

USING OUR WORDS TO LET IN THE WORLD: A TRIBUTE TO PETER CICCHINO AND THE ART OF SPEAKING OUT

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I'm going to use this opportunity to do what Peter does in these settings, which is preach a bit, but because some of you here have not had the opportunity to read Peter's essay, I will begin by reading from the essay where he tells the story of Horton Hears A Who.

The story is about an elephant named Horton who, because of his extraordinarily large ears, becomes aware that a community of microscopic people called Whos live on a dust speck that sits atop the blossom of a single flower. Horton's enhanced auditory ability is of course a metaphor for a heightened moral sensitivity. Once Horton is aware that people live on the dust, he acts accordingly, doing everything in his power to protect them.

The other animals in the jungle are not able to hear the voices of the Whos and consequently, do not recognize that persons live on the dust speck on the flower. They find Horton's way of relating to the dust speck and insistence that others act similarly offensive and bizarre. They mock Horton, they abuse him, they think him insane. They take the blossom on which the dust speck sits and hurl it into a valley of billions of identical blossoms, endangering the lives of the Whos and forcing Horton, the Whos' advocate and protector, to endure countless hours of difficult and tedious work in finding them.

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Finally in this story's climax, the other animals assault and imprison Horton, intent on boiling the dust speck on which the Whos live. But this is a story by Dr. Seuss and at the last crucial moment, the Whos, who Horton has been exhorting with the slogan, "if you can only make yourselves heard, you don't have to die," manage to organize themselves to speak one unmistakably audible, "we are here, we are here". The other animals hear the voice, recognize that Horton was right all along, and now aware of the presence of the Whos, change their behavior accordingly.¹

In his paper, Peter focused on Horton's extraordinarily large ears, the ears that enabled Horton to hear the microscopic Whos living on the flower blossom. Peter showed us Horton as a metaphor for a heightened moral sensitivity. The lesson according to Peter was that we must all listen carefully, recognize the others in our midst and appreciate their humanity.

I would like to suggest another lesson we can glean from the Horton story, but before I do, I would like to point out something about our guest of honor, Mr. Peter Cicchino. Peter is of course a man of great moral sensitivity or, to use the metaphor, someone with extraordinarily large ears.

But let us not beat around the bush here. As every one of Peter's friends knows, Peter's ears are nothing compared to Peter's mouth. What I mean by that is not just that Peter talks all the time, but that for Peter, speech is his single most powerful tool: not law, not theology, not any particular body of knowledge. There are dozens of verbs in the English language that seem coined specifically for Peter: persuade, cajole, convert, advocate, convince, coax, argue, declaim, contend, affirm, annoy.

That's why I find it so interesting that Peter focuses on Horton's ability to hear the Whos rather than the power of the Whos to make everybody else hear them, which is ultimately what changed the other animals' perceptions and saved the Whos' lives.²

The transformative power of speech has been recognized by no less an authority than the Supreme Court,³ which has noted that speech

1. Peter M. Cicchino, *Defending Humanity*, 9 AM. U. J. GENDER, SOC. POL'Y & L. 1 (2001); see also DR. SEUSS, *HORTON HEARS A WHO!* 58 (Random House Children's Publishing, 1954).

2. See generally Cicchino, *supra* note 1 (stating that the other animals hear the voice, recognize that Horton was right all along, and now aware of the personhood of the Whos, change their behavior accordingly).

3. Cf. *Whitney v. California*, 274 U.S. 357, 375-77 (1927) (noting that speech has the power to help in the discovery and spread of political truth, free men from the bondage of irrational fears, and expose the falsehoods and fallacies of life); see also *Dennis v. United States*, 341 U.S. 494, 499 (1950) (noting that speech can be used for encouraging the overthrow of the

has the power to inflict injury⁴ or to disturb the peace,⁵ even if no weapons are wielded or blows struck, and that words have an inescapable emotive quality that can either serve to advance discussion or instead, to harm the hearers.⁶ For example, racial epithets cause not only psychological but even physiological damage to their targets.⁷ But speech does not only have the power to destroy, it also has the power to create. And because Peter's background before law school was as a Jesuit,⁸ let us move for a moment from the law to religion.

In the Christian tradition, Peter's tradition, we remember the beginning of the gospel of John, which reads, "In the beginning was the Word, and the Word was with God, and the Word was God."⁹ In my own religious tradition, Judaism, we recite a prayer that says, "Blessed be God who spoke, and the world came into being."¹⁰ In his book, *In Speech and In Silence*, Rabbi David Wolpe tells the story of the emperor of China who built the Great Wall of China.¹¹ That emperor

government, but such speech is only criminal if the speaker intends to encourage such action).

4. Cf. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (holding that a state may forbid or proscribe advocacy of the use of force when such advocacy is directed at inciting or producing imminent lawless action and is likely to produce such action); *Feiner v. New York*, 340 U.S. 315, 321 (1951) (holding that it is a valid exercise of state police power to prevent a speaker from intentionally provoking a given group to hostile reaction); see also *R.A.V. v. City of St. Paul*, 505 U.S. 377, 380-81 (1991) (noting that "fighting words," that is, language that "inflicts injury or tends to incite immediate violence," are not protected by the First Amendment).

5. Cf. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942) (holding that states are free to ban "fighting words," which when addressed to the ordinary citizen are inherently likely to provoke a violent reaction); *Hess v. Indiana*, 414 U.S. 105, 109 (1973) (holding that defendant was not guilty of disturbing the peace because his words were not likely to produce imminent danger).

6. Compare *Whitney*, 274 U.S. at 375-77 (noting that speech may provide discovery and freedom), with *R.A.V.*, 505 U.S. at 415 (noting that racial threats can produce great harm to the hearer), and *Kunz v. New York*, 340 U.S. 290, 313 (1951) (stating that the City should protect people from racial epithets because they "hurt like rocks").

7. See *General Building Contractors Ass'n, Inc. v. Pennsylvania Contractors Ass'n of E. Pa.*, 458 U.S. 375, 413 (1982) (Marshall, J., dissenting) (stating that racial discrimination causes embarrassment, humiliation, and the denial of basic respect which can and does cause psychological and physiological trauma to its victim); see also DON OPERARIO & SUSAN T. FRISKE, *RACISM EQUALS POWER PLUS PREJUDICE: A SOCIAL PSYCHOLOGICAL EQUATION FOR RACIAL EXPRESSION*, IN *CONFRONTING RACISM* 33-53 (Jennifer L. Elserhardt & Susan T. Friske, eds.) (noting generally that prejudice leads to competition and conflict).

8. See Peter M. Cicchino, *To Be a Political Lawyer*, 31 HARV. C.R.-C.L. REV. 311, 313 (1996) (describing how Cicchino was a Jesuit novice in 1983); Michael J. Perry, *What is "Mortality" Anyway?*, 45 VILL. L. REV. 69, 104 (2000) (Cicchino describes himself as someone who has spent his adult life as a Jesuit and as an attorney); Cicchino, *supra* note 1, at 46, 53 (stating that he, Cicchino, was once a Jesuit novice and had known much happiness as a Jesuit). In addition, by most reports he was a very devout Jesuit. *Id.*

9. 14 *John* 1:1.

10. See PHILIP BIRNBAUM, *DAILY PRAYER BOOK* 49 (Hebrew Publ'g Co., New York 1961) (referring to Baruch Sh'amar, a prayer praising numerous positive qualities of God).

11. DAVID J. WOLPE, *IN SPEECH AND IN SILENCE—THE JEWISH QUEST FOR GOD* 5 (1992).

also demanded that all books before his time be burned.¹² Wolpe writes, "The emperor wished to keep other people out by building a wall around his nation. He wished to keep the past out by building a wall around the word, for he knew that words let in the world."¹³

We've been lucky enough to have many examples in this country of words letting in the world. We can remember the speeches of Martin Luther King, Jr., whose words contributed as much to creating a movement that would change the lives of Americans than did his or anybody else's actions.¹⁴ John F. Kennedy, exhorting Americans to step up to contribute to the country.¹⁵ Franklin Roosevelt.¹⁶ Abraham Lincoln.¹⁷ I'm just referencing presidents here because they're easy and you've heard of them, but many people have used their words to move people. Their deeds are reported in history books, but it is their words that are remembered, their words that are inscribed upon our hearts.

It might seem unnecessary for me to focus on the importance of speaking out, given that most of us here are lawyers or law students, and at least to the lay person, the very essence of lawyering is oral advocacy. You know those wonderful three-minute closings in *L.A. Law*, *The Practice*, or *Law and Order*. But I've been around law schools and I've been around a lot of lawyers, and I'm concerned that once we go to law school and immerse ourselves in appellate cases, and statements of fact, and briefs, and memoranda of law, we start to lose our connection to the power of speaking, the power of oral advocacy. We're graded on written tests. We take a bar exam that reduces great principles of the law to multiple choice questions. We go to work for law firms where lawyering is about producing dense gray paragraphs of text, spending very late nights with a computer in front of us instead of a judge and jury.

12. *Id.*

13. *Id.*

14. See Lance Morrow, *Triumphs of the Spirit; How History Responds to Ideas and Yearnings*, TIME, Oct. 5, 1983, at 75 (stating how the "I Have a Dream" speech made the news and history, as much as any earthquakes or bombs did); Ellis Cose, et al., *The Good News About Black America (Analysis of Improved Social and Economic Standing)*, NEWSWEEK, June 7, 1999, (describing how the vision of racial equality was started by the words "I Have a Dream" of Martin Luther King, Jr.).

15. See John F. Kennedy, *Inaugural Address* (visited June 23, 2000) <http://www.geocities.com/~newgeneration/inaug.htm> (quoting President Kennedy: "Ask not what your country can do for you—ask what you can do for your country.").

16. See Franklin D. Roosevelt, *First Inaugural Address* (visited June 23, 2000) http://douglass.speech.nwu.edu/roos_a76.htm (stating that the only thing to fear is fear itself).

17. See Abraham Lincoln, *Gettysburg Address* (visited June 23, 2000) http://douglass.speech.nwu.edu/linc_b33.htm (noting that the founding fathers had created this new nation based on liberty and dedicated to the idea that all men are created equally).

Even worse, in today's law school and legal profession, I fear we only feel comfortable speaking out on behalf of our clients, never on behalf of our own views. We learn to fear what might happen if we actually open our own mouths to profess something in which we believe deeply. Perhaps we will get a fact wrong, or inadvertently say something politically incorrect. Perhaps we will get a reputation as someone who does not have the correct calm and deliberate temperament to be a lawyer.

There is a wonderful story from the Jewish Hassidic tradition by the great Chasidic master Levi-Yitchak.¹⁸ On Yom Kippur, he saw that the prayers of the congregation were not ascending to heaven.¹⁹ Knowing that there must be a lost or afflicted soul among his congregants, the rabbi began to look around at the congregation, and at the back of the synagogue stood a young shepherd boy who looked troubled. The rabbi went up to him and said, "what's wrong?"²⁰ The boy said, "I've spent more time in the fields than in the synagogue and I've never learned how to pray. All I've learned is the alef bet, the Hebrew alphabet."²¹ And the rabbi told him merely to recite the alef bet and that God would arrange the words.²² The boy began to chant the letters and all of a sudden the rabbi saw soaring up to the heavens not only the prayers of the shepherd boy but the whole congregation.²³

I hope this story can help us to remember that it does not matter if every word we say has been fact-checked twice, or if we are perfect orators. It is not unseemly for a lawyer to speak up about morals and values and visions for the future. In fact, there is probably nothing more appropriate each of us can do, both as a lawyer and as a person, than to voice our core beliefs. Our most important asset for making a real difference in the world is not our law degree or our bar admission or our job title, but our heart, our mind, and especially our voice. Like the Whos, we can use the power of our voices to offer people a different view of the world, and maybe even change things

18. Cf. Wolpe, *supra* note 11, at 123 (describing a similar story).

19. See Wolpe, *supra* note 11, at 123 (describing the source of the story as the Talmud and the meaning behind it is that something must be spoken, meanings must not be spun out of emptiness); see also The Jewish Holiday of Yom Kippur (visited June 28, 2000) <http://www.holidays.net/highholydays/yom.htm> (explaining that Yom Kippur is a holiday based around confessions and repentance and, "because community and unity are an important part of Jewish Life, the confessions are said in the plural (We are guilty)").

20. Wolpe, *supra* note 11, at 123.

21. Wolpe, *supra* note 11, at 123.

22. Wolpe, *supra* note 11, at 123.

23. Wolpe, *supra* note 11, at 124.

for the better.

I want to close by talking about Peter. Over the course of his multifaceted career, Peter has done many things. He's studied theology, written briefs, made arguments, made more arguments, directed public interest law organizations, taught students, and helped countless clients.²⁴ But in my view, the most important thing Peter has done is speak out. Whenever Peter is in the room, you know that no assumption will go untested, no assertion will go unchallenged, and that no opportunity to educate the room will go unused. To borrow one of Peter's favorite aphorisms, Peter can always be counted on to use his gift of speech either to comfort the afflicted or to afflict the comfortable.

I met Peter during our first year of law school, and over the years, I've heard him speak many, many times. I heard him speak at myriad law school rallies and protests as the moral conscience of Harvard Law School—not an easy task—constantly exhorting our dean to do the right thing. The fight seemed a bit futile, but ultimately I'm convinced that through Peter's efforts and the efforts of others, perhaps some change was made. Subsequently, I've heard Peter make his moral case to individuals, to groups, to clients and to funders, and each time the other party walked away better informed, more motivated, and more inspired—even when the inspiration is derived simply from feeling guilty that the listener wasn't up to Peter's moral standards.

Peter, I want you to know that when I was reading your essay to prepare for today's ceremony, I could hear your voice in my head as I was reading it. And along those lines, there is something else I should tell you. We all have those times in life when our conscience feels the need to have a chat with us. Sometimes when my conscience talks to me, especially about working with poor people, my conscience appropriates your voice. I hear you in my head, unbidden, counseling me to do the right thing. I hope you know that your voice will be with me forever, even at such time as you may no longer be physically present.

Congratulations, Peter, on the honor of having this award named for you. I hope that it will inspire the recipients and the rest of us to use our words to let in the world.

24. See Cicchino, *supra* note 8, at 314 (describing that while Cicchino was a Jesuit novice, he worked in a soup kitchen in Philadelphia); Perry, *supra* note 8 (stating that Cicchino has been an attorney who has worked for poor people, prisoners, the homeless, and for gay and lesbian youth); Cicchino, *supra* note 1, at 53 (describing a situation in which Cicchino was involved, where he chose to help a student who felt he was not treated fairly by the high school he was attending).