Symposium Opening Address[1]

The Hon. Sir Daryl Dawson, AC, KBE, CB

It is a particular pleasure for me to open this 1998 Law Librarians' Symposium. Not only is it a pleasure, but it provides me with an opportunity to express my gratitude to all those law librarians upon whom I have relied so heavily for more than 40 years, whether as a student, practitioner or judge, and now, as a retired judge, in the various pursuits a retired judge undertakes.

I can think of no other group of people in my professional career who have provided their vital services with an efficiency and good humour that has never flagged over the years. Of course the world of the law librarian has changed a lot since the 1950s when I started. The other day at the opening of the new Information and Technology Centre at Melbourne University's Baillieu Library, the University Librarian remarked that when that library opened in 1957, there was a mere fraction of the 2.5 million volumes which it now holds.

Today the Library homepage is visited 20,000 times a week. In 1997 it made available six hundred electronic journals. Already this number has risen to 200 full text electronic journals and 2,000 abstracted electronic journals. I do not have any law library figures but my observations of the High Court Library over the last fifteen years and of University law libraries such as that at Monash, indicate a similar revolution. The modern law library is something which I could not have envisioned in my student days.

At that time, the information that the law library provided was largely confined to what was between the covers of the books on the shelves and the law librarian knew precisely what was there. The text books were classified in alphabetical order by reference to the authors' names and there was a card index to help you. That was it. I must confess that the change to the Dewey system - if it was the Dewey system - confused me more than the introduction of computers ever did.

I think it is remarkable that I can not recall *ever* having heard criticism of law librarians, despite the strains that adaptation to rapid and revolutionary changes must have imposed. Not only did they adapt seemingly effortlessly, but they had the patience to teach us, the members of the practising profession, to learn the new techniques which did not come easily to us.

To be sure there was, and is, criticism of the shortcomings of some law libraries and those shortcomings are and were almost always due to lack of funds or facilities or both. I can not recall the professionalism of the law librarian ever being called into question.

The relationship between the law librarian and the profession which he or she services has always been a satisfactory and satisfying one. But it occurs to me that this may be due, at least in part, to the fact that it is the legal profession which by and large the law librarian serves. It is only indirectly that law librarian's services are directed to the wider community.

[1] Delivered at the Law Librarians' Symposium. Thursday 1 October 1998.

The law, and in particular the courts, have a direct relationship with the community which one does not find with the law librarian and that is a relationship that has undergone change in recent years. It is a change which has resulted in criticism of the courts for lack of communication with the public, and in particular, those who seek to use the courts. This is the issue that I want to speak about for a moment this morning because I believe that the changed relationship between the courts and the public is, in no small way, a reflection of the changes in the legal profession and its relationship to those who avail themselves of its services.

The most recent criticism of the relationship between the courts and the community is to be found in a study commissioned by the Australian Institute of Judicial Administration. The study resulted in a report entitled *Courts and the Public*. The Report recommends a communication plan for one way and two way communication between the courts and their publics (the Report uses the plural).

In referring to communication, the Report speaks of such things as simplified forms, better telephone access, better witness facilities and so on. No one would deny that facilities and many other items are desirable, but their provision is dependent upon funds being available.

The Report, however, seems also to be speaking of communication in another sense. That is to say, communication to the public of the function the court performs. Far from being against communication of that sort, whether one way or two way, I am not at all sure what it is the courts are meant to be communicating.

The function performed by the courts is hardly a secret. They adjudicate cases, both civil and criminal, and apply the remedies or penalties which are prescribed by law. There can scarcely be any interested person in the community who is not aware of this function, and if more detailed information is required, it is readily available. The proceedings and decisions of the courts are regularly reported in the news media, and efforts are made in most courts to assist the media by the appointment of media liaison officers, who do seem to prove to be of real assistance, whatever the scepticism was when they were first introduced.

But personally I do not think that the courts themselves - the judges - should be called upon to become civics lecturers portraying the role of courts in modern society. There are many who are better suited, and better placed to do that. The judges are, after all, participants in the process, and participants are not necessarily the best commentators on the part that they play. That part is played publicly by the judges, and full reasons are given for any decisions that they make.

The danger is that in commenting on their own performance, judges inevitably become drawn into controversy and shift the proper focus of attention. The justification for their decisions lie in the reasons they give and their engagement in public debate tends to trivialise the judicial process. I think it must always be borne in mind that the news media, despite their emphasis on their informative and educative role, are primarily concerned with circulation or ratings, so that their objectives are often incompatible with those of the court.

It is interesting to reflect that since the televising of the O J. Simpson trial in the United States, calls for the televising of criminal trials have all but faded away There are few, I think, who would argue that broadcasting of that kind is not a perversion of a court's function

Recently Sir Ninian Stephen advocated the televising of the proceedings of the High Court. I suspect that he must have had his tongue in his cheek when he said that, because it is possible to react to that suggestion with complete equanimity, because it is apparent that no television channel would ever want to televise High Court proceedings, save in the most exceptional circumstances It is hard to imagine any other program which could be so guaranteed to lower the ratings to zero.

Both counsel and justices in the High Court have, before a case commences, read the material on which the parties rely - in America it is called a "Hot Court" because it has read the material - and the subsequent hearings in most cases are virtually unintelligible even to lawyers with that background And in any event, argument is conducted at a sufficient level of abstraction to deter even the most dedicated television viewer.

Nevertheless for my part I would still resist the televising of High Court proceedings, particularly those proceedings which may attract the attention of TV channels more than others. I have in mind such things as special leave applications which are in a short compass.

It seems to me that the parties to those proceedings are entitled to the undistracted attention of the court, to their case, and that they not be subjected to the added strain of television cameras in proceedings which are probably stressful enough There can be no question that the televising of a court is a distraction to the judges, counsel and litigants alike.

All of this has been debated before and it is not really directed at the point I wish to make. That point is made by the report *Courts and the Public,* although it is tucked away in its pages and given really very little prominence. The point is this: putting aside purely logistical matters, the information which the members of the public want communicated is not so much a description of the functions of the courts generally, or in particular, the kinds of cases, but it is information which will enable them to employ that function (or those functions) to their own ends.

The adversarial system with which we are all familiar, is very much dependent for its efficient operation upon the participation of the legal profession It is the legal adviser who provides the liaison between the members of the public and the courts and this enables the system to function effectively That is to say access to the courts is still largely by means of the advice and representation of a legal practitioner

That has been a relatively cheap method of administering justice, because, as the Report points out, it has externalised (I think that means shifted) the cost from the court, to the parties who pay the lawyers. In the past that has justified locking the courts into low level budgets which are now proving inadequate to meet the increasing demands being placed on them.

But the legal profession has undergone a fundamental change, the full ramifications of which have not yet been felt by the courts. This is not the time and place to develop that

theme but it has become obvious in recent years that the legal profession is now market-oriented and motivated by profit, rather than by professional obligation.

This has reduced the extent to which the legal profession is available to the ordinary citizen, if not by reason of cost, then by reason of the specialised scope of the work to which many firms now confine themselves. At the same time Legal Aid funds have not increased to meet the demand for representation at public expense.

The courts are being called upon to involve themselves in the administration of their own procedures, in what the Report calls a "mutation of the adversarial system" and increasingly litigants are looking to the courts for advice and assistance which they have previously relied on the legal profession to provide. That is to say the shift is to an adversarial system that is more consumer-oriented, if that is not a contradiction in terms.

That is where I think a real demand for communication by the courts is being experienced and the satisfaction of the demand is something which the courts are, presently at any rate, not equipped to meet effectively. May I give one example, one simple homely example, which may strike home to you. On several occasions recently in the High Court litigants in person have demanded the same right to library facilities as counsel. Now the court really did not know what to do. It could not cope with the flood of litigants in person seeking to use those facilities, and yet it felt considerable unease in denying to the litigants the same access to materials as was enjoyed by lawyers on the other side. The problem was partly solved because security restrictions necessitated restricting access to the litigants but that can hardly be a permanent solution. Litigants in person are increasing in the common law world, and the trend is unlikely to abate while the legal profession organises itself solely in response to market forces.

Although the percentage of litigants in person in the High Court is yet relatively small, the time spent by the registries in Sydney and Melbourne servicing their requirements is estimated to be in excess of eighty per cent of the total time available. While at the present time it is still possible to say that in most cases it can be reasonably expected that a competent lawyer will provide most of the information the litigant requires and will afford the support and assistance which is needed, it is not possible to predict with confidence that this will always be so - at all events to the same extent.

It seems to me that the cry being heard for greater communication between the courts and those who use them (consumers in modern parlance) is, when certain obvious matters are put to one side, a cry for information about how the latter may avail themselves of the court's services without resort to the assistance of the legal profession - at all events without total reliance on the legal profession.

Not only has that assistance been forthcoming in the past, but it has been forthcoming at a cost which the courts have not been called upon to bear. Now the tendency is to reduce the need for legal representation as a means of lowering the overall cost of access to justice, but the need for the information, assistance and advice which the legal profession has been able to provide in the past will always be there, and I am by no means sure that it is to the courts that we would look to meet it in the future. However one thing is clear, and that is, if such a service is to be provided by someone other than the legal profession the costs will have to be provided or borne by public funds.