

a focus on taking it to court and having the ultimate battle royal. Many sensible barristers have always considered the prospect of settlement at an early stage. But many have not. Many have engendered in their clients such a firm belief in the rightness of their cause that vindication in court has been the only acceptable way of bringing things to an end. This is not just the Bar's fault. Legal training also, with its concentration on the adversarial model, has contributed to this shackling of lawyers to their traditional role as gladiator in the court room. There is a great need to introduce flexibility and to do it soon. As I have said, it is simply a matter of common sense.

Desirably, a barrister should rarely go to court. I rarely see in court the barristers whose court performance I admire the most. That is very significant. To my mind the most successful barrister is the one whose clients most frequently settle. Such an approach perhaps leads to a less exciting life for the barrister, but much more fulfilling results for the clients.

Concentrating on ADR does not, to my mind, mean giving over to some new fangled fashion. All it means is diverting the focus away from the court room, back to the possibility of securing, by some reasonably satisfactory means, an early resolution, with a minimum of fuss and expense. There should be a renewed focus on, mainly, mediation. That is what the clients want. Changing one's tack should, for the barrister, be relatively painless.

Settlements at the court door are about the most depressing thing I experience as a Judge. I know that the parties have incurred all their costs, they have suffered all their delay, they have entrenched all their acrimony. Human resources have been wasted, human relationships fractured: although the lawyer has certainly nevertheless benefited. What a hollow result.

There is an alternative. Lawyers are so heavily criticised these days. In this area, there is still time to show a true willingness to serve that vital public interest and not be preoccupied with a narrow private one.

Bodies like the A.B.A. and the individual Bar Associations can adopt policies and express views about these things. But the real thrust must come from the individual barristers representing their clients. There is benefit here not only for the client but for the barrister as well. □

Legal Entrapment

"Fun is fun, but these lawyer jokes may be getting out of hand. We were frankly amazed to see how far anti-lawyer sentiment had gone on reading recently of the actions of the Virginia legislature. Before adjourning, the Virginians came close to passing a bill that would have established an attorney-hunting season. The State Game Board was ordered to study if it should classify lawyers as a nuisance species as well as establish regulations for trapping them. But the Virginians apparently wanted to make the hunt sporting. The use of cash as bait was prohibited, as was shouting "whiplash" or "ambulance" in order to trap the attorneys. This is really disgusting. Where are animal rights people when you need them?" □

"Section 92" in Europe

The two great issues presently facing European lawyers are the impending introduction of a single European market and the clamour from Eastern European countries to develop free market economies and join in. Both issues were treated in detail at the recent Strasbourg Congress of the International Union of Lawyers. Strasbourg was the obvious location for such a conference because of its location at the geographical and political heart of Europe.

The Conference was opened in typical French fashion, with a myriad of speeches, including speeches from the President of the European Parliament, the Vice President of the European Commission (Sir Leon Brittan) and the French Minister of Justice. The first working session of the Conference was led by Lord Alexander of Weedon QC who spoke on the challenges facing lawyers as we approach the year 2000.

I found greatest interest in sessions devoted to the proposed single market in Europe and the events currently taking place in Eastern Europe. A highlight was papers by East and West German lawyers on the fusion of their two legal systems.

In a paper I gave, I was able to point out that, notwithstanding the apparent remoteness of Australia from the heady events now taking place in Europe, we might be able to offer some assistance on issues that must arise as Europe moves closer to a single market. After all, we travelled the same path nearly a century ago. I know from David Vaughan QC, of the Inner Temple, who is the leader of the English EEC Law Bar, that s.92 cases are regularly referred to in the European Court and in other Courts in which free market problems arise for consideration.

There was an Australian contingent of more than 20 delegates and spouses at the Conference. The social programme included a river cruise one evening followed by a formal dinner at the Palais de L'Europe (the European Parliament). Day trips for spouses and those absenting themselves from the Conference included Baden-Baden and the castles of the Rhine. The last day of the Conference was given over to day trips to Colmar, along the Route du Vin, and to Freiberg in Germany. During the Conference I was appointed to the Comité de Direction (Executive Committee) of the UIA and will shortly be attending a meeting of the Comité in Paris followed by a visit to Budapest, at the request of the Hungarian Bar Association, with a UIA delegation. Other meetings of the Comité de Direction for the coming year are scheduled in Morocco, Rome, Toledo and Mexico.

The next Annual Congress of the UIA will be held in Mexico from 28 to 31 July 1991. The Conference should be well attended by American, as well as European lawyers. The programme includes sessions concerned with trade and investment between America and the Pacific, together with sessions relating to international litigation and arbitration, international civil procedure, and other matters of interest to barristers. Prior to the Mexican Conference the UIA is holding a Symposium in Rome at Easter on freedom of religion and beliefs. The symposium includes a Papal reception.

Anyone interested in joining the UIA, or attending either the Symposium in Rome or the Conference in Mexico, can make arrangements through me at 7/180 Phillip Street, Sydney 2000 (DX 399). □

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