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Abstract

This paper was initially written for an oral presentation at a seminar organised by the Legal Intersections Research Centre at the University of Wollongong. Translating it into a text form for a wider readership has not proved easy, given the lively, loud and gendered court-room dialogue upon which it draws is unable to be reproduced. The article commences with a brief sketch of some of the defining characteristics of research in feminist crimino-legal studies. This part of the paper assumes some familiarity with the epistemological debates that have hovered over social science research since the challenges of post-enlightenment philosophies to modernist knowledge claims. Then, reflecting on my own experiences as a witness subpoenaed before the Police Integrity Commission (PIC), the paper illustrates how the alignment between legal method with scientific positivism discredits feminist research in crimino-legal studies in much the same way as the legal process systematically disqualifies rape victims. I aim to demonstrate how this process of disqualification entails the asymmetrical arrangement of gendered bodies and spatiality in the hearing room, as well as the coercive exercise of a masculinist invalidation which operates through a micro-physics of power incompatible with the espoused judicial rhetoric of 'objectivity and neutrality'. The paper concludes with a salutary note about the future of feminist research in crimino-legal studies.

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Kerry Carrington

Introduction

This paper was initially written for an oral presentation at a seminar organised by the Legal Intersections Research Centre at the University of Wollongong. Translating it into a text form for a wider readership has not proved easy, given the lively, loud and gendered court-room dialogue upon which it draws is unable to be reproduced. The article commences with a brief sketch of some of the defining characteristics of research in feminist crimino-legal studies. This part of the paper assumes some familiarity with the epistemological debates that have hovered over social science research since the challenges of post-enlightenment philosophies to modernist knowledge claims. Then, reflecting on my own experiences as a witness subpoenaed before the Police Integrity Commission (PIC), the paper illustrates how the alignment between legal method with scientific positivism discredits feminist research in crimino-legal studies in much the same way as the legal process systematically disqualifies rape victims. I aim to demonstrate how this process of disqualification entails the asymmetrical arrangement of gendered bodies and spatiality in the hearing room, as well as the coercive exercise of a masculinist invalidation which operates through a micro-physics of power incompatible with the espoused judicial rhetoric of 'objectivity and neutrality'. The paper concludes with a salutary note about the future of feminist research in crimino-legal studies.

Feminist Approaches to Crimino-Legal Research

Epistemological debates about the relationship between politics and knowledge remain favoured topics of dispute in feminist criminology, just as they are in feminist philosophy (Tanesini 1999: 3). The distinctions here have been drawn between feminist empiricism, standpoint feminism and postmodern/poststructuralist feminisms (Punch 1998: 141-2). Feminist empiricism aims to correct the masculine bias of the methodologies of the human sciences, but accept its modernist claims that knowledge can be causal, certain, fixed and universal. Standpoint feminism rejects outright as masculinist traditional research methodologies and attempts to construct feminist ways of knowing based largely on experience (cf Stanley & Wise 1983, Grosz 1986). While postmodern/poststructuralist feminisms reject the epistemological assumptions of the enlightenment -- that truth can be impartial, ahistorical, acultural, singular, total or universal. These approaches tend to see knowledge as partial, uncertain and very much the product of power. They tend to opt for non-foundationalist, non-universalist ways of knowing which accept multiplicity and fallibility as defining characteristics of the episteme. This does not necessarily mean, however that all knowledge claims are relative and consequently equally valid. There are misrepresentations and methods of deconstructing these. More importantly there are better, more defensible and justified representations of events that occur in the social world and ways of researching and arguing these using methods informed by conceptual analysis, openness and critical reflection.

While there is no single identifiable feminist approach to doing research, and much debate about what such a feminist approach may be (Gelsthorpe 1990: 90, Olsen 1994), there are however a number of distinguishing features which could be said to broadly characterise feminist approaches to crimino-legal research. First, feminist research methodologies question the neat separation of objectivity from subjectivity. Consequently they question the truth claims of legal and criminological research to be objective, devoid of interpretation and free from value judgement. They argue that such 'methods cannot convey an in depth understanding of, or feeling for those being researched and that they often ignore sex or gender differences or look at them without considering mediating variables' (Gelsthorpe 1990: 90). The implication of this for feminist research in crimino-legal studies has manifested as a consistent preference for qualitative over quantitative, scientific or experimental methods. This preference, however, does not invalidate the use of quantitative methods in feminist research, for choice of method is largely a practical matter governed by the research topic at hand. So for example if the issue at hand relates to trends in women's participation in the workforce, or the gender dynamics of prison trends, then quantitative empirical tools which measure gender distribution in such settings would be justifiable.

Second, for many feminist scholars the experience of doing research is just as important as the

outcome. Questions about process and power are especially important. Some feminist researchers attempt to disentangle the exercise of power from the act of doing research by adopting reflexive methodologies. Their published accounts consciously reflect on the role of the researcher, the impact of subjectivity, the exercise of power, and the muddiness of the research process, often concealed in official research publications, such as those of the British Home Office (Davies 2000: 83, Byrne-Armstrong et al 2001). Examples of feminist research in criminology that does just this can be found in the work of Pat Carlen, Pamela Davies, Lorraine Gelsthorpe, Lisa Maher, Kathryn Daly, Adriane Howe, and Ann Hudson to name a few.¹

Third, much feminist research assumes that knowledge is sexualised, that the history of the human sciences is a masculinised one and that feminist ways of knowing and doing research have been historically subjugated, repressed and disqualified (cf Grosz 1986, Harding 1987, Gunew 1990, Stanley & Wise 1983). Given this context it is understandable that the object of research for many feminist researchers in criminological studies has been to make visible the formerly invisible voices, knowledges, experiences and stories of women. For some (but by no means all) this has led to the adoption of feminist standpoint methodologies as an antidote to the phallocentrism of the human sciences. The choice of topic for these feminist researchers -- the study of women as gendered subjects -- then tends to follow logically -- as Hudson explains:

The method of feminist standpoint criminology involves 'asking the woman question' -- that is asking how patterns of crime, penal policies, crime prevention and community safety strategies, ideologies of law and order, or indeed criminological theories affect women ... Feminist critical criminology exemplifies the traditional commitment of critical theory to acknowledging standpoints and having political/practical as well as theoretical objectives (Hudson 2000: 185).

There has been, however, much internal debate in the field of feminist crimino-legal studies about the virtues and limitations of such a methodology (Cain 1986, Smart 1989, Carrington 2002). One inescapable problem for feminist standpoint methodologies is the essentialism that flows from the epistemological equation between women's experience and knowledge (Harris 1990). As women are differentiated in relation to the operation of the legal process, feminist standpoint methodologies which assume a commonality (or fixed essence) among women, and a universal subjectivity among men, run the risk of constructing fictive unities among cohorts of legal subjects whose statuses before the law are quite diverse. So for instance women who are vulnerable to criminalisation for petty crimes (such as social security fraud) share very little in common with the overwhelming majority of women who never come into contact with the criminal process. Most women are insulated from its direct power effects. Those who are not tend to come from housing commission, Aboriginal and other poor neighbourhoods as studies of female offending have repeatedly shown (cf Carlen 1988, Carrington 1993, Chesney-Lind & Sheldon 1998, Daly 1994, Gelsthorpe 1989, Maher 1997). So there is no essential female subject of law to be 'discovered' or 'uncovered' through standpoint methodologies.

The critique of feminist standpoint methodology has called for a different kind of feminist intellectual engagement with crimino-legal knowledges to the one that totalises conceptions of law and criminal justice, attributing to them a false unity of purpose. There are healthy signs of this occurring. Many feminists working broadly in the field of crimino-legal studies have become much more aware of the effects of race and ethnicity which many had once ignored (see Hahn Rafter & Heidensohn 1995, Rice 1990). Feminists are also working overtly to correct their former tendencies to essentialise masculinity and femininity -- by demonising one and romanticising the other; and much contemporary feminist research has displaced its once essentialist focus on gender, to analyse how a complex tapestry of racial, colonial, gender and class inequalities intersect to position women differently in relation to the operation of criminal justice and law (cf Graycar 1995, Daly 1994, Mayer 1997, Thornton 1995). This is especially the case with Indigenous women and girls in countries like Canada and Australia who are massively over-represented before the courts and in our prisons and figure disproportionately as victims of crime as well.

While disputes about the nature of knowledge remain unsettled, there is, however, a broad consensus that feminist scholarship is avowedly both a 'political and intellectual' enterprise (Naffine 1995: 28). My own research, while not singularly feminist in approach or choice of topic, has nevertheless been strongly influenced by feminism. Like Lorraine Gelsthorpe 'I cannot separate a feminist and nonfeminist me. Therefore the way in which I conducted the research had as much to do with my collective experiences -- as a researcher, as a woman, as someone with a particular history -- as well as to any

specific elements of feminism' (Gelsthorpe 1990: 98). Here it is pertinent to acknowledge that the legacy of Michel Foucault, especially his approach to method, his conceptualisation of power and knowledge, and his prognosis for the role of the specific intellectual (Foucault 1981, 1991) has had obvious influences over my approach to doing research. But not solely either. The robust tradition of critical criminology which connects academic projects to political projects is clearly apparent in my choice of what to research, though not necessarily how (Carrington & Hogg 2002). This influence has been most evident in my genealogy as Chairperson for Academics for Justice and practical involvement in campaigns to correct miscarriages of justice (see Carrington et al 1991). These multiple influences intertwined when nearly a decade ago now I commenced a piece of research into the representations of sexuality in the Leigh Leigh rape/murder case. What follows is a reflective analysis of how many years later this research was 'discredited' as 'absolute rubbish' through adversarial methods for producing narrative closure peculiarly available only to those who have the sovereign power of law at their disposal.

The Crime, My Research & its Genealogy

According to a large number of police witness statements which I read during the course of conducting this research, on the night of the 3rd November 1989, 14-year-old Leigh Leigh was subjected to a series of degrading taunts, assaults and sexual assaults before being strangled, bashed and bludgeoned to death with a large rock. She had been attending a beach party on the Stockton coast line about 200 kilometres north from Sydney. Of a large number of boys involved in spitting upon, assaulting and otherwise degrading the victim shortly before her death, only one was charged with assault, and another with carnal knowledge (not rape), although she, and others present, had claimed he had raped her. No-one has ever been prosecuted for Leigh Leigh's rape, despite serious genital injuries that one forensic scientist described as most likely to have been inflicted by an inflexible object like a broken bottle.

I did not set out to 'unearth' or 'uncover' any hidden, master or singular 'truth' about this crime, nor to produce any definitive account about it, but to demonstrate how this event, like all events, is subject to multiple discursive readings, re-readings and representations some of which are more or less accurate than others, but how some are the products of 'legal fictions'. For instance, immediately following the discovery of Leigh's naked body the crime was widely and unambiguously reported as a brutal sex crime.² Three months later, however, when Matthew Webster, an 18-year-old working class boy from Stockton was charged with her murder and sexual assault after 'confessing' to it in a police interview using the tried old tactics of custodial interrogation, the crime underwent a curious discursive reconstruction. Building up to and following Webster's conviction, the crime became increasingly sanitised as a murder involving a callous and brutal bashing,³ with virtually no reference to the vicious sexual assault that preceded the victim's death. Only much, much later did it become apparent that the original charge of sexual assault was dropped during only what can be assumed was a plea-bargaining process. Because Matthew Webster pleaded guilty there was no trial or testing of 'the facts'. The detective who composed this set of facts gave evidence during the 1998/9 PIC hearings that when it became apparent Webster was to plead guilty, the sentence hearing adjourned and he was instructed to rewrite 'the facts'. An agreed set of 'facts' was then tendered during the sentence hearing that described an earlier sexual assault upon Leigh Leigh that night quite remarkably as 'her act of intercourse' making no reference whatsoever to the forensic evidence of the seriousness of the injuries to her genitalia.

Throughout the successive discursive reconstructions of this crime produced by the legal process, the discourses of guilt became so thoroughly and mercilessly inverted that Matthew Webster, the self-confessed killer, came to be represented in the press⁴ and the judge's comments upon sentence (*R v Webster*) as a 'gentle giant', an unfortunate victim of 'uncharacteristic and impulsive ferocity whilst disinhibited by alcohol and drugs'. Quoting from a psychologist's report, the sentencing comments referred to Leigh Leigh as a 'slut'. Meanwhile the consumption of drugs and alcohol, sexual promiscuity (not sexual violence) and lack of parental supervision came to be represented as the major factors underlying her murder. The sexuality of her killer and the conduct of other boys at the party that night, attracted little judicial criticism or public comment. This was just one of the many re-tellings of this event which was to offend the virtue of the victim and feed into wider discursive reconstructions that Leigh Leigh was a slut who deserved what she got.

A quite remarkable silencing occurred. Representations of the crime as a heinous act of sexual violence

were almost completely expunged from public discourse.⁵ My research began as an interrogation of how that silencing occurred and its complex multifarious power effects. I initially learnt about these discursive reconstructions from some of Leigh Leigh's former school peers who by sheer coincidence were enrolled in a subject called 'Youth Culture and Delinquency', which I taught with Andrew Johnson at the University of Newcastle. Andrew and I became interested in a series of wider cultural and criminological questions about how the discursive reconstructions of this crime were overlaid by a local Novocastrian culture which seemed to exhibit a high level of tolerance for sexual violence among its adolescent population. We were interested in how this culture overlapped with the local surfing culture, the occupational culture of the BHP steel-works, and the notorious hard-edged working class culture of the city. I applied for a small university grant to conduct a study of sexuality, adolescence and popular culture in Newcastle. Andrew worked as the research assistant on the project. We began by retrieving the media clippings relating to the Leigh Leigh case and other cases like it, both locally and nationally, and interviewing those who had known her.

I gave my first academic conference paper about the case in December 1993 at a Law and Society Conference convened by the Macquarie University Law School. A small article published in *The Newcastle Herald* described the research (*Newcastle Herald* 3 January 1994). This prompted Leigh Leigh's relatives to contact me. The first to make contact was Robyn Leigh who wrote:

I am the mother of Leigh Leigh ... The way the police handled the whole case sickens me ... I have written to anyone I could think who could help me. But all the politicians, police, Ombudsman, Commissioner for Human Rights all ignored my pleas for help. ... People forget Leigh was the victim not the boys, Stockton or the kids at the party but Leigh ... I have a court case coming up soon and am praying to anyone who will listen to the truth on what really happened that night. ... I thank you from my heart for speaking out on Leigh's behalf. Yours sincerely, R. Leigh.

I was to disappoint Mrs Leigh, for nor could I deliver any definitive account of the 'truth' of what happened that night. But I could deconstruct and problematise the one which was widely circulated following Webster's sentencing that reconstructed him as a victim, and her daughter Leigh as a 'slut'. Later I was contacted by Toni Maunsell, Leigh's aunt, and over the next few years I had met nearly every one in Leigh's extended maternal family, from great grandmother, grandmother, two aunts, and several cousins. Toni and I have maintained a close relationship since, and somewhat ironically she later became one of my strongest supports throughout my ordeal with the Police Integrity Commission. But at the time it was Robyn Leigh's personal plea that spurred my deeper involvement and continuing research into the case after the initial conference paper. Without her support at that time my involvement would have ended then and there. As a specific intellectual with privileged access to the institutions that produce regimes of truth, I somewhat naively felt a responsibility to contest the production of a number of legal fictions associated with the case. I arranged for Academics for Justice, a loose knit group of academics that challenged specific instances of injustice, to fund Mrs Leigh's appeal against her victim's compensation case. I introduced her to a new lawyer from the Newcastle Legal Centre, attached to the university, to act for her in the matter. I arranged for a number of fresh forensic opinions to be sought on the autopsy report and other materials. In August 1994, on behalf of Mrs Leigh I prepared a submission to the NSW Royal Commission into Police Corruption, headed by Justice Wood, the same judge who sentenced Matthew Webster. It all came to naught basically (for a detailed account see Carrington 1998).

Law, Science & Phallogentrism vs Critical Criminology, Deconstructionism & Feminism

In what follows I reflect on how my research into this case was subsequently disqualified very publicly and at great expense, funded by the tax-payer, by special hearings of the New South Wales Police Integrity Commission, a body that has standing royal commission powers and chose to use them against me for reasons that are still unclear and later became a matter of considerable dispute and litigation. My reflections are not purposely self-indulgent, but designed to illustrate how the assumed alignment between law, justice, science and truth operates to privilege phallogentric ways of knowing while disqualifying other ways of knowing and forms of representation. This is important methodologically, as I believe there are critical lessons here for the future of feminist research in crimino-legal studies.

In January 1999 I was summoned to appear before the PIC with a week's notice and no choice about

whether to appear. I was given no specific reason for being summonsed and what I was told by the PIC investigator who delivered the subpoena turned out to be misleading. Whether intentional or not, the PIC hearings appeared to many onlookers as designed to simply discredit me as a long-time critic of the legal system's handling of the case having published three academic articles about the case (Carrington & Johnson 1994, 1995, Carrington 1995) and a book tendered into evidence as Exhibit 72. Under summons I was cross-examined for three days by eight different legal counsel, longer than any other witness, and much longer than most of the police called to account for alleged misconduct before these hearings. The PIC is an enormously powerful public agency. At the same time it is exempt from many of the measures of accountability that generally apply to the public sector, including Freedom of Information and Privacy legislation.⁶ The sole mechanism of accountability appears to be the PIC Inspectorate. Yet the oversight functions of the PIC Inspectorate are vastly inadequate.⁷

The strategy pursued in cross-examination was to assert the authority of science as the only valid candidate for knowledge and the scientific method as the only valid method of academic research, and ultimately to align law with science and truth. I was maligned by being associated with all that was neither scientific nor legalistic. One of the rhetorical strategies of law is to insist on universal and singular definitions that disqualify alternative definitions (Goodrich 1986). My cross-examiner sought to do just that in this exchange:

Q. And would you agree with this short definition of criminology, that it means, in effect, the scientific study of crime?

A. There are different paradigms within criminologists' [sic] thinking, and that's one of them.

...

Q. Can we agree that, whatever the various definitions may be, one of them would be the scientific study of crime?

A. That's a positives [sic] criminologist's form of thinking and it's actually one to which I don't subscribe and in fact its one that contested in the criminologists' [sic] literature.

Q. Yes, but can you see scope for the scientific study of crime?

A. Criminological positives [sic] certainly do.

Q. Yes, and you would accept that people who adopt that definition would be carrying out, in a practical sense or a professional sense, a scientific study of crime -- doing their job properly, I mean, as a professional?

A. There are different approaches to criminologist's [sic] knowledge. As I explained, there are those who subscribe to the scientific paradigm and those who don't. Those who don't, there are post-structural criminologists, like myself. There are scientifically based -- there are a wide variety of criminologists [sic] approaches and paradigms, and I do not subscribe to the one which what we criminologists call positivism.

Q. I don't want to really spend a great deal of time on this, madam, but in a real sense, albeit a loose definition, it nonetheless includes, if you like, the scientific study of crime?

A. One particular criminological paradigm includes that, but it's a highly contested area

(Police Integrity Commission Transcripts, Operation Belfast [hereafter PIC Transcripts] 8 February 1999: 1511-2).

My attempts to persuade my interrogator of the validity of multiple criminological paradigms went unheeded. The discursive battleground between critical theory and the power of law to define superior knowledge was fore-grounded in this exchange. The cross-examination continued in such a way as to assert the authority of *his* definition, as 'the scientific study of crime' and then to align the 'proper' and 'professional' study of criminology with criminological positivism. The next tactic was to equate rigour and objectivity with facts, truth, and science, and to align me with all that was not ...

Q. Well, would you agree that, whatever the paradigms may be, a professional, an academic -- especially a person with your background and qualifications -- would bring intellectual rigour to any study or any examination just as part of being a professional?

A. Yes, and rigour doesn't necessarily equate with science.

Q. But in the way I use it, intellectual rigour would mean, surely trying to arrive at the truth based on proper facts, properly obtained?

A. Well if you're a Foucaultian you actually believe that there is no such thing as absolute truth; that all truths are partial; that they are contextual; that, in fact, the complete and whole truth is something that none of us are able to access. All we can access is the best possible picture of truth.

Q. Well, can you see a situation where intellectual rigour would be consistent with an objective approach to a matter?

A. No. That's something of a highly contested nature within the literature as well. ... (PIC Transcripts 8 February 1999: 1512).

Once again the rhetorical strategy was to invalidate my answers, to disallow contested meaning, and to continue the same line of questioning as if my responses were either not heard or the meaningless utterances of someone operating outside the scientific paradigm. Terry Threadgold articulates with great clarity the context of the discursive battle between feminist crimino-legal research and traditional legal method which at that moment I found myself enmeshed:

Plurality and difference is accepted in these theories (that is in critical theory) as 'normal', not as something pathological, threatening, other to be controlled and contained, overcome. ... This is a different story to the one that law tells about itself. The Law is an interpretative community with a complex intertextual history which has always worked with a view of language that is 'realist' or 'referential'. This is a view of language that has always argued, in the face of all the evidence to the contrary, that meaning inhere in words, that there is a 'true' meaning or intention to be recovered from language, that language is a kind of container for meanings which it transmits unproblematically from sender to receiver ... (1993: 15).

Predictably, the cross-examination continued to equate professionalism with pure objectivity -- the centre-piece of the myth of judicial neutrality. Objectivity, or more specifically knowledge claims of this status, have similar resonances within the familiar rhetoric of scientific positivism.

Q. And because you are a professional, you would try to exclude from professionalism and from that study any personal philosophies bias or personal views, if you possibly can, as a professional?

A. Well, that's only if you subscribe to criminologists [sic] positivism and, as I've said, that's a particular paradigm and certainly not one to which I subscribe. There are a whole stack of feminist criminologist [sic] that in fact say what's disqualified from those paradigms is experiences. There are other voices, which are outside of all that, and they actually assert that personal experience and subjectivity and the position and standpoint are very, very important in producing and generating knowledge, and that knowledge can have valid claims as well.

Q. Madam, I'm not talking about philosophies, I'm talking about ideals. I'm talking about a factual scenario, factual matrix, having in mind the Leigh Leigh murder. Do you understand what I mean by that -- that is, the investigation and the events leading up to that investigation, and what occurred after that investigation took place. Do you understand?

A. I understand you now to be talking about a specific case, and that your [sic] presenting it in terms of a legal scenario and not a criminological one (PIC Transcripts 8 February 1999: 1512-3).

Whenever I gave an answer that upset the flow of his discrediting tactics, the cross-examiner tended to

shift the goal posts. As the one being questioned, I lacked the formal power he had to realign the discursive battle ground. A fundamental feature of cross-examination is the structural inequality between the interrogator and the interrogated. 'The power of law's right to question is unquestioned, the questioning of the question by the "witness" is not permissible within the monologic framework of the legal method which refuses to allow itself to be questioned' (Byrne-Armstrong et al 1999: 33). The discursive rule which creates this profoundly unequal exercise of power was reiterated several times during my time in the box. The power effects of this asymmetrical discursive field is a central theme to which I return in the following section. A debate over the nature of 'facts' ensued, but it did not turn out to be an enlightening dialogue between mutually respectful colleagues.

Q. ... I put to you that there is no room for academic constructions, ideological constructions or philosophical constructions in relation to the fact, and the way you have dealt with it, in the context in which you have just read there, is a philosophical view isn't it?

I replied:

There is -- facts in an academic world are always mediated by discourses; facts are always open to interpretation, facts, whilst, as much as possible -- (PIC Transcripts 8 February 1999: 1530).

At that point, my interrogator interrupted, my QC objected to his interruption, the Commissioner intervened, and I was finally allowed to finish:

Academic writings and literature and criminological theories; facts, are important to them -- of course they are -- but so are ideas, so are theories, philosophies, so are other forms of knowledge, and some of those may not be readily factually verifiable, but that doesn't mean that they are invalid (1531).

Once again my answers went unheard. The cross-examination belligerently went on to assert the singular authority of law to produce incontestable 'truth' and 'facts' about cases, and to highlight my absence of formal legal credentials as a way of discrediting anything I may have to say about the Leigh Leigh case, or indeed any other. My defence of a critical criminology against positivist criminology was taken as a discrediting negative, my defence of feminist methodologies as a 'signifier' of bias and subjectivism and my attempt at being a specific intellectual by contesting the localised hegemony of the 'truths' produced in the Leigh Leigh case was discredited on the basis that I was not a lawyer and consequently not entitled to offer valid criticism of this, or any other, case processed by the legal process. I was defined as an outsider who had crossed law's jealously guarded boundaries by using such precious words as 'case', 'prima facie' and 'evidence' (cf PIC Transcripts 9 February 1999: 1574-9, and 1595 especially). My attempts to contest the sole authority of law to produce infallible 'truths' were berated in ways like: 'Madam, that is rubbish, what you're putting now . . .' (1576).

At that moment my cross-examiner could not comprehend how I could accept that the failure to prosecute anyone for Leigh's rape may have been 'legally correct' (1579) but simultaneously hold the view that 'I still can't -- and I'm not alone -- accept it was justice to Leigh, that no-one was ever prosecuted for her rape' (1580). I was operating across the boundaries of multiple epistemologies, and can accept that 'truths' are constructed in a variety of ways. He however was operating from the basis of one singular epistemology that beholds the law as the Master of Truth. Within the narrow episteme of the legal method operating in these hearings, *law is justice* so my response to his disbelief: 'Because the law doesn't necessarily equate with justice' (1580) was incomprehensible.

A little later I had the opportunity to repeat the point more forcefully: 'In the book I actually say it's legally technically correct ... I can understand it at a pragmatic level. However that doesn't make it just, doesn't make it right' (1588). I made the 'mistake' of saying at one point that I could comprehend it intellectually but could not accept it emotionally as a just outcome (1579). My research, my criticisms and my motives were then discursively reconstructed, as simply 'emotional'. Some media outlets broadcast this discrediting narrative with considerable enthusiasm (*ABC News Reports* 8 February 1999, 9 February 1999).

I went on to explain that as a criminologist: 'I have a very specific interest in sexual violence. One in four victims of sexual violence report to the police. Of those who do report -- nine out of ten ... do not receive justice, and most of them perceive the legal process as a process of them being doubly victimised,

persecuted and victimised again' (1594). In an attempt to redraw the boundaries my cross-examiner sought to insist 'but the major concerns of this inquiry are the allegations you made in a legal context, not a criminological context' (1595). I had not made any allegations of police corruption in any legal context. Like so many others,⁸ I had criticised the police investigation and the handling of this case by the justice system, and its representation in the media in the traditions of the public intellectual. These criticisms were reconstituted in the legal language before the hearings as 'allegations'. The concerns upon which I had been cross-examined related to media interviews, public discourse over which this hearing was seeking to redefine as 'legal context' for its own narrowly constituted purposes of containment, of bringing me inside its boundaries to be subject to law's powers. I interpreted this as a form of 'legal imperialism' (Smart 1989: 13) -- as a strategy to redefine the boundaries of law to contest the public discourse about this case, by seeking to discredit one of its major critics. So I answered 'No. They (journalists) introduced me always as a criminologist. They don't say "Here's lawyer Kerry Carrington."' To which he retorted, 'What your [sic] saying now is absolute nonsense ...' (PIC Transcripts 9 February 1999: 1595). I drew his attention to the analogy of anthropologists studying other cultures to explain my research in feminist-crimino-legal studies, concluding

See I am not a lawyer, but what is so wrong about somebody who is not a lawyer studying the legal process of its effects or its wider patterns? What is wrong about that? What crime have I committed here (1595)?

My attempts at dialogue were futile. No matter what I said it didn't much matter anyway. My lack of formal legal credentials, my refusal to defer to the hegemony of law to produce singular infallible truths, and my acknowledgment of the role of discourse, power, experience, subjectivity and emotion in the production and interpretation of 'facts' had me 'condemned' to the realm of 'absolute rubbish'.

The discrediting narrative did not end here. After having 'admitted' I held criminological concerns about the treatment of sexual assault complainants I was positioned in the box as rape complainants often are: as hysterical fantasiers who fabricate allegations of sexual assault (cf Mason 1995, Young 1998). This was the image my cross-examiners sought to create of me, using similar bully boy cross-examination techniques, that exaggerate or misrepresent what has just been said or done to insinuate almost the opposite to what was intended. Just as the credibility of the victim is the central site of attack in rape cases (Smart 1989, Young 1998), so too was mine. Using the same discursive devices used to routinely discredit the victims of sexual assault, I was subject to a barrage of accusations and loaded insinuations. Instances of where this occurred during my three-day interrogation are not hard to find (see also Byrne-Armstrong et al 1999 for a detailed analysis of these discursive battles). I was accused of being emotional (PIC Transcripts 9 February 1999: 1583); of being ignorant (1586); of publishing 'absolute rubbish' (8 February 1999: 1532); of manufacturing controversial allegations to sell a book (1536); of being a hypocrite (9 February 1999: 1627); of making things up to 'protect' my 'incompetence' (8 February 1999: 1546); and of lying under oath (9 February 1999: 1638).

Denials to these attacks on my credibility were silenced by the drum of the 'brisk and authoritative' narrative of my cross-examiners, as is common in sexual assault cases (Young 1999: 458). I was repeatedly instructed to say only yes or no (i.e. PIC Transcripts 8 February 1999: 1462-9). The accumulative effect of such strategies amounts, as Alison Young suggests, to an asymmetry of power in legal discourse (1999: 460). The asymmetry was not difficult to detect. In just the physical surroundings of the hearings alone it looked like a David and Goliath line up -- with the Commissioner's gaze peering down upon me from a great height while my gaze was mostly fixed upon two rows of grimacing dark-suited men (and one silk-suited woman) lined up like a pack of wolves, impatiently waiting their turn to pounce. I had the added humiliating experience of having to use a male toilet overseen by a male 'guard' to the side of the PIC hearing room. I experienced first-hand how the micro-physics of power (a concept obviously borrowed from Foucault) can have profound effects not only on the production of subjectified/objectified bodies, but on the production of 'truth' to which I now turn.

Coercing the 'Truth'

The principle aim of the adversarial legal method is the same as scientific positivism: to produce 'incontestable truths' and impose unitary meanings. As Goodrich argues, it does this through a number of mechanisms: by privileging the voice of the judicial author 'as the supreme arbiter of meaning'; by precluding dialogue, by producing fictive 'closures', and employing 'distancing devices' (1986: 189), by invoking 'devices of exclusion' (1986: 191), by asserting the sovereignty of law and the 'objectivity of its

methods' and by refuting the need to justify its rationale outside any narrowly constructed episteme which assumes a self-righteous correctness. While all of these were invoked in some way or another during the hearing, to this list of coercive devices, in my case, one can add the mockery of those who dare think otherwise. Here are just a few examples:

Q. Madam, you are an Associate Professor, aren't you? I don't mean to be facetious, but you are an Associate Professor? ...

Q. With a full understanding of the English language; correct (PIC Transcripts 8 February 1999: 1528)?

Q. You don't have to know the name of the present Pope to realise there [is] a Pope in Rome, do you? Do you (1546)?

My initial refusal to obey the coerciveness of the discursive rules of this hearing met with the following ridicule by my cross-examiner:

Madam do you understand the word 'yes', and do you understand the word, 'no' (1465)?

At that point Commissioner Urquhart intervened, not to castigate my cross-examiner's rudeness, but to demand that I obey the unequal discursive rules of *his* hearing room. My challenge to these rules was taken as 'evidence' of an uncooperative witness, and I was subject to the following scolding.

Q. Associate Professor, I'll just say something to you about why you are here?

A. Certainly, sir.

Q. You are not here to defend your book. You are here to answer questions. ... Not the question you would like to have been asked, but the question you are asked ... it is important that we proceed on the basis that questions are asked to elicit evidence.

A. Yes, sir (1465).

In this exchange, I was coerced into deference -- to obey the sovereign power of law. The voice of the judicial author was vastly privileged over mine. I was only there to answer questions, not to contest the assumptions underpinning questions loaded with contestable meaning and innuendo. I was not allowed to contest the litany of abusive attacks on my academic professionalism, personal credibility and integrity. When I defied the regime of rules governing this adversarial monologue the Commissioner reminded me of his sovereign powers of coercion. For instance:

... You have to understand, no matter how much you might want to defend your book or anything else for that matter, that you're here to answer the questions that I allow to be asked of you, and to answer that question only (1470).

Another strategy deployed by the legal method for setting itself up as the privileged bastion of 'truth' to which Goodrich (1986) refers, is by denying that words can have contested, multiple or different meanings. For example, at one stage under cross-examination I was attacked by legal counsel for the police for using the term 'investigate' in my book to describe my intellectual endeavours into the Leigh Leigh case, which *he* took to mean as only having a singular uniform definition -- a police investigation. I responded by saying:

Investigate, but not in the sense of how police would investigate, in the sense of how an academic would investigate it.

To which he retorted:

Why didn't you say that then and there so you would not mislead any reader, they could send the book back or get a refund (1515).

At that point my legal counsel objected and so did the public gallery which erupted spontaneously with

sighs of disbelief and disgust. The Commissioner told my QC to sit down and then berated the public gallery, reminding them of his powers of coercion.

The people who are in the public gallery are here by invitation. I will revoke that invitation and I will send you outside. ... I will brook no interference with the conduct of this hearing. I haven't raised my voice but that doesn't indicate it's not serious. It is (1516).

This was not the last time *he* threatened the gallery (among them Leigh's relatives and my supporters, mostly tame academics aghast at the coerciveness of the attack upon the values of academic freedom and criticism) with eviction from *his* hearing.

The next time somebody speaks like that, that person will be excluded for the whole of this hearing. I've spoken before about that. I don't want to speak about it again (1536).

Well he did. At the end of this particular day Commissioner Urquhart issued a general threat of prosecution for contempt to the gallery:

To those in the public gallery who, whether it be by reflection or whether it be a contrived situation or otherwise, wish to present some sound effects, some off-stage comments, call them what you like, I hear them, but I do nothing with them other than regard them as providing the potential for me to consider that those who are doing that may be committing contempt of this Commission, and that's an offence (1548).

Docility and compliance was being commanded not through mutual respect, persuasion, dialogue or understanding, but through the threat of coercion (Goodrich 1986: 194). Like the way the scientific method establishes its own internal episteme for what counts as valid candidates for truth, the legal method evoked throughout this hearing established its own internal parameters for what counted as valid and then sought to exclude, discredit and disqualify any alternative definitions or views. The logic of this legal method, quite apart from its insularity, is discernibly 'indivisible from the exercise of power' (Smart 1989: 11). In this respect Foucault's observation published nearly two decades ago is still all too relevant:

Truth isn't outside power, or lacking in power ... truth isn't the reward of free spirits, the child of protracted solitude, not the privilege of those who have succeeded in liberating themselves. Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power (Foucault in Rabinow 1984: 72-3).

What makes the discursive rules of this hearing look even more like the arbitrary exercise of coercive power is that the *Police Integrity Commission Act* section 20(2) requires the Commission to 'exercise its functions with as little formality and technicality as possible ... [and to conduct] hearings ... with as little emphasis on an adversarial approach as is possible'. In addition to this the *Police Integrity Commission Code of Conduct* requires that the business of the Commission be conducted with 'efficiency' and 'economy' (as well as fairness, impartiality and integrity) and that its officers should 'strive to attain value for money and avoid waste in the use of public resources'. Public hearings (with legal representation for all concerned) are the most expensive, formal, technical and (as permitted by the Commissioner in this instance) adversarial method for the Commission to conduct its business and yet this is the method it chose with respect to most of the matters involving myself. I am still puzzled as to why. I was not a police officer accused of any corruption. Yet I was made to feel very much throughout this ordeal as if I had committed some 'heinous' crime, prompting me to ask near the end of my three days in the witness box: 'I have criticised the police and where is the crime in criticising the police? What crime have I committed?' (PIC Transcripts 9 February 1999: 1626).

Unlike any court hearing, I was not accused of anything in any formal legal sense. This was not a trial, and I was not supposed to be on trial. But the regular effects of power produced by the unequal resources and strategies available to me when pitted against an almighty powerful institution such as the PIC, made it feel like a trial, like a witch-hunt. So what were my 'crimes'? Upon reflection there are probably many not the least of which: having the 'audacity' to contest the reversal of the discourses of blame in the Leigh Leigh case; to challenge the legal representations dispersed in public culture which had brought this case to an unsatisfactory 'closure' for Leigh's relatives, friends and supporters -- to cross law's jealously guarded boundaries as the only valid source of 'truth' on such matters -- and to

publicly challenge the phallocentrism of the way the legal process routinely disqualifies the victims of sexual assault by subjecting them to masculinist reconstructions of their conduct as somehow having deserved what they got. To these I have now, in publishing this piece, committed another sin -- the refusal to be silenced -- yet another discrediting signifier of the influence of feminism, not law, on the production of my politics and subjectivity. For this I make no apology should this offend those who would defensively seek to uphold the self-righteousness of law's power to command universal obedience and deference through whatever tactics are at its privileged disposal. My bitter experience with the PIC has left me wondering about the future of feminist research in crimino-legal studies.

The Future of Feminist Research in Crimino-legal Studies

Feminist research poses a profound challenge to the hegemony of law's claims to produce incontestable universal truths. It does this by exposing the masculinist biases of the law and science, and along with it the myth of judicial neutrality (cf Graycar 1995). The sheer weight of historical evidence of the gender bias of the judiciary, suggests that law, despite its claims to neutrality, objectivity and reason -- simply cannot be impartial. 'The voice of law and legal practice is "male", although this voice is construed as representing a gender-neutral stance' (Daly 1989: 1). Feminist legal theorists argue that the legal subject, although now formally inclusive of women, remains a man and not a woman, because there has been no concomitant endeavour to rethink the defining characteristics of law's subject (Naffine 1995: 29). Women's differences, which may require their specific protection (i.e. such as the provision of female toilets and female guards in hearing rooms), are not afforded that protection. Much legal reasoning is consequently based implicitly on masculine norms, from which it should be no surprise that women measure as deviant. Their differences are then sign-posted as deficiencies in character, credibility and so on. She is Othered (Kirkby 1995: xviii). Nowhere is this more apparent than in the way the sexual assault complainant is positioned in a way to silence, discredit and impugn her, through damaging insinuations about her character and motive (Young 1998: 444-5). These rhetorical strategies of legal discourse are overlaid by a narrative of gendered legal constructs that purport to represent a universal truth, 'yet negate women's understandings of reality and which make no genuine attempt to incorporate the differences between women's subjectivities' (Mason 1995: 66). So despite the increasing presence of women in the legal profession, 'legal doctrines and legal reasoning appear to have remained almost completely impervious to perspectives other than those of the (dominant) White, middle-class male' (Graycar 1995: 267). Feminist challenges to law's definitions and boundaries are invariably dismissed as irrelevant, nonsensical or 'absolute rubbish' just as mine were. Little wonder the legal method has been described as impervious to feminist challenge (Mosman 1986), making for a grim, but all the more important, future for feminist research in crimino-legal studies.

Feminist challenges to phallogentric constructions of legal knowledge present a profound threat to law's claims to produce impartial 'truth' precisely because they operate within a concrete field of specificity rather than at a level of comfortable abstraction more readily confined to the cupboard as an irrelevance, annoyance or barely noticeable distraction. That the personal is political disrupts the basis of law's claims to being able to produce incontestable universal truths. There are risks, however, in being too concretely visible in challenging the production of legal fictions. For those who dare question the authority of law's truth claims to accurately 'represent reality', my experience is a timely reminder that the sovereign power of law will jealously guard its monopoly to do so, coercively if necessary. For feminists conducting research in the field of crimino-legal studies this problem may become even more pressing in a higher education climate where academic freedom, independence and legitimacy to conduct research critical of privileged judicial voices, dominant institutions and practices is becoming less and less institutionally supported.⁹

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Footnotes

1 Davies provides a detailed reflexive account of her experience of doing qualitative research with female offenders. Her account emphasises just how much the act of doing research entails continuous decision-making (Davies 2000: 84) and argues good research rejects the traditional hierarchical relationship between the researcher and the researched. Gelsthorpe too provides a detailed reflexive account of her research in prisons, the effect of her age, gender and the role of power in doing ethnographic/qualitative research in such a setting (Gelsthorpe 1990: 94-9).

2 For example: 'The girl's battered and sexually assaulted body was found on Sunday morning ... Police believe Leigh was raped several times and that more than one person was involved' (*Sydney Morning Herald* 8 November 1989: 4); 'the brutal rape and murder of 14-year-old school girl ... Leigh was raped several times in what police said could have been a gang rape' (*Sydney Morning Herald* 7 November 1989: 1); 'the girl was sexually assaulted and strangled before being killed' (*Sun-Herald* 5 November 1989: 7); 'Leigh was raped and murdered' (*Sun-Herald* 12 November 1989: 32); 'police believed that 14-year-old Leigh had been sexually assaulted before being brutally bludgeoned to death with a rock' (*Newcastle Herald* 6 November 1989: 1); 'Police were now working on the theory that the young girl had been sexually assaulted by more than one persons and that more than one person may have been involved in her murder' (*Newcastle Herald* 7 November 1989: 1).

3 For example, 'Rock Thrown to Slay Girl on Dunes, Court Told' (*Newcastle Herald* 20 February 1990: 1); 'Man Showed where Leigh Died, Court Told' (*Newcastle Herald* 24 May 1990); 'bashing murder' (*Newcastle Herald* 23 October 1990: 1); 'Leigh murder admitted' (*Newcastle Herald* 23 May 1990: 1); 'Teenager guilty of Leigh Murder' (*Newcastle Herald* 23 October 1990: 1); 'the brutal murder of 14-year-old school girl Leigh at Stockton last year, shocked the country' (*Newcastle Herald* 1 November 1990: 9).

4 'Why Stockton's "gentle giant" will not get a life sentence' (*Newcastle Herald* 23 October 1990). See also *Sydney Morning Herald* 23 October 1990: 3, last paragraph.

5 There were two significant exceptions: Adele Horin 'Murder exposes cultural bogies' (*Sydney Morning Herald* 6 November 1993); Catherine Lumby 'Group rape: a crime that's far from rare' (*Sydney Morning Herald* 9 November 1993: 3).

6 For instance, during one of the confidential PIC Hearings of Operation Belfast, the medical records of my two children and husband were tendered into evidence by officers of the PIC. I was not present when this occurred and it was purely fortuitous that I was to later discover it. Given the PIC's exemption from privacy legislation there was no way of making this body accountable for this gross intrusion into the privacy of my family members. A lengthy dispute ensued, with the PIC inspector refusing to agree to my request that these records be destroyed and an apology extended to my family. Oddly, more than two years after their tendering into evidence, and my failed attempt to have them officially destroyed through the official oversight body, I received a letter from the PIC informing me they had destroyed these records. I am left wondering why given they steadfastly maintained throughout our dispute they had made no mistake in tendering my family's medial records into their archive of evidence. My family are still left waiting for an apology.

7 The PIC Inspectorate is a part-time office. Although vested with significant formal powers of investigation there do not appear to be the resources or strategic outlook to support their meaningful

exercise. In fact, these formal powers have rarely, if ever, been invoked by the current inspector (see minutes of Parliamentary Committee Meetings with Inspector). There is also limited information about the workings of the office. In his own words, Justice Finlay, the Inspector of the PIC, enjoys regular meetings with the PIC Commissioner, and likens his oversight role to that of a 'physician' (Minutes, Fourth General Meeting with the Inspector of the PIC February 2001: 9). He describes his role thus: 'We have now been in our respective roles for some three and half years throughout which the Commissioner, Assistant Commissioner, and I have enjoyed regular contact. From this has developed a relationship which permits easy discussion of the "issues of the day" and "longer term strategies"' (Justice Finlay, Minutes Parliamentary Committee, February 2001: 9). In practice the Inspector appears to be heavily reliant upon the PIC it is his responsibility to oversee, maintaining at least for some time an office within the PIC itself. This is the basis for my criticism that the oversight functions of PIC Inspectorate appear vastly inadequate and lacking in independence from the day to day management of the PIC.

8 Leigh's relatives, lawyers from the Newcastle Legal Centre, Justice Moore and the Newcastle Homicide Victims Support Group are among the chorus of people who also made similar criticisms.

9 I was fortunate enough during my ordeal with the PIC to enjoy the support of the Critical Social Sciences Research Group at the University of Western Sydney, but this vibrant intellectual community was swept away in the last restructure.