

## BOOK



## On Trial-The Case of Keli Lane and the ABC

Simon Davis

An Australian woman on trial for the murder of her baby was once again the subject of explosive headlines in Australia in the 2000's. The story seemed extraordinary and was of course, the subject of intense media interest throughout the Coronial Inquest and then the trial. On 13 December 2010 Keli Lane was found guilty of the murder of her two day old child, Tegan Lane. She was sentenced on 15 April 2011 to 18 years imprisonment with a non parole period of 13 years and 5 months. She will be eligible for parole on 12 May 2024. On 23 July 2013 Keli Lane appealed her conviction to the NSW Court of Criminal Appeal and on 13 December 2013, the NSW CCA dismissed her appeal in a unanimous decision. An application for special leave to appeal to the High Court was refused.

This book, "On Trial-The Case of Keli Lane and the ABC" by Simon Davis, sets out all the facts relevant to the trial, a summary of what happened during the trial, and in the appeals. He then provides a summary of the ABC TV Documentary "Exposed" and gives his comments about the documentary. This is the documentary that famously suggested strongly, that there were many problems with the investigation and the trial and that in effect, Keli Lane should not have been convicted. The issue of what the media does or can do with high profile cases is in fact an important part of this book. As the author says in the Introduction-

*"This is the story of Keli and her trial and conviction. It is also a story about how the media can appear to impugn the decisions of courts and diminish confidence in the rule of law. This book is, in part, a fact-check of various claims made in a documentary broadcasted by the Australian Broadcasting Corporation ("ABC") in 2018. The documentary was entitled Exposed: The*

*case of Keli Lane ("Exposed"). Having watched Exposed, and knowing little about the case, I was left with impressions that, amongst other things, the Crown prosecutor at Keli's trial was guilty of misconduct, that improper deals were done to keep witnesses from testifying and that Keli's lawyers were negligent. It was hard to fathom how Keli could have been convicted. A quick look at social media revealed an uproar about the failure of the administration of criminal justice in New South Wales as a result of what was broadcasted by Exposed."*

Having reviewed the source material, the author found the documentary "inaccurate and misleading..." and he noted that "Legitimate questioning of a jury's verdict is one thing. However, questioning of a verdict which has twice been the subject of appellate review, without real reference to the appeal judgments, and by apparently suppressing many of the relevant facts, is quite another."

The book has great persuasive force due to the writing, the detailed research and the focus on what really matters. That is, the author is able to use his experience as a solicitor and barrister when he comments on various claims made in the documentary and when summarising and commenting on legal submissions and evidence.

The book is divided into four chapters. Chapter One tells Keli Lane's story: her time as an elite water polo player, boyfriends, pregnancies, terminations, more boyfriends, more pregnancies, adoptions, lies, more lies, coronial inquests, the police investigation and, eventually, the laying of the murder charge on 17 November 2009.

Chapter Two then deals with the Trial and the various Appeal proceedings. These are addressed in a clear, easy to read way yet that will appeal to the law reader, but with all the details that any lawyer would appreciate.

Chapter Three then deals with the ABC documentary entitled "Exposed" which was broadcast in late 2018. The author sets out 13 "claims" (as he saw them), or propositions, that the documentary set out to argue and create problems with the conviction of Keli Lane.

These included:

- That Keli's senior counsel was only briefed three weeks before the trial started
- One of the motives for the murder, ie her prospects of representing Australia at the 2000 Olympics would be difficult to achieve if she had to have the responsibility of looking after a child, was not true
- There was no evidence or not enough evidence, to convict Keli
- The trial Judge, who had retired by the time he was interviewed for the documentary, considered he may have had a doubt if he was the trier of fact

- Deals were done to keep witnesses from giving evidence
- Keli was prevented from giving her side of the story
- A hospital record from Auburn hospital showed that she was in fact discharged from hospital at a later time (than argued by the Crown) which meant that she did not have enough time to murder Tegan
- The searches for "Andrew" and Tegan were never completed by the police
- Keli's lawyers were incompetent.

The author looks at each of the "claims" in a fair amount of detail and explains why each is, in effect, not persuasive, inconsequential or just not accurate.

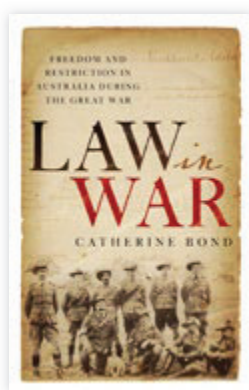
Towards the end of the book the author notes:

*"The rule of law is the cornerstone of our relatively civil community. It makes it so that disputes are generally solved by pens rather than guns. It marks out Australia as a relatively sophisticated and mature democracy. Maintenance of confidence in the rule of law is crucial. In a democracy, in theory at least, everything is open to question, including the legal system. But care is required. The questioning of the legal system ought not be indiscriminate, as it was in Exposed. Otherwise, confidence in the rule of law is unduly eroded. When confidence is lost, other less desirable rules models start to appear attractive. To question a jury conviction sound enough to have been upheld unanimously by the CCA and effectively upheld by the HCA, and to do so inaccurately, was an unwarranted meddling in the rule of law. The introduction of a trial judge who, in effect, disagreed with the verdict of the jury he had instructed, exacerbated the problem. Left uncorrected, all of this was apt to erode confidence in our system of justice and thereby do disservice to the Australian public."*

So true. I recommend that you read it and make up your own mind. We seem to be entering into a world where social media and the media generally, are getting more and more adventurous in how they comment on cases such that problems as identified by the Author, can occur. There is no doubt that they reach a wider audience than ever before. Commentary and freedom of speech are however paramount. 2020 will no doubt bring with it more media commentary about "high profile" cases including the case that has divided the country-the conviction of Cardinal Pell. This means that now, more than ever, the issue of the balancing exercise between the outlandish/sensational/potentially not accurate and fair/important comment, will no doubt be a challenge as we start the new decade. Reading about it, is so important.

Caroline Dobraszczyk

## BOOK



*Law in War: Freedom and  
restriction in Australia  
during the Great War*

Catherine Bond (NewSouth, 2020)

It is almost a century since the repeal of the *War Precautions Act 1914* (Cth), legislation introduced during the great calamity that was the First World War. This Act conferred upon the Executive almost unlimited power to impose wartime legal controls. Upon his retirement in 1932 as Solicitor-General Sir Robert Garran, the architect of the Act and its subordinate instruments, noted the slow grind of the Parliamentary machine and said: “And recourse was had to Government by regulation ... which undoubtedly may be abused; but which, especially in times

of emergency, has conspicuous advantages from the administrative point of view.”

In her latest book Dr Bond has provided the missing story of the legal framework upon which wartime defence, economic and social policies and decisions were built (it was intended that Volume 11 of *The Official History of Australia in the War of 1914-1918* would include a dedicated chapter on law. It is possible that the intervention of Billy Hughes and Garran, both of whom vetted the manuscript prior to publication, resulted in its omission).

This is as much a book about people as it is a book about law. Chapter One begins with the drafting of the Act and its regulations by Hughes and Garran, and early challenges to their Constitutional validity. Chapter Two tells the story of Frederick Sickerdick, a Victorian policeman of Prussian descent whose career was made in enforcing the Act. Chapters Three and Four focus upon the experiences of Franz Wallach and Karl Lude who were held in internment camps during the war, including a discussion of the limited legal avenues available to individuals during the war. Chapters Five and Six examine issues of censorship through the wartime activities of suffragettes Jennie Baines, Adela Pankhurst and Alice Suter (whose convictions under the Act were overturned by the High Court - they had been charged with participating in a meeting of more than 20 person “on the pretext of making known their grievances”). The High Court held that there was no pretext...they had in fact assembled for the

very real purpose of making known their grievances!), and the editor of the socialist newspaper *Direct Action*, Tom Barker. Chapter 7 highlights the discriminatory effect of the law against three men seeking to serve and fight for their country of birth, one with Chinese heritage and the others indigenous Australians. Finally, and more positively, Chapter 8 describes the beneficial effect of the Act for the wartime manufacturers of aspirin.

As I have said, this book is unashamedly the story of people and so there is no in-depth discussion of the constitutional or philosophical aspects of the enactment or enforcement of the Act. It does however bring to life the very real impact that broadly-expressed powers conferred upon the Executive in times of crisis can have on society, and in particular marginalised members of the society. As Dr Bond observes in her concluding chapter, despite the repeal of the Act in 1920, Commonwealth laws still allow for extra-judicial detention even in the absence of any wartime emergency that might have justified the conferral of sweeping powers upon the Executive.

In the current environment of the Covid-19 pandemic, where severe restrictions on everyday activities are being imposed on a seemingly daily basis by governments and government officials with limited Parliamentary oversight, Dr Bond’s book is a welcome addition to isolation reading.

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