

## Bullfry contemplates BarCare

By Lee Aitken (with illustrations by Poulos QC)



He hummed quietly to himself as he waited for the 389, in the pouring rain.

'You're where you should be all the time/ and when you're not,/ you're with some underworld spy/ or the wife of a close friend, wife of close friend ...'.

That about summed it up for him. The second Mrs Bullfry had certainly lived in the next street but one. But had the 'underworld spies' been such a good source of work? It was always a pleasure to receive a large number of 'bricks' in a used *Streets* ice cream container but contact with a 'spy' brought all sorts of extra stresses and strains to a practice – defending an armed robber wasn't quite the same thing as removing a caveat. Was he ever in danger of living off the proceeds of armed robberies, as Lord Justice Lawton had once caustically suggested decades ago, about certain members of the English Bar? And why had a prominent member of the Court of Appeal referred to him obliquely as 'something of a gangster'?

He thought back to those happy days,

prosecuting before the ACT Magistrates' Court. An incident involving one of the most experienced magistrates had always seemed to capture the pleasure of legal practice. The distinguished beak was about to fine a saw doctor for some minor infraction.

By small degrees, he had fallen into a modest criminal practice. Of course, the spies had a talent to amuse – as a matter of personality they were much more interesting companions than, say, someone from the bank's credit control team, or an AGS man in a grey cardigan –

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'How much do you earn a day?'

'About \$45'.

'That's more than I'm getting'.

'Yes, but I have to work for it!'

Bullfry had never really had to work for it – appearing in any court, great or small, was always a singular pleasure as all advocates knew. In what other business would you be overpaid for talking and drinking coffee? In what other calling could you reach the age of 58 before you realised that you were a total failure?

constantly before the duty judge justifying the appointment and re-appointment of administrators to companies on the verge of failure – or resisting an Anton Piller by going straight to court – or seeking to prevent certain named 'federal agents' from seizing your client's documents, and personal DVDs – or explaining why your client had visited a borrower's office with a baseball bat – sadly however, a perverse *noscitur a sociis*, or *qui se rassemblent*,

*s'assemblent* began to operate – you paid a high price for always obeying the ‘cab rank’ rule which is why, no doubt, so many disobeyed it – (in Queensland, once, at an arbitration, a young female barrister had told him without a blush that she would ‘never act against the Bank of Queensland’! but Queensland was a very small jurisdiction) – there were many who would ‘avoid’ having to appear in an unpopular cause, or for a doubtful client, by a simple invocation of one of the many bar rules which permit a refusal of a brief.

If you obeyed the cab rank ‘rule’, eventually the Big Four tired of your being on the ‘wrong’ side and cut you off – bankers were the simplest of men; they could not understand that barristers are the most meretricious of tradesmen, ready as instructed for a fee, either to put a family and its chattels into the street with a *Dobbs* certificate, or give a bank manager a heart attack by relentless cross-examination – no ideology attached to a practice (except, perhaps, for those who prospered by appearing only for one of the many groups of ‘victims’ which proliferated in a modern society).

Sadly, there was no such ‘victim’ category for men like Bullfry and his closest companions – men who had lived not wisely, but too well - ageing, genderist, fat, balding, ‘happy imbibers’ – ‘victims’ all, indeed, but of what? Looking around in the street, he passed a sizeable cohort of them every day, each man ruefully concealing his innermost fears and anxieties from his colleagues until – perhaps – too late? Barristers had the dangerous stoicism of all Australian males. You could attend a succession of floor dinners, or football matches and never perceive those colleagues on the point of despair, or madness. You would learn much about a colleague’s technical knowledge of offspin bowling, and nothing about his children’s delinquency, or his spouse’s wantonness. Was it time to consult BarCare?

Should he specialise and get rid of the



general flotsam, jetsam and ligan in his practice? Would he be ‘grandfathered’ into some specialisation? He looked doubtfully at the possible categories on the list. Everybody whom he knew did ‘equity and commercial’. It sounded so much better than confessing at a cocktail party that one spent most afternoons waiting to get on before a District Court arbitrator!

that a man spent 28 days investigating the building of a public pier, when a contractor wanted \$600,000 more than the county council was prepared to pay?’ No one. He thought of Owen Dixon’s comment on Adrian Knox – ‘an intellectual man but with no intellectual interests’. Knox resigned as chief justice of the Commonwealth the day after the death of a colliery millionaire under whose

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But in the quiet watches of the night, were even those with the most ‘impressive’ practice really content? As Learned Hand said many years ago, practising law involves nothing more than the production of a forensic artefact, good for here and now, and important to the parties, but ultimately of no interest to anyone else at all. ‘Who wants to know

will he shared considerable residuary estate – that put holding the highest judicial office in the land in its proper context!

It was something to compose other men’s quarrels – but even that had its dangers. How could he ever forget the intimated Commercial List summons that had alleged he had been guilty

of exercising physical duress on the defendant at the mediation involving the bouncing cheques? In all cases, there was a line, frequently a very thin one, between demonstrating well-simulated regret, or animus, with respect to the facts, and the opponents, and crossing over into that netherworld in which real emotion entered, and the speech became intemperate, and veered towards invective. He had been but twice threatened with contempt, and immediate removal by senior members of the Equity Bench. In each case the admonition was well-deserved, and the apology prompt. On another unfortunate occasion he had returned after a bibulous lunch to be told by the clerk to go forthwith to take an entirely unexpected judgment from a pietistic member of the Equity Division (long dead) who expected possession of a pub to be restored to the tenant in twenty minutes! Bullfry had swiftly disabused him of the practicalities of such an overly ambitious order. His less than coherent but immediate appeal, to the president, by telephone, from Level 8 had disquieted the doves in the highest levels of the judiciary. But all had worked out in the end.

And who but a saint could keep his temper when the matter was unsettled because the instructing solicitors for the other side had run up a notional bill of 85 'gorillas' for a one-day case involving an easement? Long experience had taught him never to underestimate by an iota the cupidity of the cadet branch.

He fought his way aboard the bus. It was never wise to take the red bag home. Concealed in a damaged tray case at the bottom was the wig (c. 1947) which he had inherited from the judge for whom he had first worked as an associate 33 years before. It had been regussetted at great expense and now resembled the bedraggled forelock of some dead marsupial – but looking at it always brought back happy memories. What a worker that judge had been – in chambers



until midnight and back at seven in the morning – he set a terrifying pace which it had been impossible to emulate. Cold and forbidding to outsiders, but a wonderful mentor to those he knew well. He had shared chambers with Sir Garfield in the glory days of the Sydney Bar – then the largest firms gradually got hold of most of the work and talent, and began to treat the practice of the law as just another arm of business, before the partners decamped to an investment bank.

Bullfry rummaged at the bottom of his sack – the flask was still securely stoppered, as were the sandwiches he had made for himself (the second Mrs Bullfry had departed to her mother's house on the Central Coast leaving him uncossessed and restless). He thought back to the halcyon days – the Common Room downstairs athrong on a Friday – the smoke, the camaraderie, the badinage, the calls for endless extra wine, the very occasional female diner – all changed, changed utterly. Now there was a monthly 'lunch' organised at a café in the City –

he never went – you never knew who would be there, or where you would sit. He thought back fondly to the Readers' Dinner years ago where he had surprised a teetotal senior appellate jurist in the act of moving his name card when he realised that he was sitting next to Bullfry! That was the sort of reputation which he strove constantly to maintain.

The bus lurched to a halt, jolting him from his reverie. The day stretched before him with nothing but preparation and paperwork to beguile him. The despond, and anomie, that are the constant companions of all counsel, settled upon him. Was it time to discuss again with Ms Blatly their joint 'work-in-progress' over an iced bottle of champagne at lunch, at that little place in Elizabeth Street? The second Mrs Bullfry wondered why his mobile was occasionally switched off, and not without cause. Perhaps a call to BarCare could wait.