

BUILDING FOR THE FUTURE
St Dominic's High School, Prioress's Lecture
14 April 2011

The Right Honourable Sir Declan Morgan
Lord Chief Justice of Northern Ireland

Running time 25 mins approx]

Bishop Treanor, Prioress, Sister Lucina, Ladies and Gentlemen, I am delighted to have the honour of being invited to join you to celebrate 140 years of excellence at St Dominic's. This is the first time that I have been invited to West Belfast as Lord Chief Justice of Northern Ireland – it is the first time that any serving Lord Chief Justice has attended an event here in his official capacity, and it is, I think, fitting that the occasion should be a celebratory one when we are thinking about building for the future.

Excellence at St Dominic's

I am sure the six sisters who came from Cabra in 1870 to open this school would be surprised and delighted to see how the seeds they sowed have grown from their first class of four day pupils and one boarder. The fact that 114 staff are now teaching a community of almost 1000 students in nearly thirty subjects would be cause enough for their delight. They would be amazed by the new buildings with specialist facilities for subjects ranging from Art, Music and Drama to Technology and Design. They might well be curious to see how your classes in, for example, Moving Image Arts compare to theirs in Heraldry, Drawing and Painting.

But they would, I think, be more anxious to see how the ethos of the school has travelled down the years. The School's Annual Report in 1929 said that "character tells more for success in life than ability", and it has always been a mark of St Dominic's that students are encouraged to strive for excellence in every sphere of their life; in their physical, mental, moral, emotional and spiritual development. The flame of excellence has been passed from one Principal to another, and one Prioress to another, from the Prioress and Principal in the 1890s (who was also the first boarding pupil), Mother Francis Kennedy, to the current Prioress, Sr Lucina Montague and Principal, Mrs Carol McCann. I would like to pay tribute today to them and to their predecessors, leaders like Sr Helena Collins, Sr Majella Fitzpatrick, Mother Laurentia Corr, Sr Virgilius O'Brien, Sr Joan Looby, Sr Jacqueline O'Reilly and Sr Olive Cooney.

That ethos of excellence has not just been fostered at this site. The appetite for growth was evident early on - work on St Mary's Training College for Teachers started as early as 1890, and St Rose's High School, Dominican College Fortwilliam, Dominican College Portstewart, St Francis School for the Deaf and St Martin's nursery have all gone on to help young people in many different circumstances strive for excellence in their own lives.

We cannot judge the success of a school only by its buildings, its outreach projects or its long history. The true judgment can only be made by looking at the character of the students, the individual futures which the school has helped them to achieve and the extent to which those students have used their skills and talents to contribute to the future of the communities in which they live their lives. On that front too, St Dominic's has a long and impressive record. Mother Francis Kennedy, was not the only Principal or Prioress to have started her association with St Dominic's as a pupil. I understand that your current Prioress and Principal are also both former students here.

Looking at the world of law, politics and commerce, I see that St Dominic's past pupils continue to play a full and active part in public life. I don't need to tell you that Mary McAleese, the President of Ireland, had her education here, as did Dr Maria Moloney, who proposed this lecture. The Permanent Secretary of the Department of Culture, Arts and Leisure, Rosalie Flanagan, is also a past pupil, as is Judge Patricia Smyth. Those women use the skills first nurtured here in the roles they occupy today - and throughout their professional lives, they have taken the lessons and the ethos of the school onto the Boards of public and private organisations, into university administration and academic life, into solicitors' offices, the Bar, the media, and into building the peace process and the devolved political institutions. I could mention many other former students who are prominent in law and business in Northern Ireland and beyond. The worlds of medicine, the Church, health services, social services, engineering and science would also yield similar stories. Since it opened, this school has raised the line of vision of those who have been fortunate enough to come here and all of us have been the beneficiaries.

The view from Stormont and the view on the street

Your 140th anniversary comes at a historic time for the legal system in Northern Ireland. On 12 April 2010, policing and justice were devolved to the Northern Ireland Assembly for the first time in almost forty years. That means a number of things. It means that our laws about policing, crime and courts are made by the Assembly and not the Westminster Parliament. It means that we have a new Minister of Justice to set justice policy and an Attorney General for Northern Ireland to represent the public interest. Among those people and groups I talk to, there is a renewed interest in the

day-to-day business of the courts and a desire to make sure that it is the best it can possibly be.

But there is much that has not changed. The fact that we have the ability to find our own solutions to problems does not make the problems go away. In my discussions with groups across Northern Ireland, I hear about the householders whose night-time peace is disturbed by joyriders, the family who are struggling to get help for a drug-addicted teenager, the pensioner who is afraid to leave her home because of anti-social behaviour in the streets outside. The fact that criminal laws are now passed in Belfast, not London, and that civil servants in the Department of Finance and Personnel, not those in the Northern Ireland Office, set the police and court budgets may not, I am quite sure, feel like a big change for any of those people.

Judges alone can't solve the problems

No single group or profession will be able to solve these problems. If an offender is brought before the courts, the judge can tailor a sentence which will try to take into account his culpability, the harm he has done, and the need to protect the public from his potential future offending. But that is only a small part of the issue - one slice, if you like, of the pie. It takes other dedicated people, with other skills, to tackle the addictions, family problems and social history which led him to offend. The police and customs have a role in disrupting the supply chain which gave him access to drugs in the first place by finding the dealers. Social services, schools, health centres and community groups all have roles in supporting families and building dynamic and hopeful communities where young people have the strength, vision and motivation to build positive futures for themselves. Business people and entrepreneurs have a role in growing good business ideas and investing in our community so that our young people have viable futures in the legitimate economy.

We have all enjoyed hearing from the school choir this evening. Each of the members of the choir has, I'm sure, been practising and taking lessons for years to reach the level of excellence they display this evening. But the individual voices, on their own, will not have the impact of the entire choir. In the same way, a judge and solicitors and barristers dealing with a case in a courtroom are only one part of the resolution. The solution to the problem they are seeking to tackle - even in one single case - be it a criminal case, a family case or a claim for damages - will involve input from many more people. There will be those who were affected by the subject of the case - the parties, the victim, the witnesses, and there may be a jury. Scientific or medical experts may have to give their opinion. There may be court welfare officers, guardians ad litem and specially trained solicitors to represent the interests of any children involved. Probation officers and support workers may be there to work with the offender or victim after the case is over. Victim Support or the NSPCC may have sent a support worker for a vulnerable child

witness or victim. Police officers, the Public Prosecution Service, prison officers, may all be involved. There may be broadcast or print journalists there, with the important role of making sure that the public can find out what has happened in the case.

All of this is a long way of saying that judges cannot work in isolation. We know that court proceedings are only one line in the music, only one slice of the pie, and that even within those limitations, the courts only work if everyone involved carries out their duties to the best of their abilities and strives for excellence in their role. I would like to show you what I mean by talking in a little more detail about criminal trials.

Criminal trials and sentencing

I am sure that any of you who are lawyers, or law students, have been asked by your family or friends; "How can you defend someone you know is guilty?" The short answer, of course is that you don't know that they are guilty. The evidence needs to be examined by friendly and unfriendly eyes in court and tested thoroughly, before the judge or, if there is one, the jury, can be sure that the accused is guilty "beyond a reasonable doubt". The role of the defendant's legal representative is to put forward the case the defendant makes and the evidence which supports it, and to test the evidence the prosecution put forward. It is the role of the witnesses to state as straightforwardly as they can what they experienced, or, if they are expert witnesses, to explain as objectively as possible what scientific conclusions they draw from the evidence. It is when every witness and professional in the courtroom does their particular and different job to the best of their ability that we have the best chance of reaching the truth of what happened.

What happens if it is found that the defendant is guilty of the crime he was charged with? Sentencing is one of the most complex exercises a judge has to undertake. A criminal sentence has three purposes. It should reflect the seriousness of the criminal act done by the offender - his culpability - and should represent punishment for the wrong done. It should also reflect the harm he has caused to the victim and the wider community. And finally, it should be designed to protect the public from the consequences of offences he might commit in future. In some cases - the majority - this means asking the Probation Service, and the Prison Service, to work out what direction the offender can be given to ensure that there are good prospects that he will change his ways. In other cases, it will be clear that this sort of assistance will not work, and a sentence of detention for public protection will be necessary.

The judge doesn't have a completely free hand in choosing the sentence for a crime. The maximum and sometimes minimum possible sentence, and the framework of "half prison, half probation" are set by the Assembly. Within that framework, the Court of Appeal also issues guidelines on appropriate sentences in cases which give rise to particular problems. But the judge still

has a relatively wide discretion, and has to answer the questions; “What is the right sentence for this offender, for this offence , committed against this victim in these circumstances, and what protection does the public require to prevent this offender causing further harm?”

That means that the judge is not sentencing in the abstract. He or she is looking at the real impacts of a real person’s wrongdoing on another real person and the community they live in. That is why it is so important for the judge to have access to adequate and properly compiled reports. The probation report will outline the offender’s background and give the probation officer’s assessment of the offender’s attitude to his crime, whether or not he is likely to reoffend and what risk he poses to the public. This will allow the judge to begin to assess what sentence is likely to be appropriate, whether the offender might be able to change his ways, and, importantly, whether he is dangerous. It is the decision that he is dangerous which allows the judge to impose an extended sentence on him for public protection.

There is, however, also a need to ensure that the victim’s voice is heard within the criminal process. Victim impact reports, and most, but not all, victim impact statements, are prepared at the request of the prosecution. Their use in Northern Ireland came about at the request of judges in the late 1980s because they were anxious to have as much information as possible from and about victims in serious crimes. When passing sentence the court would consequently have a comprehensive picture of the effect on the victim based upon a statement from the victim and evidence from suitably qualified professionals. A victim impact report may include input about the victim’s injuries from a medical or psychiatric professional, or a therapist who is supporting the victim in the aftermath of the offence, or it may be written by the victim or their family themselves. It helps the judge to understand the impact of the crime in the real world. It is not so that the victim and their family can choose the sentence – otherwise two offenders could receive entirely different punishments if one injured was a person with a strong sense of retribution while the other was a person who believed strongly in forgiveness. There must be consistency in sentencing. But the harm done to the victim is highly relevant to the sentence. Hearing the victim’s voice speaking of that in the pages of a report is one way of acknowledging their needs.

Another, more recent development, is the concept of a community impact assessment. We are increasingly recognising that crimes don’t just affect the individual victim. They also affect the other people who live in the same community, on the same streets, as the victim and the offender. A community impact report may be one way to recognise this. For the reasons I have discussed a community impact report which states the opinion of the authors as to the sentence which should be passed on the offender is of no assistance at all to the sentencer. But a community impact report which sets out the facts

about the type of offending in the area, the frequency with which it occurs, which explains the impacts it is having on local people, the harm which is being caused in simple, straightforward terms, is a different thing. The judge may not know all that is happening in that area. It would be extremely helpful to him or her to get a picture of the impact the offending behaviour is having on the people who do live there and I consider that there is much to be said for working hard to see how such reports could be developed in a way which would make them reliable tools for the courts.

What is the role of judges?

I hope that this quick overview of the criminal and sentencing process has helped explain something of the multitude of roles which exist in the Northern Ireland justice system. It is important that we communicate clearly and regularly, whether at the level of the individual case, or at an institutional level. The judges are working with the legal profession, the Department of Justice and the other justice agencies – talking, listening and drawing up plans – to tackle problems like expense and delay in the system. Looking back over the past ten years, I am heartened by the way that making sure that all the agencies are working together has made a difference in areas such as domestic violence. That problem is far from solved, but at least we are agreed that there is a problem and have developed a co-ordinated, coherent system for tackling it in which everyone knows the role they need to play.

Everyone needs to play their role. The role of judges in the court system is unique - they are charged with judging disputes between individuals, or between individuals and the state which must be decided according to law. The idea of the rule of law is not just a matter of fine words. It means that laws must respect fundamental principles of fairness. They must apply to everyone in the same way, and the state cannot interfere in people's lives except in accordance with the law.

The oath which is taken by judges at all levels when they are appointed, is to “do right to all manner of people, without fear or favour, affection or ill-will, according to the law”. The rule of law does not mean the rule of judges. The judge is subject to the law like everyone else and his or her decisions must be in accordance with law, not with his or her own values or prejudices. Like everyone else, judges are shaped by their background, their family and education. That's why it's such a vital part of their training to be aware of their own values and preconceptions, and to ensure that they do not interfere with the obligation to determine the case according only to the criteria which the law requires.

Another way of putting this is that a judge must be independent and impartial in the decisions he or she takes. The independence of the judiciary as a body is important to the smooth running of society. Judges will inevitably have to decide difficult cases and take unpopular decisions. The United

Nations has pointed out that¹ the protection of people's rights depends on the guarantee that judges will be free - and can reasonably be seen to be free - to make impartial decisions based on the facts and the law in each case, without any pressure or interference from other sources, whether government or other interest groups. Every party before the court is entitled to a fair and impartial resolution of the dispute.

Judges are not the only professionals who are required to be independent. The rule of law also depends on barristers and solicitors who are prepared to represent their client's interests whether those in authority agree that their case is good or not. Whether representing the victim of a miscarriage of justice, or the perpetrator of a notorious crime who acknowledges their guilt; whether holding the State to account or representing legitimate business interests, access to justice and the rule of law depend on the courage of lawyers who aspire to the highest standards of their profession.

Conclusions

That is why I am so pleased to be here at St Dominic's this evening, celebrating a school that has helped generations of young women to aspire to excellence and in the company of a generation who stand at the gateway to their own futures. Whether you choose a future in law or in another sector, I hope that you have seen this evening how important it is that each person strives to be the best they can be in playing their part in building a better future for Northern Ireland. Alone, each of us can make very little difference, but if each of us strives to achieve excellence in the tasks before us each day, and if we consciously work together with others, then, like your choir this evening, I believe we can achieve great things.

May I close by wishing each of you well in your future life and career. Some of you may want a career in law or politics. Others may be passionate about another area of endeavour. I know that here you are being equipped with the tools to reach for the heights of whatever area of work you want to enter. I may well be addressing these remarks to a future Chief Justice, a future First Minister or a future President. As you follow your passion, whatever it is, I hope that you will have every opportunity to build a future for yourselves, your families and this community of which we can all be proud.

¹ <http://www.icclr.law.ubc.ca/Publications/Reports/RuleofLaw.pdf>