

Justice dies a 'Death on the Derwent'

By Bill Rowlings, CEO of Civil Liberties Australia

Robin Bowles is female, don't let the first name confuse you. She is "sort of" Tasmanian, not now living there, but once did; a frequent visitor for family reasons.

She brings a unique perspective to her excellently crafted and deeply disturbing new book, 'Death on the Derwent', released on 19 Feb 2019, published by Scribe.

This is the third book in just the past few months on the wrongful conviction case of Hobart's Sue Neill-Fraser. By any measure, that's an extraordinary output when coupled with a 6-part documentary series on air at the moment and a play which ran 12 months or so ago, plus an album of songs, a 'reward for information' neon sign and countless stickers, flyers and other promotional items. Plus articles that never stop, throughout Australia.



Right: Sue, in a wheelchair due to ongoing foot problems, being wheeled in to a recent court hearing.

Sue, for shorthand, is in the 10th year of a 23-year sentence, one of Australia's worst wrongful convictions, Civil Liberties Australia believes.

Sue did not bash her husband, Bob Chappell, to death on Australia Day night 2009 on the yacht they jointly owned. She did not manoeuvre his body up two levels in the yacht, over cockpit coaming and stanchions, and drop it in a dinghy and dump it in the middle of the Derwent.

That's what she was convicted of. But there's no body – still missing, never found. There's no believable motive; no witnesses; and there was no logic in the Crown case concocted originally by an inexperienced detective apparently hooked on TV crime shows where the "wife done it".



Bowles (photo) writes that the case shows a corrupted and misogynist Tasmanian legal system, illustrated by this comment.

"One of the police expressed surprise during a videotaped interview that (Sue) would have left her elderly partner on the boat all alone without making dinner for him". – Death on the Derwent, p57 (Bob was in fact the main cook in the family!)

There's also police tunnel vision and 'noble' corruption, at the very least. The prosecutor misleads the jury. The judge specialises in weird rulings, one in particular "to save time", and in incorrect interpretations of the law, commented on and corrected by the appeal court.

Sue still languishes in Risdon Prison going on 10 years after she was shockingly found guilty by a jury. Not the jury's fault: it was led down a path of mirages replete with potholes and tripwire, manufactured by the state of Tasmania, for Sue.

Bowles's book is the first written by a female, and a 'Tasmanian'. These attributes shine through in her coverage of how bad "justice" can be in Australia's deep south.

Her book takes a different approach to the other two, splitting the events into three parts.

The first, 'The Disappearance', recounts how Sue and her husband of 18 years, Bob Chappell, searched for years for the "perfect" yacht before finding '*Four Winds*', a 16m cruising motor-sailer ketch of Roberts design. Importantly, the yacht has three (or 2 1/2) decks, which is a crucial element to Sue's claimed "crime".

As Bowles points out, if you haven't been on board the '*Four Winds*' you won't fully understand the claims and counter-claims made by prosecution and defence. Not one of the seven judges* engaged on this case had been on board the yacht before the various trials began: * 5 Supreme Court of Tasmania; 2 High Court – none has closely inspected the scene of the crime.

The second section covers 'The Trial(s)', where Bowles dissects the extraordinary – and very "ordinary", in the slang sense – performances of many players in the tragi-comedic theatrics that comprised the hearings.

Bowles is at her best when interpreting court transcripts and "reading" people and legal actors as they give and extract evidence. In particular, she's excellent at evoking the atmospherics of courtrooms and of interviews. She was in court for key parts of the trial process, and conducted many interviews with starring actors after their moment of fame.

There was an original trial, in hindsight more like amateur theatrics than a serious legal event, where the principals muffed their lines.

Then there was an appeal to a three-judge Tasmanian court. Even Sue's prosecutor, Tim Ellis, has accused the Tasmanian appeal court of demonstrating confirmation bias. That's where the judges don't want to make the original judge look stupid, so they find a way to say the original trial was fair and just, or not "significantly" flawed.

That happened to Sue, illogically. For the intellectually- and logically-challenged appeal court of three Tasmanian judges, it wasn't "significant" that prosecutor Ellis wrongly told the jury Sue's DNA was in a glove that prosecutor Ellis said was used to clean up the crime scene. It wasn't: the DNA in that glove 'used to clean up the crime scene' belonged to Bob Chappell's son.

The third section – '*The Unravelling*' – is the most powerful part of the book, where she covers Sue's latest appeal, under a new law passed by Tasmania in 2015, a process which Civil Liberties Australia initiated.

That appeal continues at time of writing, 13 Feb 2019. A decision by judge Michael Brett is expected within weeks. He is deciding whether there is enough "fresh" and "compelling" evidence for Sue to undergo what is a second full appeal before three judges. There is more than ample evidence, but does it meet the legal bar? Fresh and compelling are strictly defined terms which Bowles explains in the book.

She expounds at length how the long and excessively drawn out saga of the current hearing has played out. She is in her element in this segment. She adds considerably to public knowledge, which should add 'significantly' to public disquiet over how Tasmania's politicians, prosecutors and police operate.

She reports, after a woman-to-woman interview, how Karen Keefe becomes a key player in the latter-day drama. Keefe shared time in Risdon women's prison with Sue. Later, she was purposely placed adjacent to Sue in prison by authorities in an attempt to find "dirt" through surveillance recordings.

Bowles allows Keefe to explain in detail how she was also abused by the police/prison system, when kept in isolation, transported 200km to another prison away from her children and family, and refused her medicines and access to mental health support. More than three days of this 'torture' passed before police conducted a six-hour, badgering and threatening interview with her.

"There were photos of my kids, downloaded from Facebook, face up on the table. One of the cops leaned and turned the photos over. He said that unless I cooperated with them, it could be ten years before I saw my kids again." – p315

"We don't care if Neill-Fraser is innocent or not. If she gets out, cost the state \$120 million. We don't care about you either. You are just collateral damage." – p316

"Still scared of snakes, Karen?" one officer allegedly said with the recorder was off. – p316

In the big picture of the Sue Neill-Fraser miscarriage of justice in Tasmania, such police bastardry is a minor consideration...but one day there will be an inquiry into these matters, and current police and maybe other legal figures may go to jail themselves.

Certainly reputations will be shattered, probably among 'The Establishment', the self-selecting elite, Bowles says, which has run the state since colonial times. In an eloquent and telling passage, she sums up why Tasmania is in a state of its own, where the legal system operates under an 'Old Pals Act':

'The Establishment is a group noun for the people who 'run' Tasmania, people with a long pedigree, preferably without the convict taint, who went to the right private schools, went through university together, or own businesses on the island. They can be in any walk of life, but are usually people with position, wealth and influence...they don't rock the boat or question the actions of other Establishment members. Outsiders may not recognise members of the Establishment, but they know who they are' – Robin Bowles, p153

Bowles excels in this section by bringing a female understanding to personal and family elements of the story not explored elsewhere. She says of Sue on the witness box:

'Sue was not a good witness on her own behalf. She had literally sunk her own boat.' p144

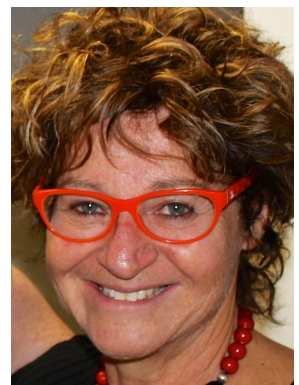
– "sunk her own boat" referring to Sue's performance in court, not on the water.

'It was like watching an animal be tormented...'

– Bowles quoting Sue's daughter, Sarah Bowles (no relation), on how Sue's own counsel was treating Sue during the original trial. p143

She gives great credit to all the women closely involved, including Sue herself of course. She highlights how important has been (and is) Eve Ash, the indomitable video producer-director who has sought and fought for justice for Sue since 2009 by using her psychologist's background and film-making skills, spending a fortune in the process.

Ash (right) is responsible for 'Shadow of Doubt', the award-winning 2013 doco on the case shown on TV and in selected venues around Australia. She is also producer-driver of the currently running (Ch 7 Wednesdays, also on 7Plus) 'Undercurrent', a six-part expose of the case.



Bowles, along with Sue, praises the involvement of Barbara Etter, a uniquely qualified woman. Etter has been a police officer in NSW and the NT, then rose to assistant commissioner (and sometimes acting deputy commissioner) in WA. As well, she was head



of the national police research body. She is a qualified lawyer with honours, has a Masters degree in law, was Telstra WA businesswoman of the year, is a member of forensic bodies and a qualified chemist as well as winner of an Australian Police Medal. Etter (left) gave almost six years, virtually full time and all pro bono, to unravelling the incompetent TasPol investigation by analysing their own logs which record what they said they did each day of the 'investigation'.

But when she tried to gain justice in another case of legal error, the "legal" Establishment went for her. A system of patronage and patriarchy is hard to beat when the politicians and power-grifters who write the rules enforce their own twisted will in a pettifogging manner.

'Our family owes Barbara a huge debt of gratitude...I consider her to be the most honourable and courageous woman I've ever met...She has paid a horribly high price for standing up publicly for what is right...' – Sue Neill-Fraser, p189.

Did I mention that Etter had been specially selected to be the first CEO of Tasmania's Integrity Commission? That was until even the semblance of integrity was thrown overboard and she was reverse-laterally arabesqued out of the job for having standards that were too high for the locals. Recently, in July 2017, Etter surprisingly and suddenly withdrew from the case without given a reason in public: she was no longer in a primary role, as the court case was now in the hands of barrister Tom Percy.

One female Bowles treats quite differently is Meaghan Vass (photo). Vass's DNA was found on the yacht in a very large sample very close to where Bob Chappell is thought to have met his end, and where his body was allegedly lifted up from the lower-deck saloon through a skylight.

The original trial could easily have found Sue not guilty if the judge, Alan Blow (now chief judge of Tasmania) had allowed the then-15-year-old, homeless Vass to be recalled to the witness box to explain her whereabouts on the night of the 'murder'. Defence counsel David Gunson had requested her recall. Instead, as Bowles points out in the book, judge Blow ruled:



'In my view, the prospect of Meaghan Vass giving significant evidence if recalled is so slight as to not warrant the time taken to recall her...I think we'd be wasting time and...there's no realistic prospect of it making any significant difference if she were recalled. So I won't ask the prosecutor to recall her, and I won't take steps to order her recall'. – Blow p139

Bowles says this was one of the most bizarre rulings of the trial. "(T)he fact that...the judge allowed her to fly away without recall is inexplicable," she writes. Amen.

The judges' weasel word "significant" has once again facilitated a miscarriage of justice (as it did in her first appeal). In this case. Blow J's concern for his time – "not warrant the time taken"... "we'd be wasting time" – means that Sue has done time, rising 10 years, wrongly. You don't have to be an Einstein to appreciate that time is relevant: it depends whether

you're on the outside or on the inside, whether you're a top judge or a wrongly-convicted woman aged 65 and missing the birth and childhood of her grandchildren.

These seeming errors of judgement by the judge are unlikely to cause him a moment's pause. They probably cannot be considered if there's a new appeal under the "fresh" and "compelling" mantra of the new appeal law because they were made in the original trial.

Did the judge make a mistake in not recalling Vass to explain her whereabouts and actions on the night? Undoubtedly yes, according to the evidence presented in Bowles' *'Death on the Derwent'*.

Vass is said to have since told many people (more than half a dozen friends and others, according to their statements) that she was on the yacht *'Four Winds'* the night Bob Chappell was killed, that she knows how it happened and who did it, that Sue was not on the yacht and that "(I) think of Sue in prison every day".

That's cold comfort for an innocent women still mourning her husband while she loses a decade of her life for a crime wrongly imagined by police, with the prosecutor filling in make-believe methodology and attributing a DNA sample to Sue in error. On these tissues of over-fervid imagination, a jury "bought" a gossamer-thin case hell limply together by circumstantial "evidence".

Much of the supposed evidence was not evidence relevant to the alleged crime. It is true that Sue had a pie for lunch at the "Royal" Tasmanian Yacht Club, as the prosecutor emphasised. It is true that she didn't visit a particular shop on the day she said. So what?

By May 2017, Bowles writes, Sue's support and legal teams had assembled voluminous evidence that her conviction was "unsafe" (as the lawyers say). Their evidence included a signed statement by Vass about what happened, plus her potentially identifying the two people who likely killed Chappell...and a diary.

After the support team briefed the material to an opposition (Labor) MP, Lara Giddings, herself a former Premier, she personally contacted the Premier, Wil Hodgman, and asked him to hear the details of the evidence.

The aim was to secure indemnity for Vass. Indemnified from prosecution, she would give evidence against the other people whom, it was alleged, were also on *'Four Winds'* on the deadly night, it was said.

Melbourne barrister Robert Richter QC, Eve Ash and ex-Victorian detective Colin McLaren attended. Present from the the state government side were Premier Wil Hodgman, acting Attorney-General Matthew

Groom and Solicitor-General Michael O'Farrell. The politicians and the state's head bureaucrat lawyer reacted instantly and negatively to the request for indemnity and a public inquiry. They had every confidence in the police and Tasmania's legal system, they said. 'Something rotten in the state of Tasmania? No way! Everything's apples here', was the attitude.



So Sue was condemned to another few years in prison, until someone with integrity AND courage ends up in a powerful enough position in Tasmania to enable a public inquiry.

The Richter side say it was made clear at the Parliament House meeting that all information was given in confidence, and not for use outside the meeting. However, at the end of the meeting O'Farrell retained a copy of the documents. Who knows who had access to them after that?

Within a very short period, TasPol was using the information in the documents to charge future witnesses lined up for Sue's appeal hearing. They were to give evidence that would help her, as Bowles explains in her full account in the book of this entire sorry episode.

Instead, TasPol charged them with future thought crimes, "perverting the course of justice" in the evidence they were to give to the court. That's an irony for a police force that has itself been accused of perverting plenty of laws, rules of evidence and police guidelines.

At the end of many years preparing to write *'Death on the Derwent'*, Bowles comes down firmly on the side of supporting Sue's right to have a fair trial for the first time. She comments:

'It seems to me that this investigation of Sue's witnesses, informers, and the team seeking the truth has probably been much more thorough, and cost much more police and other government time, than the investigation into Bob's disappearance, and has been directly aimed at ensuring her application fails.' – Bowles, p360.

Ain't that the truth. There's a lot of truth, skilfully assembled, in *'Death on the Derwent'*.



As Sue's daughter, Sarah (left, *Mercury* photo), has said:

"If this could happen to Sue, it could happen to anyone."

Very usefully, the back of the book contains a list of characters, names and where they fit in. This is a very complex case after 10 years of claim and counter-claim.

It also points out that Bowles has written about 15 other books, and is an 'expert' in the field of true crime. The book is not free of errors, but they do not detract from a ripping tale, well told by a professional

author in a readable, chatty style.

The author – after detailed research, including visiting Sue in Risdon prison more than once – shows great compassion for the innocent woman on whom a decade-long ordeal, so far, has been perpetrated by the state of Tasmania.

Bowles is a 'Tasmanian'. She has a right to criticise...and be listened to by the Tasmanian government.

Mainlanders like former judges, and many top barristers, leading legal academics, ex-detectives and other police, experienced crime journalists and film people, and a host of other Sue Neill-Fraser supporters have been ignored for years.

All any of these people want is a fair go for Sue. As Bowles says:

'I hope this book discloses the truth, and that justice will be done'.

ENDS

'Death on the Derwent: Sue Neill-Fraser's story', by Robin Bowles. Paperback, 400pp. Published 19 Feb 2019. ISBN: 9871925713176. RRP: \$32.00. An e-book is available: <https://scribepublications.com.au>