

Speech given by Justice Connolly at the Admission Ceremony on Friday, 20 October 2006

It is a pleasure and a privilege to welcome you to the legal profession on this, the day of your admission. It is a day that you should celebrate with your friends and family because it represents a significant achievement in your life, the completion of your undergraduate studies and now the completion of your professional studies to mark your admission as a lawyer, as a person who can now apply for a practising certificate in due course and practice law either at the Bar as a solicitor or in one of the range of activities that are offered by way of government or community legal service.

You should today reflect on the assistance that you have all received from your friends and family, the study of the law is a hard task and no-one can achieve it without the help of their friends and family, and admission day is normally a day to celebrate with your friends and family and they will be taking appropriate pride in your achievements, and I am sure that you will be thanking them appropriately for the support that they have given you.

Whatever you do in the practice of the law you need to remember some of the very important traditions of our profession. One that will help you is the tradition of assistance that senior lawyers give to more junior lawyers. Never be afraid to ask for assistance, never be afraid to ask for guidance.

The great and the legendary stuff-ups in legal practice usually occur because somebody was not prepared to ask for guidance and assistance. Your seniors will never think the less of you, indeed they will think the more of you for your preparedness to seek that guidance and assistance.

As you reflect at lunch today on your achievement and perhaps sit back and enjoy a nice lunch and a glass of wine with your friends and family, do not think that learning the law is now a thing of the past. Sir Owen Dixon, perhaps Australia's greatest lawyer, said that he never felt that he finished learning the law and if he can say that we can all say that.

Whether your ongoing process of learning of the law will be by way of formal post-graduate studies, by way of professional development or simply by way of reading the law reports and keeping up with changes both to the law from decisions of appellate courts or the constant stream of statutory amendments, you will never stop learning the law.

Service to the community is an important aspect of legal practice and the legal profession. And I came across a speech recently given by the UK Attorney-General Lord Goldsmith where he made reference to an admission speech given by Lord Chief Justice Popham in 1594 at a ceremony for the investiture of Sergeants at Law, one of the quaint old terms for a particular category of legal practitioner.

He spoke of their responsibility to represent not only the rich for which they would receive a fee as reward he said for your long studies and labours, but also of the duty to defend without reward the poor and the oppressed. And Lord Popham made reference that Lord Goldsmith repeated to the fact that the traditional bands that we

wear are said to represent one tongue for the rich and one tongue for the poor.

And he made the point that the bands are of equal length. Today the Law Society and the Bars in the various states and territories operate legal assistance and pro bono schemes, and I would urge you to take part in those schemes as you develop your professional career.

As lawyers you will also be probably called upon from time to time to take part in debates about changes to the law. The law is a constantly changing process and the statutory law that we learn at law school changes and new areas emerge and old areas finish.

I would never have thought when I was being admitted to practice, or indeed when I first took a judicial oath 10 years ago, that we would reach a situation where there is serious discussion both in the United States and here in Australia about the use of torture, and about how torture is an issue that may need to be regulated and somehow permitted.

I thought it would be useful to have a little look at what the history books said about the use of torture, because we should never forget the lessons of the past and I dug out the great Holdsworth History of English Law, by looking at the shortened version I was directed to the library's 16 volume version, one of the great achievements of Victorian legal scholarship.

And Holdsworth calmly and confidently asserted that the use of torture was undoubtedly now illegal by the common law and was a thing that had forever vanished from English legal history about the 17th century as a consequence of the abuses of the Star Chamber, the experience of the Revolution and the Restoration.

But he made a point he thought perhaps of only historical interest that may be worth thinking about today. He said, "Once torture has been acclimatised in a legal system it spreads like an infectious disease, it saves the labour of investigators, it hardens and brutalises those who have become accustomed to use it".

In asserting that it saves the labour of investigations he made reference to an English parliamentary report referred to by Stephen in the History of the Criminal Law, where Indian police officers had said that it was "far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence". The ease of obtaining information from torture is clearly a difficulty.

We learn from literature one of the other great difficulties and that is that torture may be overly efficient, that is to say it will always provide confessional material. *The Crucible*, a drama on witchcraft and the witchcraft trials, was of course written in the 1950s as an allegory of the then obsession with hunting down Communists in our midst.

We would all be familiar with the play, we have probably seen it performed, we may have studied it at high school, we have probably seen the film. We would all like to think that in similar circumstances we would display the moral fortitude to remain silent under torture, but I think we probably all fear that we would do what many of

the characters in *The Crucible* did, and that is to say under torture name a name, any name, in order to make it stop.

And that of course is what happened. But we do not need to only look to literature for that, we can again look to the great classics of English legal history and Maitland in Maitland and Pollock in their *History of English Law*, again provide specific examples, documented examples of the use of torture in pre-17th century English legal history.

Particularly they noted in relation to the offence of heresy, heresy they said “is a crime committed not by deed or by word but by thought, and so it provided an ample field for the use of torture to extract confessions”. There is an example cited in 1324 of a process in Ireland where a number of persons under torture confessed to various dealings with demons and devils. We can safely assume that those confessions were false, they were however extracted under torture.

As persons trained in the law, as persons now admitted to practice the law, your voices ought to be heard when persons in the community under no doubt pressing imperatives suggest that we resort to extra legal processes in order to deal with such threats.

We learnt the lesson perhaps in the 1950s, we may need to learn the lessons all over again. I will leave you with some thoughts from Aharon Barak, the Chief Justice of Israel. If there is any democratic society that has to deal with the reality of terrorism within their community it is the state of Israel.

And yet the Israeli Supreme Court has firmly ruled that the state may not have recourse to torture, that a democratic state must preserve its ideals. He said in the decision in 1999 of *The Public Commission Against Torture in Israel v The Government of Israel*, that he was aware that the court’s decision to strike down and rule out the use of torture would not make it easier to deal with the reality that faced the state.

He said:

This is the fate of democracy, as not all means are acceptable to it, and not all methods employed by its enemies are open to it. Sometimes a democracy must fight with one hand tied behind its back, nonetheless it has the upper hand. Preserving the rule of law and the recognition of individual liberties constitutes an important component of its understanding of security. At the end of the day they strengthen its spirit and strengthen and allow it to overcome its difficulties.

So said the Supreme Court of Israel. In similar vein the Supreme Court of the United States has recently in *Hamden v Rumfield* ruled as unconstitutional military commissions which would have permitted evidence obtained under torture to have been used in those special procedures.

As newly admitted lawyers you have taken an oath to in effect uphold the rule of law, your voices may be more important in the world that we now face than they perhaps

would have been some years ago when we could safely assume that recourse to extra legal methods and investigation, was something that could safely be confined to the 19th century text on English legal history.

I wish you well in your career and I again congratulate you on your significant achievement.