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### *Knowing True Crime*

When I was twelve, I told people that I wanted to be a judge someday. What I actually wanted was to issue judgments, not in the courts, but in daily life. Specifically, I wanted the authority to dispense justice, by which I meant, vengeance. This is because I was both a girl and queer, and by age twelve, I'd pretty much had enough. At eighteen, I went to Sydney Law School and pushed through my undergraduate law degree—five years of wondering how a university, and most judges, could take inherently fascinating questions about human behaviour, violence and inequality, and turn them into hundreds of pages of unreadable technicality. I practised shipping law for a few years and then moved to academia.

Jeanette Winterson says that stories have three possible endings: revenge, tragedy or forgiveness. In criminal cases, the state claims to acknowledge all three: punishment as revenge; forgiveness through rehabilitation and concessions for early guilty pleas as well as statements of remorse; and tragedy through victim impact statements. But legal stories are unsatisfying. Although many judgments in criminal trials are freely available online, people prefer the true crime genre. I prefer the true crime genre. The law aims to avoid the standard of common sense, excess emotion, the representation of gratuitous violence, and bias. True crime trucks in all of these, and perhaps it should disturb me that I enjoy it so much, while being so committed (purportedly) to the ethic of justice, especially to social justice. Isn't it better to be rational, unbiased, and even? Isn't it better to avoid the prejudices and horrors of "common sense," a standard which has powered racism, sexism and queerphobia? This essay examines these forms of knowing: in law, in the public sphere, and in our own minds. Knowing in law involves concepts that we all recognise: presumption of innocence; rule of law; proof of guilt beyond a reasonable doubt. True crime is not only diagnostic of how these forms of knowing work more generally but *produces* forms of knowledge in relation to specific points of view (for example, the perpetrator's). The genre also circulates different truths—in particular, there is a significant sub-genre that is obsessed with the "true innocence" of people who have been found guilty in law. Podcasts in this vein include *Serial* and *Who Killed Leanne Holland?* and the television documentary on Keli Lane, *Exposed*.

True crime is mostly enjoyed by women, which has been written about a lot (Tuttle; Barcella; Moskowitz), and by queers, which has been written about less. It's been suggested that this is because, as likely victims of violent crime, we use the genre as a zone of thought-experiments, and empowerment. We imagine ourselves in dangerous scenarios, on the cusp of death, and through those scenes we rehearse the manoeuvres that could someday save us. I think this is part of the enjoyment of watching, listening to and reading true crime, but I don't think this capacity is unique to true crime. I was walking between train carriages at the age of twelve, on my way to school, hockey-stick in hand, moving away from random guys who followed me, and imagining what I would do (possibly with my hockey-stick)

if/when they assaulted me. I'd already had some random guy stick his tongue in my ear while I sat in the carriage doing my maths homework, and I would never be oblivious on the train like that again. So, women and queers don't need prompts to step through scenes of survival; real life almost always provides us with the material. But it's enjoyable to learn the texture and details of these cases—what is familiar and strange, both. When one is immersed in the details of a true crime story, the general threats that women and queer people live with are contained, made specific—this cis man, this time, this place, rather than any cis man, anytime, anywhere. True crime is also cathartic in a retributive sense, if not a reparative one—we can relish the perpetrator's guilt, and our knowledge of it.

There were three true crime cases that defined my adolescence and young adulthood—that really got under my skin—and I think these cases have resonated for my contemporaries too. The first case was Anita Cobby's murder. Anita was walking home from the train station after meeting friends for dinner after work when she was abducted and killed by a group of men. She was walking home from the station because the public phones were smashed up, so she couldn't call her dad, and then no taxis came. I lived in Prospect and knew how bad the public transport system was—you could get a train into the city but to get to the station, you'd have to wait for an hourly bus, or get a lift from someone. I was travelling into the city to go to high school. I was eleven and had been recently told that I needed to “stop running around the streets,” after a childhood of scrambling around storm water drains.

When I was 14, Leigh Leigh was killed by a boy at her school, while attending a birthday party at Stockton. Leigh had been sexually assaulted, humiliated, spat on and mocked by a group of partygoers that night. The narrative that came out of that case, through both the legal process and the media, was one of exceptionalism—Stockton was aberrant because the community was poor, alcoholic, and didn't supervise their children adequately. But I was Leigh Leigh's age, I went to a school in the eastern suburbs of Sydney, and I didn't see anything exceptional about it at all. Nobody I knew had been murdered, but the coerced sex and continual harassment was absolutely familiar to me. One thing that gets lost in Leigh Leigh's case is that she was punished—by many boys and some of the girls—because she protested the fact that she'd been sexually assaulted. If she had just walked away after her initial rape, she would not have been set upon in the way she was. But she didn't walk away. She stood there and demanded justice. They knocked her down and mocked her and threw beer on her, and she got back up and demanded justice again.

A few years later, the writer Nick Enright wrote an absolutely appalling fictionalised treatment of Leigh's death as a play and then a film, both called *Blackrock* (1995 and 1997), despite Leigh's mother, Robyn Leigh, stating she would prefer a documentary treatment of Leigh's death (Brien). Enright stated categorically that the play was not “about” Leigh, even though it was filmed on Stockton beach and tells the story of the violent gang-rape of a 14-year-old. The film *Blackrock* focalises Leigh's death through the point of view of a working-class boy, Jared, who is yearning to become middle class, and is helped to do so by his middle-class girlfriend's photographer father. Jared witnesses Leigh's rape and death, and his moral dilemma is whether or not he should “dob in” his friends for the gang rape and murder of Leigh Leigh (sorry, of “Tracey,” as Leigh is named in this fictionalised account). The fact that this moral question is legitimately set up as a “dilemma” just reinforces the narrative of mateship. I saw *Blackrock* in my early twenties and essentially had a breakdown. Then I discovered that this problematic film circulated in schools for years, as an educational tool purportedly designed to help kids understand sexual violence and

mateship. Understand what? That the rape and death of a girl may *sometimes* trump the allegiances of mateship? You'll need to think about it. And really, it needs to be a gang rape, the girl needs to be dead, and it helps if you're fleeing the poorer classes and no longer in need of the existing matey networks and back-scratching of the people you're dobbing in, because you're about to join the supposedly less-rapey middle class.

The third case was Keli Lane's murder of her daughter, Tegan, which didn't come to light until ten years after the fact. Keli Lane was sentenced in 2011 to 18 years in prison for the murder of her daughter, Tegan Lane.<sup>1</sup> Every contemporary of Keli, including me, remembers the details of Keli's trial, and of the events surrounding the murder of Tegan—Keli's secret pregnancies, Keli's sex life, and the cream Country Road suit that she wore to a friend's wedding on the day that Tegan disappeared. Keli was convicted by a jury in December 2010 of one count of murder and three counts of making false statements under oath. It was the Crown's case—accepted by the jury—that Keli left Auburn Hospital on 14 September 1996, two days after she had given birth to a baby, Tegan, and that this was the last time Tegan was seen. The fact that Tegan was missing was not officially noticed until some years later, when a social worker who was assisting with the adoption of Keli's next child discovered that Tegan's birth had never been registered. Police commenced an investigation, and then there was a Coronial Inquest before a six-month jury trial. The Crown's case was circumstantial—Tegan's body has never been found, and there was no physical or witness evidence to support the fact that Tegan was murdered or was in fact dead.

## Knowing—Murder

I believe Keli killed her daughter Tegan. I also think that Keli both knows and doesn't know that she killed Tegan, and that her family and friends have supported her in this belief of not knowing. I think she, and they, both know and don't know that Keli murdered a two-day-old baby. The series of "unintentional" and "secret" pregnancies that Keli had involve states of knowing/not-knowing that extend to the murder. This contradiction about sex, and sexual assault, is something that she, and they, and we, are trained in—not just specifically Keli's family and the toxic sexual culture of the "insular peninsular" where she lived, but more generally by the Australian culture of the 1980s and 1990s.<sup>2</sup> And I don't believe that that culture is at all behind us.

Keli maintains that on 14 September 1996, she handed Tegan over to the child's biological father, a man who she first called Andrew Morris in interviews with investigating police officers, and then later called Andrew Norris in a subsequent interview. Police found a number of men called Andrew Norris/Morris in records (the Australian Tax Office; the Australian Electoral Commission and from state registries of births, deaths and marriages), but they've never been able to find *the* Andrew Norris/Morris. At the time Tegan died, Keli Lane lived in Fairlight, on the Northern Beaches of Sydney, a great distance from Auburn, where she went to hospital to deliver Tegan. Keli seemed to have a happy and successful life—she has been described by many people, as well as the sentencing judge, as a "golden girl," who had many friends, played water polo at state and national levels, and was well-supported by her parents. She had a long-term boyfriend, Duncan Gillies. But the court also found that, beneath this surface, there was a lot of trauma. Keli had two unintentional pregnancies as a teenager, and two terminations that she found distressing (*R v Keli Lane*, para 4).<sup>3</sup> Her family and friends were not aware of the pregnancies and terminations (para

5). In 1994, when she was 18 years old, Keli became pregnant a third time, and carried this pregnancy secretly to term. On 18 March 1995, Keli played in a water polo grand final, and then went to a Balmain pub with her friends. At some point in the evening, her friends noticed that she was missing. In fact, she had gone to Balmain Hospital because she was in labour. Her first child was born the next day, on 19 March 1995, and was placed for adoption. Duncan Gillies, Keli's parents and many of her friends have stated that they were not aware of this pregnancy or the birth of this child. In December 1995, Keli became pregnant again, and again carried the pregnancy secretly to term. During this time, she continued her water polo training and took up a position as a Physical Education teacher at Ravenswood School for Girls in Gordon. On 12 September 1996, Keli Lane gave birth to Tegan, and Keli was discharged with Tegan on 14 September around noon. The judgment says that "the evidence is completely silent as to what happened immediately thereafter" (para 11). The Crown's case is that between noon and about 3 pm, when Keli Lane arrived at her parents' home at Fairlight, Keli murdered Tegan and disposed of her body. There was no evidence regarding the time, manner or place of death. That afternoon, Keli attended a wedding with Duncan Gillies "wearing all white" (*Exposed*, Episode 1)—in fact, wearing her cream Country Road pants suit (*Problem Child*, Episode 2). Keli Lane became pregnant again in 1998 and secretly carried that pregnancy to term and gave birth on 31 May 1999. Lane started the adoption process for this child and it was during the process that a social worker raised concern about what had happened to Tegan, a child whose birth had been recorded but who had then disappeared from the public record.

There is a substantial community of people looking at Keli Lane's claim of wrongful conviction, including academics and students from RMIT University's Bridge of Hope Innocence Initiative, which Keli Lane had approached in 2015 (O'Neill). Associate Dean Dr Michele Ruyters, who heads the Bridge of Hope, said of the Keli Lane case: "We go right back to the beginning and we look for holes," and "I absolutely think that (Lane) believes she is innocent" (O'Neill). Dr Ruyters also visited Lane a number of times at Silverwater Women's Correctional Centre and was struck by the way Lane was "instantly likeable—instantly ... She's got a great manner and she's very grounded despite everything she's been through. She's very self-reflective. She just comes across as a stand up person" (O'Neill). Criminologist Dr Xanthe Mallett stated that she found Lane "to be a warm, charismatic, intelligent woman." Dr Mallett finds Lane's conviction "problematic," because "the fact that two people can't be found has led to the successful prosecution for murder ... that someone can be found guilty of murder when no evidence exists to demonstrate murder took place"; "[a]t no stage during Lane's trial for murder could any witnesses be found who had seen Lane murder Tegan; no one saw Lane covered in blood or claimed to see her with tools to dig a grave, or disposing of Tegan's clothing"; and "[b]eing a liar doesn't mean she's a murderer." Dr Mallett said that her biggest fear was: "If Lane can be found guilty of murder under these circumstances, with no body, no forensic evidence or witnesses, and no rational motive, then any one of us could be accused and found guilty of a crime." I mean, I guess it could happen to any of us who has a baby that's vanished without a trace? Dr Ruyters argues, "There is a pattern in people who firmly believe in their innocence and that is that they never give up ... They refuse to take part in pre-release programs because that means admitting guilt for something they didn't do. They never stop fighting. It's an observable trend."

I think the courts got Keli's legal guilt right; I just don't think the courts' accounts contain the whole knowledge we have of Keli, which is fine, as the law doesn't set out to give

us a complete truth. The way the Crown conceptualised knowledge of Keli's intention to kill Tegan is fascinating. The Crown's case was that Keli deliberately killed Tegan and disposed of her body, and that the jury should exclude accidental death (para 37). The Crown distinguished this positive intention to kill from an intention to cause harm more widely, from death caused by negligence *and* death as a result of a spontaneous act (para 38). In part, the Crown inferred Keli's intention to kill Tegan on the basis that it was clear Keli had no intention to bring Tegan home, and had made no alternative arrangements of care for her (para 37). The Crown also inferred guilt from the lies that Keli told about the day Tegan disappeared, "categorised as lies evidencing a consciousness of guilt" (para 19).<sup>4</sup> The Crown also relied on evidence that Keli had a history of taking steps to ensure that she did not have the responsibility of caring for a child or children—the evidence of two pregnancy terminations, and two children whom she had given up for adoption (one of the latter post-dating the birth of Tegan); the trial judge permitted this evidence to be relied on by the Crown as tendency evidence pursuant to s. 97 of the Evidence Act 1995 (para 20). The trial judge found, at sentencing, that during that day, "in her mind, Keli had nowhere to turn" (para 44), a medical expert diagnosing "an emotional state of pragmatism and desperation" (para 47). Finally, the Crown argued that the fact that Keli attended a wedding a couple of hours after Tegan's death, "moving on with her life in a normal manner ... showed either a callous disregard for human life or a complete ability to block out the terrible act she had just committed" (para 38). I want to stay with this point of the Crown's understanding of Keli's intention here, the Crown deducing Keli's state of mind from Keli's performance of *not knowing* on that day, of appearing *normal*. Showing that we *don't know* that violent acts have just happened, showing that things are *normal*—aren't we taught this, as girls and queers and women, from the time we can walk down the street?

Keli's protestations of not knowing what happened to Tegan (beyond the fact that she had been given to her natural father, who Keli named Andrew Morris and then Andrew Norris) went against Keli in law. In terms of sentencing, Keli would have been better off providing a specific account of causing Tegan's death by negligence, or that she killed Tegan without premeditation or on account of her state of mind being compromised at the time (opening her up to the charge of manslaughter, rather than of murder). In fact, the NSW Coroner at the time, Carl Milovanovich, offered Keli Lane a deal—a certificate of immunity, meaning she would spend no time in gaol—if she told the police where Tegan's body was, and what had happened to her (*Exposed*, Episode 2). Keli stuck with her version of events—that she had given Tegan to Andrew Norris/Morris.

Questions that the sentencing judge believed had a bearing on Keli's culpability included "questions which have excited public attention," including:

"Why did the offender become pregnant so many times when it was clearly within her means not to do so? Why were the pregnancies, terminations, and births kept secret? How were they kept secret? What was the point of their being kept secret?" (para 25)

In the 1990s, in some circles, the most terrible thing that could happen to you—maybe even worse than your own death—was teen pregnancy. I'm not sure what to make of that—was it a hangover from earlier times, in some places? I understand it being a painful experience, but this end-of-your life experience? Middle-class white girls weren't meant to stuff up like that; unplanned pregnancy was what happened to poor girls who have no options. But this

fact doesn't explain why Keli hid her pregnancies, or why she didn't take steps to prevent future pregnancies or why she did take those accidental pregnancies to term.

## Not Knowing—Sexual Violence

The popular documentary about Keli Lane, *Exposed*, strongly argues for Keli Lane's innocence, bringing up counterfactuals to the courts' findings of guilt that are at times frankly fantastical. There are several Facebook groups that campaign to uphold Keli's innocence—I mean, of course there are. There was an amazing podcast called *Problem Child* that argued against the innocence claims raised in *Exposed*, drawing on court transcripts and other documentary evidence (*Problem Child*). *Problem Child* has been pulled from the internet, though, allegedly because of death threats made against the podcasters by Keli Lane's supporters, and allegedly threats made by Keli herself (*Problem Child*, Episode 8). *Exposed*, as true crime, is fascinating for the ways in which it represents Keli's knowledge of what happened. Keli Lane herself approached the producer and writer of *Exposed*, Caro Meldrum-Hanna, to ask her to investigate her case. Asked what she would like to achieve out of the documentary, Keli Lane says, "Well, obviously, the biggest hope for me is that someone comes forward with my daughter. She'd be an adult now" (*Exposed*, Episode 1)—a wish that seems incredible.

Keli Lane's parents claim not to have known about any of her pregnancies, including the three she carried to term—the same parents she lived with and also trained under. Her boyfriend, Duncan Gillies, said that he wasn't aware of the pregnancies. Anne Bain, who was the team manager for the Australian Women's Water Polo team, recalls one water polo game in Perth, January 1995, when she observed that Keli Lane was "definitely pregnant" (*Exposed*, Episode 1). Bain said that "talk was everywhere," from players and coaches, that Keli Lane was pregnant (*Exposed*, Episode 1). Keli's mother, Sandy Lane, was team manager for Keli's team at that time. Meldrum-Hanna asks Anne Bain whether, considering there was so much talk, there was any possibility that Sandy didn't hear the rumours? Anne says "No." Meldrum-Hanna interviews Keli's mother, Sandy, and asks her why she didn't notice Keli's pregnancy, and Sandy says: "Because she didn't look differently. Like, she's one that carried a pregnancy extremely well. She was never one of those tummy out here jobs" (*Exposed*, Episode 1). Keli played in the water polo grand final a couple of months later, in March 1995, when she was nine months pregnant, and gave birth to her first child later that night. Her water polo team-mates rang around random Sydney hospitals to find out whether Keli had had a baby and were told that she had; two days later, when Keli was still in hospital—it was her twentieth birthday—Keli got a "pass out" to go and have a birthday dinner with her family, and afterwards she returned to Balmain Hospital (*Exposed*, Episode 1).

Reviewing photos of Keli's 21st birthday party in 1996, Sandy recognises Keli's outfit, but not the fact that she was pregnant:

Caro Meldrum-Hanna: Do you know what party that was?

Sandy Lane: It'd be ... that's her 21st. Cos I recognise the clothes.

Caro: Good party?

SL: Terrific party.

Caro: Now, that girl standing in those photos there, your daughter ... is pregnant with Tegan.

SL: Oh, well, how could you tell?

Caro: About four months pregnant.

SL: Amazing. .... I mean, look how thin she is. And we see women these days ... because their dresses are too tight, for a start. I'm a bitch. ... It's society. It's how things have changed.

Keli Lane's first sexual experience, at 15, was a sexual assault, a "date rape," while she was intoxicated (*Exposed*, Episode 3). Explaining how she became pregnant again and again, Keli says, "It was carelessness, and a lack of self-protection ... drinking a lot, drinking and not using the pill correctly or not asking my partner to use protection. And not having control, I think is the biggest thing, of the situations I was in" (*Exposed*, Episode 1). More than that, there is the pervasive culture of assault that has always been around Sydney in general, and maybe the Northern Beaches in particular. Keli was known as the "Manly mattress." I think she also experienced other rapes, when she wasn't able to consent. I think she drank a lot and had a lot of "grey area" sex. If someone is intoxicated enough that their birth control stops working, do they have the capacity to consent to sex? So, how do you navigate rape culture? You're judged by how skilfully you do this. You shouldn't end up the manly mattress, or worse, pregnant. You have a "choice" in engaging, in the sense that you could always stay home, not socialise, be depressive. But if you do engage, the terrain is there. The misreading of this threat is evident in the state of mind of our judicial officers. Discussing the decision to prosecute Keli, part of which required evaluating the threat that Keli posed to the general community, the NSW Director of Public Prosecutions at that time, Nicholas Cowdery QC, said: "I don't think Keli Lane was a risk to the community in that she would go around killing other people's babies ... she seemed to be a bit of a risk to the virile young male portion of the community" (*Exposed*, Episode 3). Did he really say that? Yes. Yes, he did.

I know what it is, to both know and not to know at the same time. We all do. We know that a number of studies say that one third of kids experience sexual violence by the time they reach 18 years ... but do we even need those studies? To know? We were there. We talk to our friends. As Keli's contemporary, I regularly witnessed "casual" sexual violence at parties and bars. I was sexually assaulted by a teacher, and also by three boys in a hotel spa while on holidays. I was hunted and assaulted on trains going to school, as I said earlier. It sounds nuts to recount those stories now, as anything but exceptional and horrible, but we all know how pervasive and ordinary this violence is. I thought of this violence as normal and I was correct, it truly was/is normal, in terms of its pervasiveness, and in terms of the way our legal system and our culture both know and don't know about this violence—where "knowing" means accountability, or even accounting for. I talked to my friends and heard about how normal this violence was, and how to "not know" about it too—not make a fuss, not appear upset, to smooth things over so that you could get on with your life. Because who has the time or energy to fight all of it when you're 13, 15, 19? As I became older, I learnt I could deal with these stories therapeutically, in private settings—those frameworks of recognition were in place—but there were no wider, public frameworks of accountability. Yes, the criminal law provides a system whereby the state prosecutes the harms of indecent assault, of sexual assault, of rape, but we also have stories about how that goes for people who actually engage with the process, and mostly those stories are dire. I remember when I was fourteen, after my friend told me about being sexually assaulted while walking down the street, she said, "Well, you know. It's just a normal part of being a girl. Isn't it." It wasn't that we weren't angry, it was more that sexual

violence was like the weather—how do you push back against the weather? There wasn't a framework of meaning in the 80s and 90s for this violence. There's barely a framework of meaning for it now. We have #metoo, but we also have a situation where the Head Boy of Cranbrook recently *begged* his fellow students to see fellow girls and women “as people,” not rape them, and not dismiss sexual violence as “a joke” (Learmonth). How do you intervene in that culture, in that violence, as a kid? Both law and culture are complicit in “not knowing” sexual violence. True crime stories confirm our own experiences as women, girls and queers—experiences that arguably rely on a knowledge different from *common sense*, a knowledge more particular and in many ways more authoritative, given that it is grounded in experiences of violence, of perpetrators, of detailed ways, also, of not-knowing: situations in which violence is hidden, subordinated by wider society, by law and sometimes by ourselves.

## NOTES

- 1 The facts of the case described in this essay, which were accepted by the jury and the court, are set out in the sentencing judgment: *R v Keli LANE* [2011] NSWSC 289 (15 April 2011).
- 2 The toxic culture of the Northern Beaches has been explored in the podcast *Teacher's Pet*, and the investigation into institutional sexual assaults that arose from that podcast.
- 3 All future references to the judgment will be cited as paragraph numbers.
- 4 See *Edwards v The Queen* [1993] HCA 63; 178 CLR 193; *R v Lane* [2011] NSWCCA 157; 221 A Crim R 309.

## WORKS CITED

- Barcella, Laura. “Why Women Are Obsessed with True Crime.” *Forge*, 5 December 2019, <https://medium.com/@laura.barcella>; and Bridge of Hope Innocence Initiative <http://www.bohii.net>
- Edwards v The Queen* [1993] HCA 63; 178 CLR 193.
- Learmonth, Asher. “Our Boys’ Treatment of Girls Has Been Disgusting: Cranbrook Prefect Pleads for Respect.” <https://www.smh.com.au/education/our-boys-treatment-of-girls-has-been-disgusting-cranbrook-prefect-pleads-for-respect-20210225-p575us.html>
- Moskowitz, P.E. “True Crime Is Cathartic for Women. It’s Also Cop Propaganda.” *Mother Jones*, May/June 2020, <https://www.motherjones.com/media/2020/06/true-crime-podcasts-white-women/>
- O’Neill, Marnie. “Convicted Baby Killer Kelly Lane’s Mission to Clear Her Name.” <https://www.news.com.au/entertainment/tv/convicted-baby-killer-keli-lanes-mission-to-clear-her-name/news-story/0cc0c58ba2d17d4ee57610cca04f3d9a>
- Problem Child: The Story of Keli Land and the Murder of Baby Tegan*. Podcast, Episode 2, <http://www.problemchildpodcast.com>
- Tuttle, Kate. “Why Do Women Love True Crime?” *New York Times*, 16 July 2019 <https://www.nytimes.com/2019/07/16/books/review/kate-tuttle-true-crime-women.html>; Brien, Donna Lee. “‘Based on a True Story’: The Problem of the

Perception of Biographical Truth in Narratives Based on Real Lives," *Text*, vol. 13, no. 2, 2009 <http://www.textjournal.com.au/oct09/brien.htmnic>  
*R v Keli LANE* [2011] NSWSC 289 (15 April 2011); *R v Lane* [2011] NSWCCA 157; 221 A Crim R 309.