

OPENING REMARKS

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It is moving to be here with Mr. and Mrs. Cicchino and Billy and Jane and Sally and Jonathan Springer. I feel Peter's presence very much in the spirit of Peter's family and in so many of Peter's assembled friends and admirers. Last year at this time 30,000 young people came to Washington, D.C. to storm the barricades at the IMF and the World Bank to protest globalization.¹ This year there is a stock market crash.² I think Peter continues to send us messages about the shakiness of the global economic system.

Every day I try to live my life in a way that Peter would be proud of. This is not an easy thing, as any friend of Peter's will tell you, because Peter's ethical system did not turn on a series of prohibitions. It was not a list of 'Thou Shalt Nots.' It is relatively easy to live like that, sort of as a Holmesian bad man,³ just avoiding any ultimate conflict with categorical prohibitions against doing something bad. You just drive through life like a video racecar driver, sort of swerving to avoid the onrushing vehicles and obstacles.

Peter, however, showed us that ethics involved not negatives, primarily, but affirmatives, a politics of 'Thou Shalt' and a principle that we must slow down and get involved. He taught us to be

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1. See MOBILIZATION FOR GLOBAL JUSTICE, DAYS OF ACTION WASHINGTON D.C. APRIL 15-17: THREE DAYS THAT SHOOK THE BANK AND EXPOSED THE FUND, <http://www.a16.org/feature.cfm?ID=19> (last visited Sept. 12, 2001) (describing the 30,000 people that converged on the streets of Washington D.C. to protest the IMF and World Bank meeting and the hundreds of resulting arrests); see generally Paul Maynard Hendrick, *The Theory of Relativity: Environmental Justice in the Context of Doctrinal Durability*, 32 U. TOL. L. REV. 137, 180-81 (2001) (describing the mass protest at the International Monetary Fund and the World Bank meetings on Apr. 15-17, 2000).

2. See Terrence O'Hara, *Options with an Uncertain Value*, WASH. POST, July 16, 2001, at E12 (discussing the economic impact of the March 2000 Nasdaq stock market crash).

3. See ALBERT W. ALSCHULER, LAW WITHOUT VALUES: THE LIFE, WORK, AND LEGACY OF JUSTICE HOLMES 132-34 (2001) (describing Justice Holmes' legal philosophy as one where the bad man only cares about the knowable material and legal consequences of his conduct while the good man finds legal and nonlegal reasons for his conduct).

engaged with the problems of our society and the problems that other people are having, even when we are tired, feel lazy, or when getting involved is sticky, complicated, gets other people mad at us, and exposes us to different kinds of risks and hazards.

There is a story about Peter that I always tell the Marshall Brennan Fellows, who are Washington College of Law (WCL) students who teach Constitutional Law to high school students in Washington, D.C. and Maryland. Peter was teaching at Gonzaga High School in D.C. at the time and one of his students got into trouble for a piece of artwork that he was working on.

One of the charming aspects of this story is that Peter never told us what was the content of the artwork that got everybody so upset. I do not know whether it was too sexy, too violent, too politically provocative, or too druggy. But whatever it was, it got the school administration up into arms, and they insisted that he get rid of his artwork and disavow it. The student wisely went to see Peter.⁴

Peter took up this student's case and championed the First Amendment, or whatever is the closest moral equivalent thereof at Gonzaga High School. Peter ended up, amazingly, winning a reversal of the disciplinary action for the young man, winning his freedom in that context. However, Peter lost his job in the process. Peter saved the young man from his punishment, but ended up unemployed, poor, and certainly worst of all from his perspective, *not teaching*.⁵

Yet nonetheless Peter told people, including the Marshall Brennan Fellows, that he derived great satisfaction from what he had done, not just because he was standing up for some abstract principle, but because he was getting involved in the life of a young person who was in desperate trouble and needed help. This was a young man for whom there was really nobody else who could help him. Peter stood up for him and that meant something profound to that young man and to his development as a human being.⁶ It should mean something to us.

It is hard to believe that Peter was only here for two years before he died. He never received tenure. But I want to address this now to my colleagues and junior colleagues: *Peter had tenure*. He had "tenure of the mind"⁷ and tenure of the heart. He never looked over his

4. See Peter M. Cicchino, *Defending Humanity*, 9 AM. U. J. GENDER SOC. POL'Y & L. 1, 7 (2001) (retelling the story of a Gonzaga High School student who faced possible suspension for displaying a piece of art).

5. See *id.* at 8 (discussing Cicchino's commitment to help his students).

6. See *id.* (explaining how this particular event had a significant and profound positive impact on the high school student as well as Cicchino).

7. My esteemed professor at Harvard Law School, Morton Horwitz, used this phrase in

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shoulder. He never tailored his thoughts. He never pulled his punches. There was no toadying, no bowing, no scraping, no sycophancy for him. He had his ideas, convictions and exquisite moral passions, which he expressed in a way that showed he was afraid of no one and that, conversely, no one should be afraid of him. No one was.

Some people go an entire lifetime in academia without achieving tenure of the mind, without writing the kind of paradigm-breaking article that Peter wrote for the Georgetown Law Review about equal protection and moral harms and moral preferences.⁸ Some people have tenure of the mind and of the heart the moment that they show up for the job. However, most of us have to fight for it every day, to remind ourselves that we only deserve our positions, our titles, and our tenure, indeed, our precious right to be alive, when we are speaking meticulous truth to power, as Peter did, and when we are facing down injustice in the real world.

I wish you all a happy, irreverent and insurrectionist Peter Cicchino day at WCL.

telling me what to strive for as an academic and a scholar.

8. See Peter M. Cicchino, *Reason and the Rule of Law: Should Bare Assertions of 'Public Morality' Qualify as Legitimate Government Interests for the Purpose of Equal Protection Review?*, 87 GEO. L.J. 139 (1998).