both made it harder to charge lawyers as aiders and abettors.⁴

I will not write here of the many times Geoff helped me when I was in despair because of some personal trial. Suffice it to say, he had a generous and loving heart and was all a friend could be. I cannot help but mention, however, how much he loved his many children and grandchildren. One could hear it in his voice as he spoke. And then there was Elizabeth, his wife, whom, if anything, he loved even more. He was blessed to have found her and blessed again by the joy and support she provided him in their many years of marriage.

Geoff did not tell me that his health was failing. I found out only after he died that he'd been in hospice for a while. This broke my heart, although it was apparently what he wanted. I would so much have liked to say goodbye, to tell this man, whom I thought of as a second father, how much he'd changed my life, how much he taught me, and most of all how much I loved him for being the titan he was among men. He knew these things of course. But I so wish I'd been able to say them to him again, once more, before he passed.

I miss him very much and will forevermore.

4. See HAZARD & KONIAK, *supra* note 1, at 189–234 (5th ed. 2010).
