

Stephen Keim SC

By Richard Beasley

When Anna Cappellano made submissions in mitigation for her client at Brisbane Local Court on 14 July this year, there was one person paying particular attention beyond the magistrate and the defendant. Her father, Stephen Keim SC. As interested as he was to watch his daughter that day, Keim had reasons beyond this to be in the same courtroom. He had the next matter in the list. The continuation of the application by the Australian Federal Police to keep Dr Mohamed Haneef in custody, while neither being questioned nor charged.

If you were a fiction writer determined to create a character with a curriculum vitae for the sole purpose of provoking antipathy in our right-wing cultural warriors, you couldn't do better than plagiarising Keim's.

A former volunteer solicitor at Caxton Legal Centre – the equivalent of Redfern or Kingsford in Sydney – he subsequently became president of its Management Committee. He has been a president of the Queensland Council for Civil Liberties. After the Goss government was elected in 1989, he became chairperson of the Legal Aid Commission. He has been an inquiry commissioner on the Human Rights and Equal Opportunity Commission, and a deputy chairperson of the Land Tribunal. Since coming to the Bar in July 1985, he has regularly acted for Aboriginal people in a variety of cases challenging government decisions, and in native title matters. He has done his share of pro-bono work. Most recently of course, he is best known as legal counsel for Dr Haneef.

As unattractive as the image is, this is a resume that would have Piers Ackerman frothing at the mouth.

While the next generation is already in the legal profession, Keim was the first of his family to study law. He began in 1971. The early days of the Bjelke-Petersen regime and the time of the Springbok riots. Keim admits that, in part at least, his career and political beliefs were influenced by these times, and in particular the Joh-era in Queensland.

Bjelke-Peterson, Keim told me, 'revelled in his conservative reputation'. Beyond this, he had 'no respect, and little understanding' of the institutions of government, all of which were, in Joh's world, tools of the executive. Looking back now, Keim thinks that the era may have 'felt' worse than it was, although he recognises that this is not the case for those who were at the sharp end of the corruption of government in Queensland in the 1970s and 1980s. 'Good people left Queensland because they couldn't bear it anymore.'

Keim reminded me that the low-lights of the Bjelke-Petersen government extended beyond the appointment of the later jailed Terry Lewis as police commissioner, or the un-accounted for cash in the premier's office safe. There was the support for the white supremacist government in South Africa, the organised violence against anti-apartheid protesters, wide spread police corruption, the banning of street marches in the late 1970s, the attempt to have the Racial Discrimination Act declared invalid (*Koowarta v Bjelke Peterson*), and the jailing of sacked electricity workers in the mid-80s not long before the Fitzgerald Inquiry began the unravelling of it all. In the 1970s and the 1980s, Queensland had enough to keep the left and civil libertarians occupied.



So what about Australia and the federal government now, I asked? While there is obviously no analogy between the Howard government and that of Bjelke-Petersen – outside of longevity, perhaps – how does the Anti-Terrorism Act sit with a civil libertarian? What does Keim think of detention without charge, or 'control orders' and their secrecy provisions – breach of which, even by parent to parent, is punishable by jail – that surround them?

'I think – in the context of our recent anti-terrorism laws, and some of the changes to the Migration Act- that Howard could better articulate than Joh what he perceives as the need for the state to enact these laws, even if they take away what many people would consider important protections and individual rights.' That he might speak of it more fluently is not to say however that Keim believes that Prime Minister Howard has been better at meaningfully allowing a proper debate to occur as to whether these additional powers – given to both law enforcement officers and the executive – are worth the risks that come with them.

Keim recognizes that federal politicians are constantly 'pushed and pulled' on security issues. What he objects to though is the politicisation of the arguments for and against the anti-terrorism laws passed by the federal government. 'They've firstly promoted the desire in the community for tougher anti-terrorism laws,' he said. 'They've encouraged people to think we're not safe without them, and then they've said: "we're passing these laws because you desire it". It's almost as if politicians want to increase pressure on themselves to act in a non-rational way.' One of the results of such policy, at least on the Howard government's analysis of the Migration Act in the Haneef case, is that 'any visitor to our country can be kicked out for entirely arbitrary reasons.'

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In the course of this discussion I asked Keim what the term ‘civil libertarian’ meant to him. Two themes emerged. Balance, and conservation. The civil libertarian, so Keim believes, will always conduct a balancing exercise when considering legislation. Are the benefits of anti-terrorism laws worth the risks? Rather than reducing the rights that we have, is it better that they be ‘conserved, rather than expunged in the great post 9/11 haste?’



When he said this, I raised with him his interview on the ABC’s *Lateline* program with Tony Jones, immediately after the controversy over his release – or ‘leak’ in the language of Minister Andrews and the attorney-general – of the first police interview with Dr Haneef. Apart from raising his invitation to the attorney-general, the prime minister and the Federal Police – ‘they can come and grab me anytime they like’ – I reminded him of what he said that night in relation to the debate concerning ‘what the government had done’ to his client:

As a barrister – because I’m a barrister, I have no opinion with regard to that. But I do have a very, very strong opinion that this debate is something that could affect the lives of our grandchildren and so I felt very passionate this debate be conducted on the evidence and not on some skewed version of the evidence. So, I’m not joining the debate, but I’m trying to make sure that the public have the material by which they can conduct the debate.

What precisely did he mean by this?

‘Unless laws are obviously unjust,’ Keim believes, ‘people – at least most non-lawyers – have an intrinsic respect for the law. It’s almost an assumption that because something is the law, it must also be just or fair. If you change the law, you can change people’s perception about behaviour.’

Mohamed Haneef, as almost the whole country knows, was arrested on 2 July 2007 at Brisbane Airport. He was later charged under the Criminal Code with intentionally providing resources to a terrorist organisation, being ‘reckless’ as to whether the organisation was a terrorist organisation. Prior to this, he had been detained without charge for 12 days pursuant to the provisions of the Anti-Terrorism Act.

On 16 July he was granted bail. That afternoon his visa was withdrawn by Minister Andrews. On 27 July, the charges against him were withdrawn. He left the country the next day. His visa has not been restored.

Section 501 of the Migration Act empowers the minister to refuse or cancel a visa. According to Minister Andrews, when the ‘character test’ in this section talks of someone having, or having had ‘an association with someone else, or with a group or organisation, whom the minister reasonably suspects has been or is involved in criminal conduct’, the term ‘association’ carries with it no element of personal fault. This was rejected by Spender J in the Federal Court at first

instance, but is of course on appeal, and perhaps the minister may turn out to be correct.

This won’t mean, according to Stephen Keim, that the rule of law is alive and well in this aspect of our security laws. ‘It’s all on a whim, if they’re right,’ he told me. ‘People think – well, he must be a criminal.’

I reminded Keim at this point of a paper he delivered at the Goodna Neighbourhood Centre on the outskirts of Brisbane way back in 1987 when he was vice-president of the Council of Civil Liberties, that can be found on the Internet. The paper is entitled *Rights, Liberty, Freedom – Civil, Natural, Human, etc.*

After complaining about the paper’s title, I reminded him of this:

The council [of Civil Liberties] is of the view that people in Australia generally would benefit from having a Bill of Rights in the Constitution. It would raise an awareness of the importance of protecting basic human rights and would make it more difficult for governments when tempted by some particular political objective to impinge upon matters such as the freedom of assembly or freedom of speech.

Does he still believe, 20 years later, that Australia would benefit from a Bill of Rights?

‘Yes.’

We discussed this view in particular against the current anti-terrorism laws. ‘There are some basic human values against which, I believe, all of our laws should be judged,’ he said. In saying this he made reference to the recent discussions and papers delivered by eminent lawyers such as Lord Bingham and Lord Goldsmith in the UK and Sir Gerard Brennan in Australia,¹ that have centred on the notion of the rule of law meaning more than rule by law. If laws have to be consistent with fundamental human rights, so Keim thinks, then there needs to be a proper debate about whether the anti-terrorism laws ‘fail this test’. ‘A Bill, or Charter of Rights would state who we are,’ Keim says.

Perhaps our migration and anti-terrorism laws do? ‘That’s part of the debate.’

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I discussed with Keim the support that the government and Minister Andrews has had from some sections of the media in relation to the handling of the Haneef matter. How does he respond to the suggestion that people who say that Dr Haneef's 'associations' are not sufficient to 'disqualify him from entry into Australia are either careless of our security or motivated by political antagonism'.²

'He wasn't denied entry,' Keim explained. 'My client was legally living in Australia. He was working in our hospital system. He was making a contribution. The real issue is whether a law that allowed him to be detained for 12 days without charge is the kind of law we want.'

Is it better though, I asked, in terrorism matters, for us to be 'safe rather than sorry'? Or, as Janet Albrechtsen puts it, 'is it better that we detain them and investigate the evidence instead of sifting through the twisted metal of blown up trains and human remains after a terrorist attack if they turn out to be guilty?'³

'The government has a proper and serious role in ensuring public safety,' Keim said. 'It's obviously desirable for the police to have powers to arrest people. It's perfectly reasonable that those people be charged if there is enough evidence to charge them. As I said, the issue really is, should we have laws where people can be detained for long periods of time without being charged, and should people legally here be able to be expelled from our country on an arbitrary basis by a minister?'

During the course of his interviews with the Australian Federal Police, Mohamed Haneef was asked a number of questions which, at least to someone unskilled in criminal or terrorist investigation, appeared quite startling:

'Do you lean one way or the other in terms of being Shiite or Sunni?'

'What sort of Koran were you listening to? Like, I don't understand, is it just verses?'

These are two examples.

'My client was very humanely treated in prison,' is the only comment Keim offers in response to this. 'The Federal police did not try to trick him, and when they asked him important questions, they told him that that was what they were doing. I thought the officers involved were very fair. Whether the AFP or other counter terrorist organisations are properly funded however, is an entirely different issue.'

There hasn't only been criticism though. Keim has received a great deal of support from both colleagues and the community since taking on Dr Haneef's case. He received 300 e-mails in the week following the bail application, and now has more than 500. Only one was hate mail. Thirty-six members of the Queensland Council for Civil Liberties wrote to the attorney general and accused him of 'unfairly' branding Keim's actions in releasing the first interview transcript as unethical. Then the chair of the Criminal Law Section of the Queensland Law Society defended Keim as 'a lawyer of the highest integrity'.

Despite the great attention that the Haneef case was given by the media, Keim is quick to point out that he does not consider it in any way to be the most important decision in relation to human rights in Australia.



Kevin Andrews, minister for immigration and citizenship holds a press conference in Melbourne in relation to information about Mohamed Haneef. Photo: Stuart McEvoy / NewsPix

'What is?'

'Mabo.'

Mabo is of course a four letter word in the minds of Australia's right. Did he think that the High Court's judgment, or some exaggerated reliance on it by something called the 'Aboriginal rights era' had 'in fact hurt the average Aborigine'?⁴

'I'm not competent to comment on that. I do think though that it's probably too early to talk about what the long-term benefits of Mabo will be. I think there will be many benefits, but I think they will be harvested in the long term. In any event, in my view, law based on a fiction like *terra nullius* simply cannot be just.'

Given his double-major in government at university, and his obvious interest in and commitment to civil liberties, I wondered whether Keim had ever considered a role in politics? 'No,' he said. 'Maybe years ago, but not now. It seems to take too heavy a toll on family life. What I've really always wanted,' he told me, 'is a mainstream legal career.'

Mainstream? 'By that I mean, I've acted from time to time for developers in land matters, or for public authorities in administrative law matters, and for the DPP in criminal matters. I haven't wanted to be on the

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A prisoner believed to be suspected terrorist Mohamed Haneef being driven out of the Brisbane watchhouse in a police vehicle, 18 July 2007. Photo: Eddie Safarik / Fairfaxphotos

fringes. I think we all need to have a commitment – as lawyers – to ensure those with the fewest resources aren't oppressed, but I suppose, in my career, I've wanted the best of both worlds.'

He must have legal and political heroes though? Who were they?

At first he denied this. In fact he told me his greatest hero was Sam Trimble, an opening batsman for Queensland in the days of the Sheffield Shield who played first-class cricket until he was about 80 without ever being selected for Australia. Upon reflection though Keim said that one of the things he most admired in people was what he describes as 'you can all get stuffed guts' – he nominated Terry O'Gorman (another past-president of the Council of Civil Liberties) and Justice John Jerrard of the Queensland Court of Appeal as people who fell within this category. He also holds in high esteem anyone

who has the ability to 'keep growing and developing into middle and later age'. This is why he admires former chief justices of the High Court Sir Anthony Mason and Sir Gerard Brennan, as well as Sir William Deane.

Slightly more eccentrically, he nominated Stephen Jay Gould (the evolutionary writer) and Richard Feynman (particle physicist) as members of his list. Continuing with the theme, he lastly mentioned Leigh Matthews, the three times premiership coach of the Brisbane Lions. Matthews was a typical AFL player of the 1970s. Prone to one or two outbursts of violence, he was strong enough to push over the entire Wallaby forward pack with one hand, while drinking a schooner and kicking a goal at the same time. Apart from this, I asked, 'Why him?'

'Because my whole family (Keim is married with four adult children) are now Lions fans,' Keim explained. 'And in John Eales recent book on 'Legends' he was the only one who honestly answered 'no' when asked if there was anything he wouldn't do in order to win. Perhaps he drew the line at murder.'

Matthews has mellowed.

I don't think Matthew's philosophy fully reflects the Stephen Keim philosophy. But based on his *Lateline* interview – and more – he appears to have enough of what he describes as 'you can all get stuffed guts' to draw the coach's admiration.

Endnotes

1. *The Role of the Legal Profession in the Rule of Law*, Supreme Court of Queensland, 31 August 2007
2. Imre Salusinszky, *The Australian*, 31 July 2007
3. *The Australian*, 29 July 2007.
4. Janet Albrechtsen, *The Australian*, 18 July 2007. Who the 'average aborigine' is was not defined in the article.