

# The End of Innocence

by Estelle Blackburn

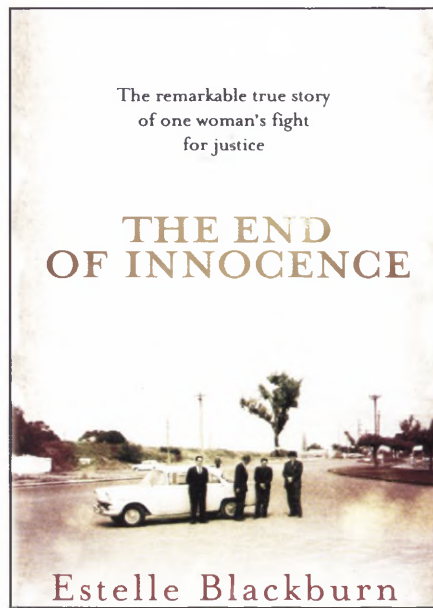
By Rob Guthrie

**E**ric Edgar Cooke committed a staggering number of house break-ins, assaults and several murders in the late 1950s and early 60s in Perth, WA. Most people living in Perth during that time had some connection with these events. Cooke was the last man to be hanged in WA but, before he died he confessed to two murders for which he was never convicted.

Cooke's final confession is the subject of Estelle Blackburn's first book, *Broken Lives*. In *Broken Lives*, Blackburn describes how John Button and Darryl Beamish had been convicted of murdering women for which Cooke later took responsibility. Button and Beamish both served time in prison, and it wasn't until the 1990s that Blackburn began her remarkable investigation into their unjust convictions. *Broken Lives* uncovered a modus operandi for Cooke which involved stealing cars, driving through lonely streets at night and running down women. Cooke was never charged with these running-down incidents and the four or five women who were involved in these separate cases were unaware of each other's plight. Blackburn uncovered a string of episodes which led her to be able to convince the WA attorney-general that the cases of Button and later Beamish should be reopened. In the end, both Button and Beamish were found to have been convicted on unsafe evidence. In both cases, they were subsequently awarded damages for their time in jail.

*Broken Lives* was published in 1998, and the journey for Button and Beamish through the court system and their ultimate success took another five or six years from that time. Along the way, Blackburn was assisted in her crusade by a range of advocates, experts and friends. It's worth mentioning that the appeals on behalf of Button and Beamish were led by Tom Percy QC, the current Western Australian president of the Australian Lawyers Alliance.

Blackburn's personal story is described in her second book, *The End of Innocence*. This remarkable book traces Blackburn's initial contact with John Button, which began with her taking up an offer from Button's brother to dance. We learn from the book that Blackburn, among other things, is a fanatical dancer, but is also an incredible investigative journalist who, when she discovered the full facts of the John Button case, commenced an extraordinary voyage, which involved many years of sleuthing and investigation. Perhaps the biggest achievement for Blackburn was that



she uncovered the fact that Cooke was not only a murderer but that he had confessed to a remarkable series of housebreaking and hit-and-run collisions. The latter was almost ignored by the WA police. Cooke was portrayed by police as a monster and a liar. Sadly he was certainly the former but not necessarily the latter. Robert Drewe's non-fiction account of Cooke, *The Shark Net*, takes up the monster theme as does Tim Winton's fictional *Cloudstreet*, which features Cooke's exploits. When Cooke confessed to the murder of the women for whom Button and Beamish had been held responsible, his evidence was not believed. By uncovering Cooke's hit-and-run exploits, Blackburn was able to show that Button's girlfriend, Rosemary Anderson, had not been

run down by Button, but had been the subject of another of Cooke's hit-and-run episodes. Likewise, through the evidence she gathered, Blackburn was able to show that Jillian Brewer was not stabbed to death by Beamish but, rather, by Cooke. The main focus of the book, *Broken Lives*, is on the innocence of John Button.

During her investigations, Blackburn established that Button had been assaulted during the course of police investigations. The police assault had not been the subject of any evidence in the Supreme Court during his original trial, and in *Broken Lives*, details of this assault were not outlined for fear that the police officers involved might sue for defamation. *The End of Innocence* describes how Blackburn gathered the evidence to assist Button and Beamish, but also described how she was restricted in bringing to light key elements of the police investigation until the matter was before the Supreme Court.

Once the matter was before the Court, the issue of the assault upon Button could be raised without fear of legal action. Added to the difficulties Blackburn and Button's legal advisers experienced in relation to the issues of police assault were considerations relating to evidence generally. Blackburn soon came to understand the difference between journalistic information, hearsay, and what could be admitted into evidence.

A further complication for Blackburn, which came to light in the course of her work, was that she had spoken to a number of jurors who were involved in the original trial of John Button. Having spoken to those jurors, Blackburn became aware that she herself may have been charged with

soliciting information from a juror following a trial. *The End of Innocence* is not simply a book that uncovers an injustice; it's the story of a journalist's education in the ways of the legal world.

*The End of Innocence* is a remarkable story. It is not uncommon to read the commentaries of lawyers who have been involved in cases where the courts have been found to have been wrong at first instance. Nor is it uncommon for lawyers to describe how new evidence has been bought to light. Blackburn's book describes how, when and where that new evidence was found and the conflicts that may arise for journalists who venture into the unsafe territory of forensic journalism. In this journey towards truth, Blackburn writes with an easy flow, happy to divulge details of her private life, the breakdown of her finances caused through her obsession

with the Button and Beamish cases, and the difficulties of dealing with temperamental lawyers. *The End of Innocence* is a worthy companion volume to the seminal work of *Broken Lives*. For those who lived in Perth during the 1950s and 1960s, *The End of Innocence* is a catalogue of connections that reduces Perth society to far fewer than six degrees of separation.

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## CASE NOTES

# Defamation and the difficulties with burden of proof

*Macquarie Bank Ltd & Ors V Nationwide News Pty Ltd & Anor* [2009] ACTSC 9

By Erica Lai

**M**odern defamation laws have developed over several centuries; but can still be described as an imperfect science, dealing with contemporary social and moral values, free speech and individual reputation.<sup>1</sup>

Defamation laws should not place unreasonable limits on freedom of expression and on the publication and discussion of matters of public interest and importance.<sup>2</sup> But balancing the protection of individual reputation with freedom of expression is vital in order to avoid silencing criticism and chilling speech,<sup>3</sup> where journalists and publishers become reluctant to pursue significant stories for fear of defamation lawsuits.<sup>4</sup>

In assessing whether defamation has occurred, the defendant's intention is irrelevant; it is the effect of the defendant's actions that matters.<sup>5</sup> Defamation centres on the loss of reputation, and does not necessarily include all assertions that upset, offend or inconvenience individuals.<sup>6</sup> For published material to be considered defamatory, the imputations must either expose a person to ridicule; lower their reputation in the eyes of members of the community; cause people to shun or avoid them, or injure their professional reputation.<sup>7</sup>

The ACT, South Australia and the Northern Territory are the only Australian jurisdictions where juries are not used in civil proceedings; in NSW, juries are still used in civil defamation cases.<sup>8</sup> *Macquarie Bank Ltd & Ors v Nationwide News Pty Ltd & Anor* was heard by a single judge, Gray J,

in the ACT Supreme Court. His Honour's frequent use of the term 'ordinary reasonable reader' begs the question as to whether or not juries should be used in ACT defamation proceedings. In fact, Gray J commented in his judgment, 'I don't have the benefit, as a jury would have, of discussion about the impact and impression that the article might make on others and particularly on persons who are not lawyers.'

## BACKGROUND

The plaintiffs sued the defendants regarding the publication of material that they claimed defamed them. The plaintiffs were Macquarie Bank Limited (MBL), Warwick Morris and Jonathan Rourke, senior executives of Macquarie Bank's Treasury and Commodities Group. The defendant, Nationwide News Pty Limited (Nationwide), is the publisher of the *Weekend Australian* newspaper, in which the published matter complained of appeared on 5 March 2005.

The case against a second defendant – News Interactive Pty Limited, the publisher of the *Weekend Australian's* online content – was dismissed, following a consensual agreement between the remaining parties to do so. Like most other laws, defamation is jurisdictionally defined based on geographical areas, which poses a problem, as the Internet is inherently trans-border in nature.<sup>9</sup> This can have serious implications for defamation laws and, while it is not an issue explored in this case, the challenges presented by the cyberspace era on longstanding laws cannot be ignored, or solved by partially uniform laws.<sup>10</sup> >>