

## IN HIS OWN WORDS: THE PETER HENNING I KNEW

JOAN MACLEOD HEMINWAY<sup>†</sup>

*Tuesday, October 15, 2015 at 10:18 AM*

*Joan,*

*I'm looking forward to seeing you on Thursday (and Friday). I'm planning to go to the restaurant where we're having the dinner a little early, heading down there about 5:30. Can I swing by and pick you up so that you don't have to hassle with the Inn's shuttle? We will arrange for a ride on Friday morning, or if you want it's a short walk over to the Law School. We can figure that out once you're here.*

*peter<sup>1</sup>*

The message above is quintessential Peter Henning: warm, thoughtful, generous, caring, and informal. Reading these words after Peter's untimely death continues to offer me some comfort—the comfort of memories that make me smile and, in some small measure, keep Peter close and provide ongoing motivation for my career development.

When I started out in law teaching, after enjoying fifteen-years of law practice, Peter was one of a small group of legal academics who fully embraced me, appreciated what I had done (and what I was doing and what I strived to do), and understood the support I needed to move forward. He felt and shared my desire to ensure that legal scholarship included linkages to practice settings—incorporating pragmatism framed by the benefits enjoyed in (and constraints imposed by) boots-on-the-ground lawyering. He and I both understood that some legal scholars have not practiced significantly (if at all) in the areas of law that their research and writing addresses. As a result, we both seemingly had an implicit mission to fill some gaps in the academic understanding of insider trading—he from an enforcement practice angle and I from a corporate advisory and

---

<sup>†</sup> Rick Rose Distinguished Professor of Law and Interim Director of the Institute for Professional Leadership, The University of Tennessee College of Law. I am grateful to Chris Lund and the *Wayne Law Review* for allowing me to say these few words about Peter. The experience of writing this, especially in light of the recent deaths of a dear staff colleague and my father, was cathartic.

1. E-mail from Peter Henning, Professor of L., Wayne St. Univ. L. Sch., to Joan MacLeod Heminway, Professor of L., Univ. Tenn. Coll. of L. (Oct. 15, 2015, 10:18 EST) (on file with author).

compliance angle. It was unspoken, but I always saw us as sympatico souls in the quest for a more comprehensive, more accurate picture of U.S. insider trading regulation.

Along those lines, the message quoted above relates to a symposium that Peter organized for *Wayne Law Review* in 2015. The topic was “Corporate Counsel as Gatekeepers.”<sup>2</sup> Peter contacted me as he was organizing the symposium, inviting me to participate and asking for feedback on his planned “academic panel” for the event. I offered some positive reinforcement and introduced Peter to Arthur Laby<sup>3</sup> as a possible co-panelist. Arthur accepted the invitation to participate.

Peter’s paper for that symposium, “The New Corporate Gatekeeper,”<sup>4</sup> focused on emergent ethical issues facing corporate counsel in their role as gatekeepers. In the published version of the paper, he observed that corporate counsel were increasingly occupying externally accountable roles as gatekeepers and explained the impact of this development:

This expansive approach to gatekeeping, especially if it entails reporting potential violations to outsiders, seemingly conflicts with the traditional understanding of the attorney as representing solely the interests of the client. Under this view, lawyers are “zealous advocates” owing no obligation to protect the interests of third parties, except perhaps ensuring that legal services are not misused for illegal or obstructive conduct.<sup>5</sup>

Ultimately, Peter concluded that “[i]f corporate counsel, in particular an in-house lawyer, is expected to view regulators as an ‘ally’ by providing information that makes government oversight more effective, then that may undermine the gatekeeping role that puts the attorney in the position to prevent misconduct.”<sup>6</sup> His appreciation for the lawyer’s conundrum was sincere and compelling. (I still feel guilty that I never offered him

---

2. See *Corporate Counsel as Gatekeepers*, WAYNE L. REV., <http://waynelawreview.org/corporate-counsel-as-gatekeepers/> [<https://perma.cc/SZW2-PVX3>] (last visited Aug. 27, 2022). The keynote presentation, my paper, and Peter’s paper from the symposium were published in the first book of Volume 62 of the *Wayne Law Review*. Joan MacLeod Heminway, *The Role of Business Counsel as Compliance Gatekeepers: Toward Understanding and Combating Reckless Disregard for Legal and Ethical Compliance in Business Entities*, 62 WAYNE L. REV. 7 (2016); Peter J. Henning, *The New Corporate Gatekeeper*, 62 WAYNE L. REV. 29 (2016).

3. Arthur Laby, RUTGERS L., <https://law.rutgers.edu/directory/view/alaby> [<https://perma.cc/K8HC-WX4U>] (last visited Aug. 27, 2022).

4. Henning, *supra* note 2.

5. *Id.* at 31 (footnote omitted).

6. *Id.* at 52.

comments on the paper before it was published. In all candor, however, I am not sure anything I could have said would have improved the piece.)

Peter's paper also amply demonstrates other attributes of his work. He could be pointedly and keenly insightful and sometimes exhibited a certain wry humor in making an argument or expressing a viewpoint. The following paragraph illustrates well Peter's powers of perception and wit:

Catchy labels have a certain visceral appeal, so they can be easily expanded to contexts beyond their accepted meaning. For example, "insider trading" has a fairly narrow application to the misuse of information for personal profit in breach of a duty of trust and confidence in connection with trading in securities. But as of late it has been used by New York Attorney General Eric Schneiderman to describe something he called "Insider Trading 2.0" to assail the use of private market data for profitable trading by high frequency trading firms. That is not the type of securities fraud denominated as insider trading because there would be no misuse of information and the data is available to anyone willing to pay. But calling something insider trading generates an immediate negative response, so the moniker is a handy one to apply even if the actual transactions do not fit the legal definition of a violation. Similarly, a Ponzi scheme, named after Charles Ponzi for his efforts to entice investors to send him money for postage stamp speculation, involves soliciting new investors to pay off earlier ones to maintain the façade of a successful program. But that term was used by Eliot Spitzer, the former New York Attorney General and Governor, in 2009 to describe how the Federal Reserve Board responded to the financial crisis by providing bailout loans to numerous banks that were secured by distressed assets that had little market value at the time. It was certainly a fetching rhetorical flourish, but the Troubled Asset Relief Program was far from the type of scheme designed to fleece gullible investors by using new money to pay off old investors; indeed, the federal government made a profit on a number of the programs used to prop up the economy after the financial crisis hit.<sup>7</sup>

Those who know Peter will recognize that his oral expressions were similarly infused with perceptive, witty commentary. It was always a pleasure to listen to his descriptions, explanations, and arguments.

---

7. *Id.* at 32–34.

I also bonded with Peter over sports. I have heard others comment on this as well. On the Saturday after the 2015 *Wayne Law Review* symposium, for example, the University of Michigan played Michigan State (in football), and the Spartans stole victory from the jaws of defeat at The Big House in the final seconds of the game.<sup>8</sup> I commented briefly on the game—a crazy chapter in a storied in-state rivalry—in an email message. Peter’s response?

*Monday, October 19, 2015 at 4:18 PM*

*Joan,*

*More than half the state is still in shock from the Michigan-MSU game. I have a few friends who attended, including one who made the first trip ever to see a Michigan game. I told him there’s no way you can top what he saw, because it will be talked about 20 years from now. I feel bad for the punter, who actually had a very good game.*

*I’ve seen the ads for Tennessee-Alabama next week. Enjoy!*

*peter<sup>9</sup>*

In re-reading this message, I noted both the full-throated validation of the extraordinary nature of the game and the sympathy (maybe even empathy?) for the punter who was at the center of Michigan’s bobbled play. . . . Again, classic Peter. His compassionate nature infused so much of what he did.

Ultimately, as I was writing this tribute, it was Peter’s collegiality, grace, and kindness that kept re-emerging. Email messages from Peter abundantly evidence these traits. After the 2015 symposium, for example, I also received the following from Peter:

*Monday, October 19, 2015 at 3:05 PM*

*Dear Joan,*

---

8. See *Michigan State Stuns Michigan with Final-Play Fumble Return*, ESPN (Oct. 17, 2015), [https://www.espn.com/college-football/recap/\\_gameId/400763542](https://www.espn.com/college-football/recap/_gameId/400763542) [<https://perma.cc/YM5V-M48Q>].

9. E-mail from Peter Henning, Professor of L., Wayne St. Univ. L. Sch., to Joan Macleod Heminway, Professor of L., Univ. Tenn. Coll. of L. (Oct. 19, 2015, 4:18 EST) (on file with author).

*I want to thank you for taking the time to participate in the Wayne Law Review Symposium last Friday. I have received uniformly positive feedback on the program, and your contributions were an important part of that. I know how busy your schedule is, so taking out that much time to join the Symposium is greatly valued.*

*I hope the trip back to Knoxville was uneventful, and I'll see you next summer at SEALS.*

*peter<sup>10</sup>*

And then, a few years later, when I was scheduled to return to Wayne State University Law School for another *Wayne Law Review* symposium at which we had planned to get together, Peter sent a message expressing regret that he would not be able to meet up with me in Detroit after all.

*Wednesday, February 13, 2019 at 3:56 PM  
Joan,*

*I hope you're doing well. It turns out that I will have to be out of town next week when the symposium takes place here at Wayne. My father-in-law had back surgery a couple weeks ago, and then suffered a (mild) heart attack after that. So Karen is going down on Friday to help out, and I'm going next Thursday to help around the house. The problem of aging parents.*

*I hope you have a good trip up here and the symposium goes well. Sorry that I will miss you.*

*peter<sup>11</sup>*

In my experience, not many people would take time out to write such a lovely note at a time like that.

For Peter, family and friendships were so important. His family pride and love emerged in many a conversation. I have mentioned it before, but

---

10. E-mail from Peter Henning, Professor of L., Wayne St. Univ. L. Sch., to Joan Macleod Heminway, Professor of L., Univ. Tenn. Coll. of L. (Oct. 19, 2015, 3:05 EST) (on file with author).

11. E-mail from Peter Henning, Professor of L., Wayne St. Univ. L. Sch., to Joan Macleod Heminway, Professor of L., Univ. Tenn. Coll. of L. (Feb. 13, 2019, 3:56 EST) (on file with author).

I will always remember specifically how proud he was when we drove by the University of Detroit Mercy School of Law, and he reminded me that Karen worked there and proudly rattled off a number of her recent accomplishments. The love and respect in his voice was so touching. His abiding friendship and co-authorship with Ellen Podgor<sup>12</sup> and his long and strong mentoring bond with Steven Davidoff Solomon<sup>13</sup> also have left lasting impressions on me.

I miss and will continue to miss Peter's presence in my life as a friend and fellow teacher-scholar. I share Peter's own words liberally in my reflections because they are meaningful to me and part of what keep his dreams alive for us all. Through them he lives on; through them, his inspiration endures. I aim to continue to toil diligently in the spirit of his labors, paying forward what he gave to me and to so many of us. It is a blessing it is to have known Peter and to be influenced by his life and work.

---

12. *Ellen S. Podgor*, STETSON L., <https://www.stetson.edu/law/faculty/home/ellen-podgor.php> [<https://perma.cc/UZ9L-HEGY>] (last visited Aug. 27, 2022).

13. *Steven Davidoff Solomon*, BERKELEY L., [https://www.law.berkeley.edu/our-faculty/faculty-profiles/steven-davidoff-solomon/#tab\\_profile](https://www.law.berkeley.edu/our-faculty/faculty-profiles/steven-davidoff-solomon/#tab_profile) [<https://perma.cc/C7FK-ZRFH>] (last visited Aug. 27, 2022).