

Spear carriers in a production of Aida

One One Five by Alan Manly, Julian Day & Graeme Brosnan, A.K.A. Publishing, Sydney, 2011, 267pp, \$24.95. ISBN 9780980453164.

By DAVID ASH, *Barrister*

THIS BOOK IS ABOUT LITIGATION WHICH went off the rails. A poignancy – and perhaps an explanation – is that all the protagonists were, at least by the end, litigants in person.

The story begins with a claim for \$115 and ends in an unsuccessful application for special leave in the High Court. For reasons of privacy, a number of names have been changed, including that of the applicant. While I know some of the real names, that is no reason not to respect the authors' wishes.

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I found this a difficult book, but I'm glad I finished it. It reminds us that many intelligent and adventurous souls view the legal system with contempt, and litigation with utter contempt. "The litigant is a supernumerary, like a spear carrier in a production of Aida," the authors remark. And if they had the misfortune only to deal with lawyers and judges who were ignorant of the aphorism much touted by former CJ Murray Gleeson – that the rule of law is not the rule of lawyers – one can have only sympathy.

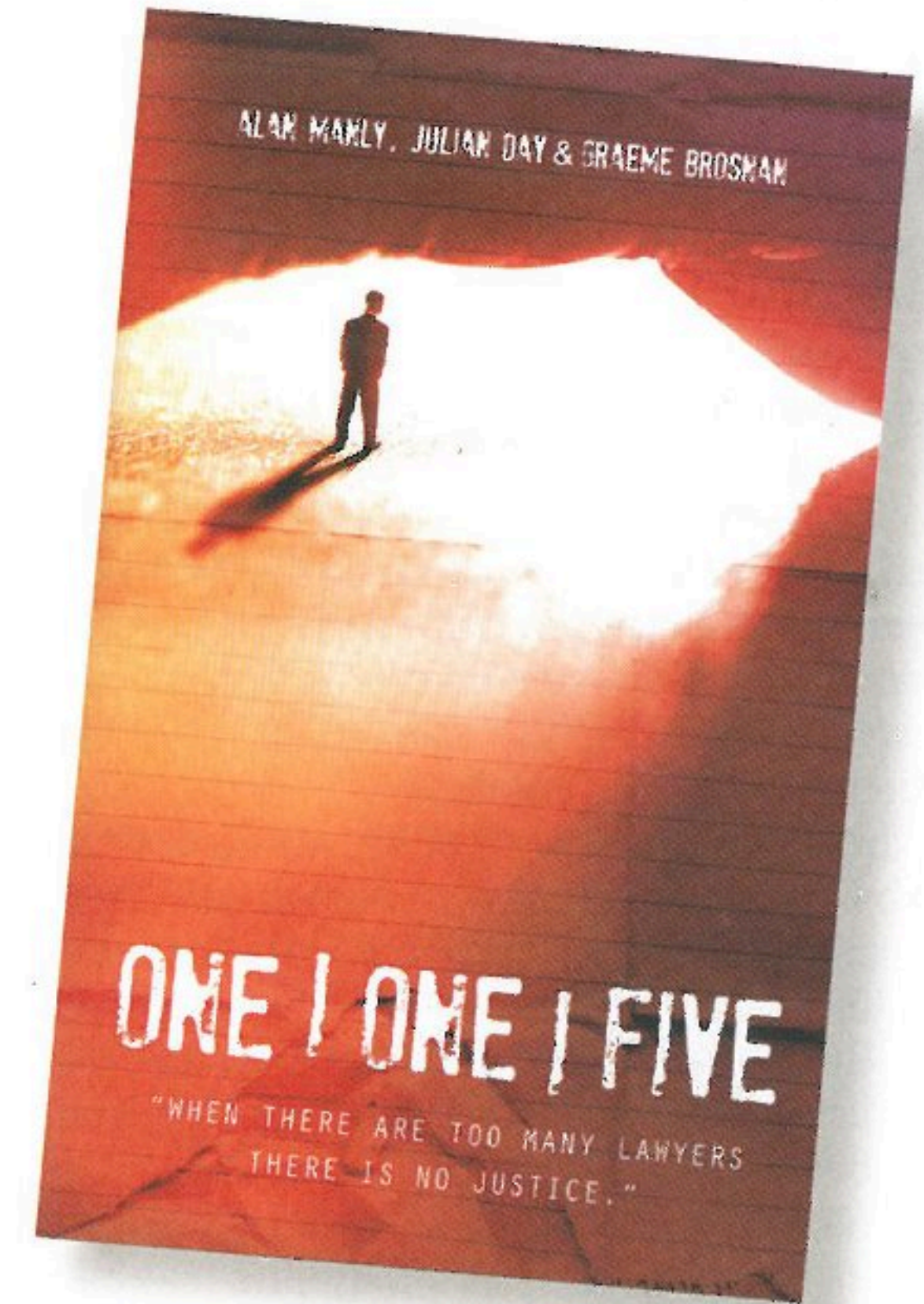
The book contains some gems. Anyone who has advised a creditor how to sit through a creditors' meeting might connect with the authors' summary of the "well-worn ritual".

One aspect of this book which I found

most interesting was the consideration given to seeking that the unsuccessful protagonist be listed as a vexatious litigant. Wisely, I think, the decision was taken that enough was enough. But the point is in the observation that "since the colony of New South Wales was founded in 1788 there have been only two people declared vexatious litigants ..."

This comment was correct in mid-2002, and that is the place in the narrative where it was made. What is curious is that the register now names 17. Doubters may go to the Supreme Court homepage and look under "Vexatious litigants".

I have not – touching all wood I can find – been sued by a vexatious litigant. However, and like many a lawyer, I have



acted against litigants who deserved the title. I have also – embarrassingly (?) – acted for persons later declared. I have an idea how difficult it is to be involved in such litigation.

These things said, we should be concerned that 200 years of stable government produced two vexers, while less than ten years has produced almost ten times as many. Stripping someone of the right to sue without leave is a serious step. For those interested in the pros and cons, I recommend Simon Smith's *Maverick Litigants – A History of Vexatious Litigants in Australia 1930-2008* (Maverick Publications, 2009) (see Review, *LSJ*, December 2010).

Meanwhile, those curious about the authors here may go to Wikipedia. Each has an entry. Each appears to have embraced success in one way or another. Those who sued have survived the system. If we as lawyers make clear to the world at large that litigation is for litigants and not for lawyers, I am sure their next book will not be so critical of us. □

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