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TRIBUTE

A TRIBUTE TO PETER LOW

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PETER Low's retirement marks the end of an era for the Law School. Peter served on the faculty for fifty years, returning to teach a year after his graduation in 1963. It is hard to imagine the Law School without him, a state of affairs of which no one in the building has any direct experience.

While it is not the most important thing about him, Peter has a golden resume. He is a graduate of Woodberry Forest, Princeton, and the Law School; former law clerk to Chief Justice Earl Warren; author of influential casebooks in criminal law,¹ federal courts,² federal criminal law,³ and civil rights litigation;⁴ and at various times reporter for the ABA Advisory Committee on Sentencing and Review, consultant for the Brown Commission on Reform of Federal Criminal Law, reporter for the ALI's Model Penal Code and Commentaries, consultant to the FBI National Academy, and Provost of the University of Virginia.

In some respects, Peter's way of performing the office of law professor has gone out of fashion. His scholarly output was always intensely and deliberately practical. In the early years of his career, Peter was deeply engaged in law reform efforts that attempted to rationalize and

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¹ Peter W. Low, Richard C. Bonnie, Anne M. Coughlin & John C. Jeffries, Jr., *Criminal Law: Cases and Materials* (3d ed. 2010).

² Peter W. Low, John C. Jeffries, Jr. & Curtis A. Bradley, *Federal Courts and the Law of Federal-State Relations* (8th ed. 2014).

³ Peter W. Low, *Federal Criminal Law* (2d ed. 2003).

⁴ Peter W. Low, John C. Jeffries, Jr., Pamela S. Karlan & George A. Rutherglen, *Civil Rights Actions: Enforcing the Constitution* (3d ed. 2013).

codify a criminal justice system then consisting of a patchwork of statutory and common law crimes coupled with broad judicial discretion over sentencing.⁵ His later academic writings were principally in the medium of the casebook.

Peter wrote relatively few law review articles, and the ones he did write were also designed to have an immediate and practical impact on criminal law. Nothing better illustrates the point than a twelve-paragraph piece that he wrote with John Jeffries in the *Virginia Law Weekly*, the Law School's student newspaper, in March 1977.⁶ Low and Jeffries wrote to discuss *Mullaney v. Wilbur*, in which the U.S. Supreme Court found unconstitutional Maine's murder statute.⁷ The statute defined "malice aforethought" as an essential element of the crime of murder, but allowed the defendant to escape that liability if he could prove the crime was committed in the heat of passion.⁸ The Court found that procedure violative of *In re Winship*,⁹ which required proof beyond a reasonable doubt of every element of the crime charged.¹⁰ What was not clear was whether *Mullaney* also applied to affirmative defenses, which often placed the burden of persuasion on the accused to show some ground of exculpation. If it were so read, *Mullaney* would have invalidated a host of ameliorative defenses, which softened the rigor of common-law crimes by allowing the defendant to establish a ground of exculpation or mitigation. Low and Jeffries argued that "proof beyond a reasonable doubt" should not be used to strike down benign innovations in the law of criminal defenses.¹¹

⁵ See, e.g., Am. Bar Ass'n Project on Minimum Standards for Criminal Justice, Standards Relating to Appellate Review of Sentences (1968); Am. Bar Ass'n Project on Minimum Standards for Criminal Justice, Standards Relating to Probation (1970); Am. Bar Ass'n Project on Minimum Standards for Criminal Justice, Standards Relating to Sentencing Alternatives and Procedure (1968); Peter W. Low, Comment on Forgery and Fraud Offenses: Sections 1737, 1738, 1751-1758, in 2 Working Papers of the National Commission on Reform of Federal Criminal Laws 959 (1970) [hereinafter Working Papers]; Peter W. Low, Comment on the Sentencing System: Part C, in Working Papers, supra, at 1289; Peter W. Low & Richard A. Green, Comment on Theft Offenses: Sections 1731-1741, in Working Papers, supra, at 913.

⁶ See Peter W. Low & John C. Jeffries, Jr., DICTA: Constitutionalizing the Criminal Law?, Va. L. Weekly, Mar. 25, 1977, at 1.

⁷ 421 U.S. 684 (1975).

⁸ Id. at 687 n.5.

⁹ 397 U.S. 358 (1970).

¹⁰ *Mullaney*, 421 U.S. at 685, 703.

¹¹ See Low & Jeffries, supra note 6.

The reasons they gave were perfectly sensible. But why were they offered in a column in the *Law Weekly*, a publication otherwise devoted to reporting on events of interest only to students at the Law School? Because the Court had just heard argument in *Patterson v. New York*¹² and seemed poised to resolve the question of how broadly *Mullaney* should be read, perhaps without a clear sense of the real-world implications of the issue. Low and Jeffries wanted to make sure the Court understood the practical dimensions of the problem, and only the Law School's in-house newspaper offered the opportunity for timely publication of those views. The Court decided the case in June 1977, concluding that *Mullaney* should be given a narrowly procedural reading and citing the Low and Jeffries article multiple times¹³—the only instance to my knowledge of a student newspaper being cited by the Supreme Court for a substantive proposition of law. *This* was scholarship Peter Low style.

A second respect in which Peter's career was old-fashioned was his unflinching devotion to the institution he made his professional home. New entrants to any profession today are urged to create a personal (and therefore portable) "brand." The only brands of interest to Peter were the University of Virginia and its School of Law. He came to the Law School at a time of substantial change. In less than a decade we would break ground on a new building. Legal academia was in the throes of a shift from a practitioner-oriented to an academically-oriented model of scholarship. Fortunately, Dean Monrad Paulsen saw the change coming and persuaded his colleagues to embrace the future. The result was the hiring of a cohort of energetic young scholars who were among the leaders of the first wave of "law and" scholarship in the American legal academy.

Although I never met Monrad, he was by all accounts not a detail-oriented man. That is where Peter came in. He served as an Associate Dean for most of Monrad's tenure. Peter himself described his role as "Associate Dean without portfolio, in charge of nothing but often in the way."¹⁴ But of course Peter was in charge—of pretty much everything apart from faculty hiring and external affairs. Peter would later serve as Associate Dean for Academic Affairs, creating that office as it exists today (under the title "Vice Dean"), running the Law School's curriculum,

¹² 432 U.S. 197 (1977).

¹³ *Id.* at 207 n.10, 209 n.11, 214 n.15.

¹⁴ Peter W. Low, Monrad Paulsen, 63 Va. L. Rev. 170, 170 n.1 (1977).

supervising all student services, and facilitating faculty research. John Jeffries has referred to Peter as the “chief operating officer” of the Law School during Peter’s fifteen years as an associate dean, and that description is entirely apt.

I’m honored to be the eighth Law School dean to have served under Peter. Like all seven who preceded me, I have found his advice unfailingly wise. While Peter richly deserves an uninterrupted retirement, I suspect that I and future deans will continue to call on him for counsel. No one knows more about the history—or played a more crucial role in the development—of the institution that the University of Virginia School of Law is today.