

TO PETER CICCHINO, FROM THE HEART

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Although it may disappoint some here, I do not intend to disagree much. In fact, seven short years ago this month, I met Peter Cicchino at the 1993 Lesbian and Gay March on Washington, and we have not really disagreed much since. Most of those who know either of our personalities would find that astonishing, but I think we both knew when we met that we were soul mates. And all of Peter's speeches and comments since then have only confirmed that for me.

When I reread Peter's speech¹ in preparation for this event, one of the first things that struck me is that it was prepared a couple of years ago because it did not begin with a parable from "Buffy the Vampire Slayer." That is another point of agreement between Peter and me. I do not know if I am outing him or not, but I will out both of us: we are both devoted Buffy fans.

We are also fans of Dr. Seuss, as you can see when Peter begins his wonderful essay. When I reread his speech, it really did hit a nerve, and I decided to circulate it to a few friends at work. I work for the Legal Aid Society; I'm a specialist in welfare rights, and I have been doing this for ten years. As one can imagine, the last several years have been very "happy" ones, by Peter's measuring rod. I also work with a homeless rights project on a lot of homeless issues. We have had quite a lot to do recently, so I decided to circulate the speech, since it did really resonate with me, to my friends at work. These hardened litigators, some of whom have worked with homeless people in New York City for over a decade, were all deeply touched

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1. Peter M. Cicchino, *Defending Humanity*, 9 AM. U. J. GENDER SOC. POL'Y & L. 1 (2001) (commenting on the theory and practice of public interest lawyering).

by Peter's words—so much so that the head of our homeless rights project, who himself has been practicing in this area for almost two decades, circulated the speech to everyone in the office.

I decided today that I would try to address why my comrades and I, this group of crusty contrarians, seemingly, all reacted so strongly and appreciatively to Peter's speech beyond the obvious fact of its eloquence and its decency.

To skip ahead a bit to the punch line, what seemed evident to me was that Peter's speech brought us all back to basics: why we do what we do, and what kind of people we're trying to be when we do it in an environment of unrelenting hostility to our clients and our work, constant conflict, anger, and even, I have to concede, hatred that this environment has bred in us at times. It was profoundly nurturing and reassuring to be reminded that what we do is grounded in simple human decency, in caring for our fellow human beings, and dare I say it, even love.

Peter's preaching to the choir—what he calls his *Ferverino*—reminded us that whatever tough self-image we may have, we are caring people who are constantly making trouble and fighting proudly, because we have a vision of community that is so fundamentally at odds with the prevailing ideology, and not only because we like a good fight.

To explain the depth of our response, I want to recount briefly a little of the most recent and most desperate of battles that homeless people have been fighting in New York City. Over the last several months we have been litigating to prevent the City from implementing new diabolical plans to deny shelter to homeless people or even throw homeless people out of shelters if they do not comply with bureaucratic rules, including welfare rules.² Under the proposed plans,³ the City would throw people who have nowhere else to live out onto the streets of New York if, for example, they missed a welfare appointment, or if they failed to provide some documentation or something to the welfare department within some strict time frame, or if they did not fully satisfy any aspect of the City's infamously draconian and irrational work requirements for welfare

2. See Nina Bernstein, *Official Fear Impact of Rule on Homeless*, N.Y. TIMES, Oct. 29, 1999, at B1 ("Acknowledging that strict new welfare rules have mistakenly cut some people from the rolls, the city official in charge of homeless services expressed concern . . . that work requirements and other new rules for homeless people could risk wrongfully depriving some families of shelter.").

3. See, e.g., 18 N.Y. COMP. CODES R. & REGS. tit. 18 § 352.35 (1995) (plans consist of City implementation of regulations).

recipients.⁴

The ideological underpinnings of this dreadful new policy can be found in so-called “welfare reform,” which itself has ideological foundations hundreds of years old. “Welfare reform” was well promoted by candidate Bill Clinton, and, to some extent, was signed into law in the Personal Responsibility Act⁵ by the personally responsible Bill Clinton at the advice of the personally responsible Dick Morris. It says that the right to subsist—specifically the right to needed income supports, primarily for food and shelter—should be contingent on adhering to the rules the government lays down for good behavior.⁶ This view is based on the premise that poverty exists because of a person’s irresponsibility and that poor people need to be taught to follow the rules of society, allegedly in order to save themselves.

Let’s leave aside for today the obvious and dangerous invitation to bureaucratic harassment and error in such an arrangement—an invitation the Guiliani administration has enthusiastically accepted, raising bureaucratic abuse to an art form.

And let’s leave aside for today the long and pervasive racist and sexist histories and subtexts that led to these supposedly new ideas.⁷ Taken at face value, and when laid bare, this world view presents—sometimes explicitly, as in the mayor’s homeless policies—the terrifying moral message that human survival is at best a contingent right. And in practice, in New York City, this moral message often means that survival is contingent upon submission to abusive authority. More often than not, this insistence on supposed “mutual obligations” has in fact consisted of the welfare bureaucracy demanding that people abandon their hopes, desires, and dreams as a condition of being able to pay for food or have something of a home. As an example, since the “welfare reform” project in New York City began, approximately 20,000 students on welfare have been forced to leave the City University of New York⁸ in order to do

4. See Bernstein, *supra* note 2, at B1 (observing that “[t]he work requirement is only one of a list of rules that those seeking shelter will have to obey . . .”).

5. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2501 (codified as amended in scattered sections of 8 U.S.C. & 42 U.S.C.).

6. See *id.* (defining the purpose of the Act to include “reduc[ing] welfare dependence by requiring work”).

7. See generally MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT (1996) (exploring the race, class, and gender dynamics of various public assistance programs).

8. Compare City University of New York Central Administration, Spring 1996 CUNY Enrollees Receiving Welfare Benefits (on file with author) (reporting that 26,969 CUNY students received public assistance), with City University of New York Central Administration,

workfare,⁹ on threat of losing their subsistence benefits.

In the extremist version pursued by the mayor, this moral view makes even minimal shelter from the elements contingent on complete submission to these rules. If one cannot or does not follow the rules, one is literally expelled from society—perhaps to jail or perhaps simply to die on the streets of New York. The mayor has called this view “tough love.”¹⁰

By the way, I think it fitting that we are discussing the imposition of this kind of discipline on poor North Americans when, at the same time, we are having protests this week in Washington against the imposition of discipline on poor people in the third world, who are also being told to lower their expectations for life in order to play their assigned “responsible” role in the economy.¹¹ I would argue that these forms of discipline are actually two sides of the same dollar.

Now for some good news. In the face of the mayor’s terrifying proposal, we have fought back and won a court decision that articulates a different moral vision, one much closer to Peter’s vision than to that of the IMF. In a decision for the ages, Justice Stanley Sklar, in *Callahan v. Carey*,¹² ruled that a Consent Decree entered into by the City and state twenty years ago to guarantee shelter to those in need¹³ “has served for nearly two decades as a staunch protector of the right of homeless, and often helpless, men and women in this City to have access to the bare minimum of decent shelter and board that one would hope to provide for all people in a humane caring

Fall 1999 CUNY Enrollees Receiving Welfare Benefits (on file with author) (reporting that 7569 CUNY students received public assistance).

9. See The Associated Press, *Judge Rejects N.Y.C. Plan to Force Homeless to Work*, SEATTLE TIMES, Feb. 23, 2000, at 1, available in 2000 WL 5522084 (explaining that “[u]nder the city program known as workfare, welfare recipients are put to work by city departments”).

10. See Sharon Krum, *Ten Years Ago if You Told a Native New Yorker that Times Square Would Become a Dream Destination for Parents, They Would Have Told You to Visit Any One of the City’s 10,000 Therapists*, GUARDIAN, June 21, 2000, at 1, available in 2000 WL 23282014 (describing Mayor Guiliani’s policy of “tough love”).

11. See Juliette Beck, *Why We are Protesting*, WASH. POST, Apr. 16, 2000, at 1, available in 2000 WL 2297159 (explaining the protests against the World Bank and the International Monetary Fund are part of a larger movement which “aims to democratize economic decision-making at all levels so that the people who are most affected by economic policies have a voice in designing them”).

12. *Callahan v. Carey*, No. 42582/79 (N.Y. Sup. Ct. Feb. 18, 2000).

13. See *Callahan v. Carey*, at 1 (citing Consent Decree entered into in 1981). The Consent Decree stated in part that:

The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter.

Id. See also *Eldredge v. Kock*, 98 A.D.2d 675 (1st Dep’t 1983), cited in *Callahan v. Carey*, at 1 (extending the provisions of the Consent Decree to homeless adult women).

society.”¹⁴ Warning that the City’s plan would “result in an explosion of homeless individuals, banished or barred from shelters, risking their health, and perhaps, their lives, on the often bitterly cold, and palpably dangerous streets of a sadly indifferent City,”¹⁵ Justice Sklar found the City’s plan invalid.¹⁶ Of course the City plans to appeal.

Why am I telling you all of this? Although plaintiffs’ counsel did not actually provide Justice Sklar with a copy of Peter’s speech, the judge’s decision nevertheless bespeaks a moral view that tracks Peter’s essay. First, following Peter, the decision implicitly recognizes the shared humanity of each and every person in our society. Homeless people need what we all need: food and shelter from the elements at an absolute minimum. Second, again following Peter, the decision implicitly recognizes that homeless people must be treated as people, that a humane society could never strip any of its members of access to the basic conditions of survival.

Giving the City the benefit of the doubt, the Court accepted that the City’s plan was motivated by the good intention of helping people become self sufficient, but nevertheless said there are limits to how people can be treated.¹⁷

Justice Sklar writes, and this is one of my favorite passages:

Defendants express great confidence that their regulatory bureaucracy can be so stream-lined and made so fail-safe, as to ensure that virtually no deserving person will be harmed. However, bureaucratic error is as much a part of bureaucracy, as human error is a part of life. If the Consent Decree were to be found to encompass the multitude of bureaucratic requirements which are contained in the Regulation . . . the simple bureaucratic error which might send an individual out into the street, because he or she was unable to understand or to cooperate with these requirements, might be the error which results in that individual’s death by exposure, death by violence, or death by sheer neglect. The risk is simply too great to take.¹⁸

In other words, recognizing that homeless people are people implies that we cannot take risks with their very lives.

The less charitable view of the City’s purposes might also have observed that their supposed “tough love” is not accidentally

14. Callahan v. Carey, at 2.

15. *Id.* at 23.

16. *Id.* at 24.

17. *Id.* at 24 (remarking that if City regulators “sincerely want to create a system in which our homeless citizens can rejoin, and contribute to society, as is evident, they should do so by means which do not endanger those very persons”).

18. *Id.* at 23-24.

indifferent to human life, that in its world view, those who do not provide value to the society or more specifically, to the economy, have no value in this society and should be discarded like so much waste. The judge's decision implicitly discards that kind of reduction of human life to its instrumental or economic value. Following Peter, the sheer decency of the decision rests on its insistence that people, yes, even poor and homeless people, are to be treated as people and not as things.

Finally, I come to Peter's third dictum in his essay—that defending human rights is part of leading a good and happy life—and with that I also come full circle to where I began, that my comrades and I had such a deep appreciation of Peter's message. Coming to us just after the months of intensive litigation that led to the *Callahan* decision, Peter's speech reminded us that we not only stand against something—a brutal, dehumanizing, and exploitative world view masquerading as “tough love”—but that we also stand for something, indeed, something very beautiful and decent—I would call it a community of caring.

Our vision comes from a commitment to Peter's first two principles, even though or perhaps because their application to our clients is often very unpopular. Our job is to hear the Who and to represent them.

Peter's speech not only articulated our moral vision, but reminded our battle-hardened souls that there is love in what we do, and that we should be happy about that. That is why we loved his words so very much, and Peter, that is one of the many reasons why I love you so very much. Thank you.