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### Triumphs of Commission

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#### Recommended Citation

Eric L. Talley, *Triumphs of Commission*, (2017).

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## TRIUMPHS OF COMMISSION

REESE PRIZE ADDRESS FOR COLUMBIA LAW SCHOOL CLASS OF 2017

PROF. ERIC TALLEY<sup>1</sup>

MAY 18, 2017

Many thanks to the Class of 2017, and welcome once again to the Columbia Law faculty, staff, alumni, families, and former SEC Chairs. I cannot overstate how honored and humbled I feel to receive this award. It's particularly gratifying because it comes from you. As you may know, Columbia faculty are expected to balance research, teaching and service activities. Frankly I like all three parts of the job – more or less; at least most of the time.

But the one part of the job I **love** is the part that happens in the classroom. Every day. It never gets old; it never gets repetitive; and it never gets easy. Nor should it – a theme I'll return to momentarily.

But before that, I want to heap praise and props on your classmate, Ms. Beatrice Kelly, for doing me the singular honor of that introduction – Look, in all honesty, everyone knows Beatrice is a preternatural ham and performer, so really all she could have done is disappoint – no pressure, right?<sup>2</sup>... But of course she didn't (rendering the job of following her even harder). Beyond her enviable skills as a thespian, Beatrice embodies traits that I have grown to admire greatly in Columbia Law Students: She's smart, she's fearless and she's unbelievably resilient. Seriously, for an art historian to subject herself to present discounted values, Black-Scholes pricing, Multivariate Regression and the Capital Asset Pricing Model – all at 8:30 AM no less – is a telltale sign of real grit (or possibly dangerous self-destructive tendencies – only time will tell).

Students are often told to be on the lookout for inspiring teachers. Here's a little secret: the opposite is true as well – we're always on the lookout for inspiring students. And class of 2017, you inspire me.

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<sup>1</sup> Isidor & Seville Sulzbacher Professor of Law and 2017 Recipient of the Willis L.M. Reese Prize for Excellence in Teaching at Columbia Law School. I dedicate this address to the late Harvey J. Goldschmid—Dwight Professor of Law at Columbia and two-time recipient of the Reese Prize—whose office I currently occupy. Although Harvey departed us a few months before I could enjoy his company as a full-time colleague, he remains an ever-present inspiration to his students, friends, fans and peers around the world. We miss him profoundly.

So let's get down to business: the *real* upside of the Reese Prize is neither the attractive crystal plaque nor the year's supply of Rice-a-Roni that accompany the award; rather, it's the airtime to deliver what (for most of you) will serve as your final official faculty lecture. How cool is that? I was really licking my chops over that prospect, at least until Dean Ramos-Herbert dutifully reminded me of the major ground-rules:

- My time would be limited to 8 minutes (unless I'm on a roll)
- No PowerPoint slides
- No exams or problem sets
- No cold-calling of any graduate; or any of their family members
- The lecture has to be delivered outdoors, on a 90-degree day, while wearing a floppy hat and 20-pound velvet-&-polyester bath robe.

(Beyond that, no constraints)

But then I started thinking: what do you say for a last law-school lecture? How do you encapsulate the totality of students' experiences at CLS in an abbreviated format without seeming trite or clichéd? Fact is, I can't. (Even *if I had* PowerPoint). But what I can do, perhaps, is to offer a few thoughts you can store somewhere in your prefrontal cortex as you enter the coming months, years, and decades. (A final bag of CLS SWAG, if you will.)

I want to touch on three themes: Your life as a student; your tolerance for risk; and your professional calling.

### **First, I want to talk about your life as a student**

Many of you no doubt believe that today marks the joyous end of your penurious existence as a student. Well, about that, I'm sorry to say, you are sadly incorrect. Today merely marks the end of your existence as a *tuition-paying* student. (No small benefit there!) But your life as a student continues indefinitely – if it doesn't, then you're not doing it right.

A favorite quotation of mine comes from noted French jazz composer Michel Legrande, who famously quipped, "*The more I live, the more I learn. The more I learn, the more I realize, the less I know.*" Now Legrande is still kickin' it at 85 – about 35 years my senior. So by my reckoning, I must know a ton more than he (or at least I think I do). And in turn, I guess, you must know more than I.

But here's one thing that I think I still do know: Our world is complicated. We make it so. On purpose. Our social institutions, statutes, precedents, regulations, and norms reflect the centuries-long aggregation of our collective capabilities, aspirations, and limitations. And they make for an environment whose nuanced contours are ever-changing, its forces powerful, and its logical path unclear.

In the coming years, you will all -- by turns -- confront facets of that complexity, with your principal remit to make sense even a small corner of it. That turns out to be a big ask. And as you grope, remember that you'll probably never be "done". More importantly, try to understand the world not only through the narratives of your allies and Facebook connections, but also through those of your adversaries and un-friended Facebook connections; for they have a story to tell as well. And it's one we too frequently miss or ignore. Embrace not just the convenient truths, but also the inconvenient ones. And insist that others do as well.

Make no mistake: as a lawyer, you will owe a duty to be an **effective advocate**; but don't confuse that with being **effectively an ideologue**. The two are quite different.

## **Second, I want to talk about risk**

Even if you're destined to be a student (in some fashion) forever -- isn't it *at least* fantastic that you'll never have to take another final exam? Like, ever?

Well, about that...you're sadly mistaken once again. Indeed, you'll soon discover that your prize for winning the metaphorical pie eating contest that is law school is ...[wait for it] ... more metaphorical pie. You are about to begin drafting an answer to the most intricate issue spotter essay question ever devised -- one whose call asks you to become the author your own professional life. Think of it as a 50-year take home exam. (Word limited, of course; and I'll even grade it for you if you can track me down in 2067 and I still have my wits about me).

At many junctures as you author this truly epic exam, you'll confront a seemingly endless sequence of hard choices:

- Where to live and work?
- How to live and work?

- With whom you spend your life (professional and personal)?
- Should you radically change any of the above?

And because life is sequential, it's natural to frame each of these choices as pitting the status quo against the unknown; the familiar against the unfamiliar; the comfortable safe play against the discomfiting flier. As humans, we are pre-programmed to be risk- and uncertainty-averse, instinctively embracing the status quo, and reticent about the unknown. (This reticence is no doubt reinforced by the speed with which social media disseminates news of our every move.)

But I want to caution you – at least within reason – to resist defaulting into the familiar and comfortable. While the unfamiliar path is no doubt fraught with hazards and unknown unknowns, it also has two wonderful and redeeming characteristics:

- The first– which will come as no surprise to my Corporate Finance or M&A students – is that the most uncertain path is also the one with the highest option value, allowing you both to learn & react as you learn. About yourself; about your heretofore undiscovered passions, capabilities, opportunities, and limitations; about your world. And this option value remains high even when it is costly (or impossible) to reverse course.
- The second factor that redeems the uncertain path is more subtle. As I reflect on my own life thus far, I see scores of mistakes. (In fact, I cringe in recalling some of them – as does, I suspect, Dean Lester). I tend to classify my mistakes into two camps:
  1. Mistakes of commission: Moments where I actively changed course in a way that I would come to regret
  2. Mistakes of omission: Moments where I (less actively) passed up an opportunity whose future resolution I would never see.

And that's just the thing: If my 27-year-old self were sitting amongst you today, adorned in one of those stylish baby blue polyester bath-robos, I'd want to impress upon him two points:

- First, YOU MUST. FLOSS. REGULARLY. – Seriously.
- And second, when I look back on my own mistakes in hindsight (and I do), they don't add up equally: those errors of **omission**? They get 10x the weight

of errors of commission. The question, “What might have been?” is perhaps the most vexing and poignant thing you can saddle your future self with.

So please, cut that future self of yours a break, and become tolerant of errors of commission. You might be surprised at what you get.

### **Finally, I want to talk about your professional calling**

Believe it or not, this is a wonderful time to become a lawyer: First, after several years in the doldrums, legal hiring seems to be making a comeback – particularly here in New York. Second, the world is changing technologically, and with it so are many of our traditional ways of life. New practice areas will race to keep up, from AI, to energy, to personal injury law for driverless cars. And third (and somewhat paradoxically), we are in a moment of historic and palpable political and regulatory flux, both nationally and internationally.

The first two reasons make lawyering a sensible occupation. But it’s the third that makes it truly a calling. Those of you who become members of the bar – and the vast majority of you will – are going to take an oath:

*You will – to paraphrase -- solemnly swear to support and defend the state and federal constitutions and to discharge faithfully the duties of attorney and counselor-at-law according to the best of your ability.*

That oath will take less than 45 seconds to recite (particularly at the pace lawyers speak). That’s less time than it takes to apply for a library card (2 min), obtain a driver’s license (2 weeks – less in NJ), or (most certainly) fill out a tax form. But it also carries far more gravity than any of them. And it’s part of what makes lawyering different, and special:

- Today’s graduates of Columbia Business School? They won’t be taking oaths.
- Nor will the engineering students, nor the PhD students.
- And, while the Medical School graduates will, their oaths – unlike yours – will not require them to defend public institutions.

It goes without saying that even as your generation enters the workforce in an era of great general prosperity, it is also a moment of significant political and legal unease.

International instability, domestic upheaval, socio-economic inequality and perfervid ideological differences are as pronounced as they have been in my lifetime.

But it is in such crises that lawyers are needed most; when they inevitably step in to become the heroes, not the punchlines:

- For it is the lawyers that *others* look to for expertise, for patience, for maturity, and for professionalism.
- It is the lawyers who safeguard constitutional institutions, who fight for individual liberties and freedoms, who vindicate the rule of law over the impulses of the feckless and powerful, and who advocate for those who cannot advocate for themselves, regardless of class, race, gender, sexual orientation, religion, political belief, lineage or national origin.

You are it. YOU ARE the backup plan.

Now a pronouncement like that may send shivers down your spine, along with a sense of foreboding responsibility that borders on dread. But it doesn't for me. To the contrary: I look out on this group of accomplished and committed graduates, of former (yet still life-long) students, of smart and fearless and resilient future leaders, and I am filled with confidence and hope about what lies ahead.

For I can think of no group I would rather see carry forward the mantle of this venerable institution, this noble profession, and this great country than those graduates assembled here today.

\* \* \*

Lastly, I want to say just a few words about the Law School administration and my family. In the interests of time, I can bundle these two categories this year.

***I love our dean.*** OK we all do, but for me it's personal – so much so that 19 years ago I finally worked up the nerve to ask her to marry me. In hindsight this was one of the luckiest non-errors of my life.

And it began a partnership that sought to embrace the spirit of the themes I have just discussed: of always learning, of tolerating risks, and of pursuing one's calling – a pursuit

that stared us coldly in the eyes when, 2 years ago, we decided to uproot our family and move to New York City.

It wasn't easy – I guess these things never are. But hard as it was, it was made many times simpler by the warmth and infectious enthusiasm that met her (and then me) from the Columbia Law students when we arrived. Many of those same students, as it happens, comprise the JD and JSD classes of 2017, seated here today. And while the LL.M.s have been here only a year, I can't overstate how you enliven our hallways and enrich our classrooms, every single day.

To the Columbia Law School Graduating Class of 2017: My most heartfelt thanks and congratulations to you, as well as to your families, partners and friends. I wish you the best of luck in the great work that lies ahead. I *can't wait* to behold both your errors -- and your triumphs -- of commission.