

Remarks of Eric Talley
Isidor and Seville Sulzbacher Professor of Law
Willis L.M. Reese Prize for Excellence in Teaching Recipient
Columbia Law School Graduation
Monday, May 16, 2022

Well, thanks so much, Samarth and Moliang, for those generous words. And I have to say, as I listened to them give those words here, I only thought, you know, this is what kind of makes me the most proud about Columbia Law School. It's our students. And more broadly, I want to welcome families, friends, and colleagues of today's graduates, as well as Columbia faculty, staff, and alumni who are here with us today. Above all, though, I want to thank and express my proud admiration for this amazing, resilient, and freakishly battle-tested Class of 2022. Is a rainstorm going to stop this thing from going down? I don't think so.

So, listen, I've been a professor for over a quarter century, and I'd be hard-pressed to recall any other class whose path has careened more unpredictably than yours, courtesy of several national and world events. And yet here we are. Yeah. [Laughter and applause.] So for that reason, I feel especially humbled and honored to receive this recognition from this particular group. For everything you've gone through Class of 2022, you stand alone. You are, in a real sense, peerless. Now, the dictionary defines "peerless" as unequaled, unrivaled, incomparable, one of a kind, and . . . from a layperson's standpoint, that seems to fit the bill. But, you know, I'm also a contracts professor, and I can't resist the temptation to linger a little bit on that term and to flag its connection to a similarly peerless legal case from 150 years ago that's still taught in today's classes.

Does anyone know? Come on, it's graduation, so who cares whether they think you're a gunner? [Laughter.] Anyone remember? That case is a case called *Raffles v. Wichelhaus*. Now, I had intended to cold call some of you for the facts of the case, but ultimately I decided to skip it. Yeah. Is he going to teach it? Yeah, I am, I am. I'm confident you can conjure up all the key facts with minimal prodding if you had to. But for the benefit of your families and guests who are not lawyers, here's a little review. Now, Raffles was an English cotton importer who in around 1863 contracted with a buyer, Wichelhaus, for the delivery of 125 bales of Surat Indian cotton to be shipped from Bombay, as it was then called, to Liverpool. Now under the terms of this deal, the cotton was to get loaded on a ship named Peerless, which was to set sail from Bombay sometime after the contract was executed. And when the ship docked in Liverpool, the buyer was supposed to show up, fork over the moola, claim the merch, and the whole thing was done. So this sounds pretty simple, right? Except there is just one glitch. Unbeknownst to either party, there were actually two cargo ships sailing from Bombay to Liverpool just weeks apart from one another. And both of those ships, as it happened, were named Peerless. Yeah, Peerless, unequaled, one of a kind. So anyway, you might guess that shenanigans ensued, and they did. The buyer claimed to

have expected the shipment on Peerless number one, and our seller actually put the goods on Peerless number two. But when the cotton got there on Peerless number two, the buyer basically reneges and says, “Look, I was waiting around for Peerless number one. He didn’t show, and I just got on with things.” So how did the seller respond? Well, come on, it’s law school. He sued, all right. Tried to enforce the contract. And in this famous opinion, the court concluded that the buyers’ and sellers’ misunderstanding about the ship was so central and material to the deal that it torpedoed everything. By fixating on different vessels, the court reasoned, the parties never achieved a so-called meeting of the minds and no contract ever existed. The buyer and seller’s inconsistent beliefs were literally and figuratively two ships that passed in the night, both evidently named Peerless.

OK, so, what’s up with Talley doing the 1L case brief in our graduation speech? Well, I guess I mentioned this case for a couple of reasons. First, it’s just sort of refreshing to know how fortunate we are to live in a day and age where parties to large transactions don’t try to duck their commitments by using some quirky technical argument. I had to slip in an Elon Musk reference somewhere. He’s not going to win, by the way. Second, I think this case serves as a reminder that no matter how peerless you think of yourself or your situation, reality is often much more complicated. And let me be clear: If the label peerless applies to anyone, it’s this graduating class that deserves it. But by the same token, none of us is really, truly peerless. We all owe our trajectories, our fortunes, and our fates to countless other peers. Some of them affected you way back in the day. Some of them are seated right next to you today. And some you haven’t even met yet.

The idea that I want to explore with you briefly along these three dimensions is those different types of peers: peers past, peers present, and peers, well, prospective, to hold the alliteration. Let’s first talk about peers past. Think about how you got here today. Most of you didn’t do it alone. Important people shaped your lives in fortuitous times, including folks who weren’t obligated to and may even have had other things to do. Yet they still took the time to lend advice, counseling, and encouragement, and moral support. If anyone deserves your gratitude today, it is they. And this observation applies not just to you, but to everyone here today, myself included. As I look back on my own life, I see a landscape dotted with people who played critically important roles. I think of Mary Louise Williams, a high school history teacher in rural New Mexico, who evidently saw something in a somewhat unfocused youth and invested her time and effort to steer him towards college. I think of Neal Beck, a political science professor who challenged that same, now slightly older college student to think bigger and bolder and more rigorously. And I think of Ian Ayres, a professor who nearly singlehandedly inspired that same student—now a graduate student—to recover a passion for curiosity and academic inquiry. And I say “recover” because that graduate student was very, very close to cashing in his chips and dropping out. Now, these are just some of the people who helped me. And though Mrs. Williams and Neal couldn’t make it on the trip today, I somehow dragooned Ian into showing up, and he’s somewhere out there right now. I think I promised him good weather. [Laughter.] So I want to thank all of them as I think you want to acknowledge people that made your position possible as well. As you walk the stage today, keep in mind and figure out a way to acknowledge the pivotal role they played as the so-called “but for” causes of where you find yourself. Symbolically, they’re going to be up on stage with you because, with the possible exception of the band Green Day, no one walks alone. [Laughter.] All right.

Second, I want to talk about peers present to take a moment to reflect on your classmates seated all around you in those remarkably stunning powder-blue bathrobes. This group of J.D.s

and LL.M.s and J.S.D.s descended over the last years and probably harbored a little bit of trepidation about the stress and the cutthroat competition that they would face in law school. Now, it would be disingenuous for me to suggest that the last three years have not had their share of stress. Everyone has felt it—faculty, staff included. But I would wager that few, if any of you, actually experienced the cutthroat competition you might have feared. Instead, you began and cemented a peer group that is going to last you through the rest of your lives. Even sitting here today, you already know how important those connections have been. You’ve suffered through long readings, studying, outlining exams, that coffee in Lenfest, fitting an entire semester’s worth of notes on a two-page attack outline. Let me see, did I leave anything out? How about a global pandemic? How about critical and important conversations about racial injustice, economic inequality, climate change, a nearly destabilized geopolitical map? And that just happened over the last three years. Mark my words: You will continue to draw on that peer group in myriad other ways. You’ll encounter one another as co-counsel, adversary, partner, referral, business executive, judge, mediator, regulator and the list goes on and on. And in each one of these occasions, even when you’re not working for the same side, your common foundation that you share, forged right here at Columbia Law School, will prove invaluable in each interaction. It is one of the most important professional communities and support networks that you’re ever going to have. And if you want any more proof, you needn’t look far. Just ask the members of the class of 1972, several of who, as you know, are here with us today. They sat literally where you are sitting now, 50 years ago, back when *Raffles v. Wichelhaus* was a spry 100-year-old case.

Now, once again, this applies every bit as much to the rest of us and myself included. And I think about my own colleagues here at Columbia, many of whom are up here on stage with me. Their passion and love for teaching inspires me each and every day, pushing me to try harder and to do better. And while my admiration extends to every one of them, I’d like to call out in particular Professor Maeve Glass and Professor Bert Huang. [Applause.] And I think Maeve isn’t here, but, Bert, are you here? Would you be willing to stand? And the reason that I am singling them out is not to be cruel, it’s because Maeve and Bert each received the Willis Reese prize over the last two years, but due to COVID restrictions had to deliver their remarks over Zoom. I’m told that Bert was wearing sweatpants, but I can’t confirm that. [Laughter.] So when I see Maeve and Bert in the classroom and in their office and in their office hours—and I do a lot—their energy and commitment to their craft is infectious, and it always reinspires me. So I know you guys love them as well as I do. So let’s give them one more round of congratulations.

Alright, finally, let’s talk about peers prospective. That sounds pretty lawyerly, but I want to encourage you to reflect on not just the past and present but also your future peers—the ones you haven’t met yet. And especially want you to focus on those who will be following in your footsteps. When I admonished you earlier to acknowledge those who helped you to this moment, you probably thought I was asking you to seek them out, thank them, possibly buy them some soup. And yeah, you should do all of that. But I can think of an even better way to honor them: You should try to become them. Be active in furthering the successes of your peers, especially those who are junior to you. Take pleasure in lending a hand to help them navigate their way, to confront hardships, and to make difficult choices. Celebrate their triumphs as though they are your own.

Now, about now you might be thinking, come on, Talley, you can’t be serious about this. I’m just some peon maybe going to a government or law firm job, or I’m simply too busy trying to stay afloat myself to be a good Samaritan to other people. And while both of these responses

are facially sensible, they're ultimately off base for a few reasons. First, though you might think you are a peon, don't become a prisoner to that perception. Others are already looking up to you. The 1Ls and 2Ls you regularly talk to. The people from your neighborhoods and communities who themselves dream of going to law school. The kids and teenagers who are trying to figure out where they fit in. You may not realize it, but you have already started to become a role model, adviser, and example setter. Embrace it. And second, on the, "I'm too busy reaction," I have some sobering news for you: It's not going to get better. In fact, too busy is going to be sort of the new normal for you. Every day, every year, things are only going to get busier unless you prevent them from getting so. And that's kind of the point. It sort of is what you signed up for. But if you can't do this now, then it's going to be even harder to do later. So here's one last perspective: Imagine you have the chance to chat briefly with your 50-years-from-now self. Maybe they were returning to campus to crash the graduation of 2072. Wow. I'd make a wager that that conversation would have your future self ask you, "Did you make a difference? Did you make a difference?"

Now, there are a lot of ways to make a difference, no doubt. But one of the most durable and satisfying of them, in my view, comes from seeing the results of your efforts to visit success, accomplishment, empowerment, and joy onto others. For me, it's a game changer every day of the week. So I guess my bottom line is this: Notwithstanding how unequaled, unrivaled, or incomparable this group assuredly is, you should still strive not to be peerless. Grab on to your communities. Support them. Consult them. Bring them with you. Push them forward. And let them push you forward. Become the connective tissue that motivates, encourages, and empowers others. Including—yes, including—your potential successors. You can and should start doing this today, even as you continue to struggle and strive yourself for your own successes. Get on that boat now. Don't sit around waiting assuming you can just catch the next one. Because that next boat, it may never come. And even if it does, it almost certainly will not be named Peerless.

All right, to the Columbia Law School graduating Class of 2022, my heartfelt thanks and congratulations to all of you, your families, your partners, your colleagues, and your friends. And on behalf of the entire faculty, I wish you the best of luck in the great work that lies ahead because I can't wait to see it unfold.

Thank you.