

**The Lotter Case: Towards a Discourse Network of Female Perpetrated
Killing**



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DECLARATION

I, Morgan Joan Stead, know and accept that plagiarism (i.e., to use another's work and present it as one's own) is wrong. Consequentially, I declare that this research report is my own unaided work.

Signed:  _____

Date: 30 May 2014

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*“The law is an imperfect and even hostile tool, but it is a terrain that cannot be ignored” –
Albertyn, 2005, p. 219.*

“Discipline increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience). In short, it dissociates power from the body; on the one hand, it turns into an ‘aptitude’, a ‘capacity’, which it seeks to increase; on the other hand, it reverses the course of the energy, the power that might result from it, and turns it into a relation of strict subjection” - Foucault, 1995, p. 138.

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CHAPTER 1:

INTRODUCTION: RATIONALE, CASE SELECTION, AIMS, RESEARCH QUESTIONS AND OUTLINE OF THE REPORT

1.1. RATIONALE

Women who violate and extend themselves beyond social norms are worthy of investigation. A prime example of such norm violation has been argued to exist in the case of female-killers. Within this context, research has focused primarily on the reasons why women kill, specifically why women kill their intimate partners as a result of on-going abuse (Dutton, Hohnacker, Halle & Burghardt, 1994; Follingstad, Brondino & Kleinfelter, 1996; Pretorius & Botha, 2009) and much of this research has been conducted outside of the South African context and in predominantly western countries (Kunst, 2002; Perlin, 2011; Pretorius & Botha, 2009; Simon, 1976). Furthermore, where female-killers are given adequate representation in psychological literature and are a comparatively common area of psychological investigation, they are, in contrast, an infrequent subject for discursive analysis.

Preliminary research concerning the discursive representation of female killers has been conducted within the South African context by Stead and Howard-Payne (2012). The focus of this research was print media's representation of female killers in the Lotter Case, primarily in relation to Nicolette Lotter. The results of this study demonstrated that discourses generated within the media regarding Nicolette serve, firstly, to reinforce conventional notions of femininity and female inferiority and instigate a climate of forgiveness, secondly, to dismiss both the individual and her acts and effectively ignore such a gender role transgressor and finally, to demonise her women in the media and to discourage similar female violations. Overall, such discourses exerted a powerful effect over the female gender by virtue of their ability to subvert the overt confrontation of gender politics in regard to female perpetrated killing and to relegate and confine the feminine to the diminutive in accordance with patriarchal ideals (Stead & Howard-Payne, 2012).

These findings are both surprising and significant in a climate of purportedly constitutionally entrenched democracy and gender equality and suggest that society and its legal systems might be less progressively oriented than they are often professed to be. This hints at the necessity of examining institutionalised discourses which arise within the legal context in the interests of assessing the propagation of covert patriarchal ideology as it is believed that discourses of female perpetrated killing generated in the media context are strongly influenced by those arising in the legal context. Furthermore, consideration of the manner in which discourses arising within both the legal and media context reinforce one another is warranted to assess the extent of the proliferation of such ideologies.

Previous research into discourses generated in the legal context *vis-à-vis* female-killers is restricted and predominantly external to the South African environment (Ferguson, 2008, Gurevich, 2008, Gurevich 2009). South Africa's Constitution and consequentially its legal system is celebrated as a forerunner thereof worldwide and it is arguable then that this system serves as an example to foreign jurisprudence. Consequentially, local research is warranted. Furthermore, such research is often methodologically limited (Gurevich, 2008), which necessitates its extension given that scholarship on 'legal language' implies, in a typically constructionist sense, that such discourse is an "active construction of the defendant's character and identity" (Gurevich, 2008, p. 518; Mertz, 1994). A genealogical account of the discursive formation and re(production) of femininity in the South African situation is saturated by classification and homogeneity as it pertains to the feminine in an effort to sustain the binary taxonomy of masculinity and femininity (Salo & Gqola, 2006), whereby the feminine was relegated to the inferior. The 1994 advent of South African Constitutional democracy offered a "new political and legal context" to provide for gender equality and the positional advancement of women in social and economic life (Albertyn, 2005, p. 217). However, legal feminist authors have argued that the notion of equality is contestable to the extent that "in both law and politics, the inclusive nature of equality has usually been on terms that do not challenge the *status quo*" (Albertyn, 2005, p. 218). To this end, "a strong critique of the law" is required to be "combined with a recognition of the law as a site of power and an arena of struggle" where the power of the law is said to reside in its "ability to define an authoritative 'reality'" (Albertyn, 2005, p. 219 – 220). Thus, the law is understood as "an imperfect and even hostile tool, but it is a terrain that cannot be ignored" (Albertyn, 2005, p. 219) This research then sought to examine the extent to which normative and marginalising discourse in relation to the female subject continues to be operational within

contemporary South African legalism. This is imperative in order to establish the extent to which oppressionary classification saturates such discourse within the legal context, thereby prejudicing modern jurisprudence to the extent that it continues to be founded on notions of gender inequality.

Moreover, research suggests that such discursive constructions generated in legal contexts surreptitiously foreground the gender of the accused (Gurevich, 2008). Foucault (2003) suggests that criminal trials represent a method of governance and normalisation, which effect the preservation of social and political order. Thus, this focus might be more strategic than incidental embodying the latent ideological effect of perpetuating unequal gendered relations of power between men and women in modern society. This theorisation is tentatively supported by Gurevich (2009, p. 64) who asserts, in a typically Foucauldian sense, that “categories” such as “gender” draw their “strength” from their “covert” presentation, from being “‘invisible’ and appearing ‘scientific’”.

Through a consideration of female perpetrated killing as it presents in the South African environment, where current discourses represent gender and crime in a particular manner, and serve a specific marginalising socio-political function, this study aims to determine the ways in which discourses concerning female killers have reinforced gendered power relations. The study limits its focus to a survey of the recent “Lotter Case”.

1.2. CASE SELECTION

1.2.1. The Lotter Case:

On the 19th of March 2012, Nicolette Lotter and her brother, Hardus Lotter, were convicted of the murder of their parents, Maria Magdalena Lotter and Johannes Petrus Lotter, on the 19th of July 2008. Also convicted of the murder was Nicolette’s former boyfriend, Mathew Naidoo, who has been cited as the ‘mastermind’ behind the killings. According to the testimony of both Hardus and Nicolette, Nicolette delivered the fatal blow to her mother with a hunting knife after several failed attempts that evening to kill her, including stabbing her repeatedly with a blunt knife while Hardus shocked her with a Taser gun. Following the murder of his mother, Hardus proceeded with the killing of his father by way of strangulation, employing an extension cord for its execution. Over the course of the trial it

became apparent that the defence of Nicolette paralleled that of her brother, that at the time of the murders both of the siblings were under the influence of Mathew, believing him to be the third son of God and that it was God who wanted their parents dead in exchange for the salvation of their souls. Mathew's defence, by contrast, was one of an alibi; that at the time of the murders he was absent from the scene of the events (facts obtained from the South African Press Association, 2012a, 2012b).

The 'Lotter' case presents an interesting and meritable case for analysis in light of three significant concerns, namely, the disproportionately high rates of violence *against* women as opposed to violence *by* women in the South African context, patterns presenting in parricide cases, and the theory of gender homogeny. A consideration of these issues suggests that the act of matricide perpetrated by Nicolette operates in the antithesis of general patterns of offending present in the local environment and serves as a transgression of pervasive gender norms.

1.2.2. Violence in the South African Context: Women and Crime

South Africa's history can be characterised as a history of violence. Ratele (2004, as cited in Bennett, 2005, p. 24) writes, "Our history is a violent one. Violence is a characteristic, perhaps the main characteristic of our institutions as we have them. Our personal lives are written, shall I say it, in blood". Such claims are projected to the present on consideration of the National Crime Statistics and the report of 403 789 violent crimes (including murder, attempted murder, assault with the intent to do grievous bodily harm and common assault) committed locally for the period 2011-2012 and the 65 514 sexual offences reported for the same period (Department of Correctional Services, 2013). Such figures are alarming as Seedat, Van Niekerk, Jewkes, Suffia and Ratele (2009, p. 1011) note that the country's overall violent death rate is approximately five times the worldwide average and that "South Africa, a country not at war", therefore, "faces an unprecedented burden of morbidity and mortality arising from violence and injury". A phenomenon frequently cited as a particular cause for concern is the incidence of violence against women (Bennett, 2005) and this has led authors such as Sheeran (2002, p. 20) to suggest that the women of this country are under a "state of siege".

According to the Department of Correctional Services (2013), 38.5% of the victims of violent crime for the period 2011-2012 were women. Women further accounted for 48.5% of the

victims of sexual offences for the same period (Department of Correctional Services, 2013) and South Africa's incidence of rape is shown to be the highest for any INTERPOL country with over 55 000 cases being reported to police per annum (Jewkes & Morrell, 2010). Those who have experienced the act of rape being committed against them are considered to be primarily adult women and children and this figure is estimated at nine times lower than the actual number of occurrences (Seedat et al., 2009) as a result of a failure to report these events. Furthermore, Jewkes and Morrell (2010) suggest that 28% of men disclose having raped either an adult woman or a young girl. Intimate partner violence is also not uncommon. It is believed that at least half of all homicides against women (a figure reported at 12 530 homicides or 14.6% of all homicides for the period 2011-2012 (Department of Correctional Services, 2013)) are perpetrated by their male intimate partners (Seedat et al., 2009). Literature reviewed by Jewkes and Morrell (2010) suggests that between 25% and 55% of woman have experienced physical abuse by an intimate partner and that the incidence of female homicide by a male in South Africa is six times the global average. In a retrospective national study adopting a proportionate random sample of 25 South African mortuaries, 50.3% of the 3 797 female homicides were a result of intimate partner violence and the mortality rate of this phenomena was 8.8 per 100 000 women (Abrahams, Martin, Mathews, Vetten & Lombard, 2009).

In light of the above, women who kill in the South African context transgress conventional patterns of female victimisation. Although infrequent, it is not impossible for women to commit acts of violence. The Department of Correctional Services (2012) reports that the total number of inmates (sentenced and un-sentenced) for aggressive crimes as per 28 February 2011 was 84 279 and that the total number of women convicted of such crimes to date was 1 376 accordingly. Thus, women account for 1.63% of violent crime in South Africa. Despite the traditional targets of their aggression customarily being an abusive husband, lover or other women with whom their husbands have become romantically involved (Pretorius & Botha, 2009; Simon, 1976), it is possible for women to commit violent crimes as a result of seemingly motiveless malignancy (Adshead, 2011; Pistorius, 2004). Thus, in instances such as the Lotter Case, which involves a female accused of the murder of her parents, such an accused has violated not only general patterns of violent offending, which imply female victimisation as opposed to female perpetration, but also patterns of *female* offending, which imply revenge as a precipitating factor. This provides primary motivation for an analysis of this case.

1.2.3. Parricide

Parricide, the killing of one's parents, is an exceedingly rare crime and is cited as the most rare form of intra-familial violence (Baxter, Duggan, Larkin, Cordess, & Page, 2001; Buyuk, Kurnaz, Eke, Ankarali & Oral, 2011; d'Orbán & O'Connor, 1989; Hart & Helms, 2003; Marleau, Millaud & Auclair, 2003; Shon & Targonski, 2003). Parricide can be further subdivided into patricide, the killing of one's father, matricide, the killing of one's mother, and double parricide (the least common form of parricide), which is the killing of both one's parents (Buyuk et al., 2011; Hart & Helms, 2003; Hillbrand, Alexandre, Young & Spitz, 1999; Shon & Targonski, 2003). In their review of the literature, Hillbrand et al. (1999) suggest that in the United States, one in four is killed by a relative and of these intra-familial killings, approximately one in ten is attributable to parricide indicating that the incidence of parricide is less than 2% of all homicides per annum. Similar incidence rates are reported in the United Kingdom, France, and Canada where parricide is estimated to account for between 1% and 2%, 2.8% and 3.7% of all homicides per annum respectively (Buyuk et al., 2011; Hillbrand et al., 1999). Given the infrequency at which parricide occurs, and given the even greater infrequency at which double parricide occurs, the Lotter Case is an interesting case for analysis as it involves the commission of such a double parricide. Further merit to an investigation thereof is attributed when one considers the patterns present in the commission of such crimes. Two considerations warrant attention in this regard: firstly, the disproportionate rate of male offending and secondly, motives for the commission thereof.

Chiswick (1981, as cited in d'Orbán & O'Connor, 1989, p. 27) notes that parricide is "almost exclusively a crime of sons". Hillbrand et al. (1999) suggest that a review of the literature implies a 15:1 male to female ratio of adolescent offending and a 5:1 male to female ratio of adult offending. More recently, Canadian and Turkish studies have shown males to account for 90% and 79.5% of offenders respectively (Buyuk et al., 2011; Marleau et al., 2003).

Nicolette's participation in the commission of the crime, therefore, violates a prevalent pattern of male offending present in this category of violent crime. Furthermore, prolonged periods of abuse typically present a motivating factor in incidents of adolescent offending whereas adult offenders have characteristically been found mentally ill at the time of commission (Hillbrand et al., 1999; Shon & Targonski, 2003). Little evidence exists to suggest that either Nicolette or Hardus suffered abuse at the hands of their parents prior to

their murders or that the accused were mentally ill at the time of commission. In the absence of such evidence, this case becomes exceedingly complex and thus particularly worthy of empirical analysis.

It must be noted that the above represents evidence of parricide commission external to the South African context. This is attributable to the paucity of research conducted on the subject and the unavailability of local data in this regard. However, speaking on the case, Prof. Schlebusch (2012, as cited in Cole, 2012), psychologist and defence witness, stated in an interview that “it is unusual to involve a daughter and a son. It is the only case in the world that I know of. And it is extremely unusual that it involved religiosity and the belief in witchcraft”. The paucity of research concerning parricide cases in the South African context as well as the above expert commentary on the case further motivate for an analysis of this case.

1.2.4. Gender Homogeny

Social dynamics are said to support the incidence of violence against women in South African society, specifically the legacy of patriarchy and patriarchal notation of masculinity (Seedat et al., 2009; Sheeran, 2002) and hegemonic masculinity (Jewkes & Morrell, 2010). In their explanation of intimate partner violence, and the violent control of men over women generally, Jewkes and Morrell (2010) offer Connell’s notion of hegemonic masculinity, which refers to the identification of the masculine position as dominant and the feminine position as legitimately subordinate. Hegemonic masculinity is understood as a pivotal feature of patriarchal society and is “characterized [sic] by a set of practices that both express men’s power within the social system and serves to bolster this power” (Jewkes & Morrell, 2010, p. 8). Society remains both horrified and enthralled by instances of female perpetrated killing. This preoccupation may be attributed to discursive practices concerning gender and femininity, which conventionally exclude anger, hostility and cruelty and inscribe the belief that it is contrary to a woman’s ‘nature’ to kill (Adshead, 2011; Kowalsky, 2003; Pistorius, 2004) in “compliance with women’s subordination” (Jewkes & Morrell, 2010, p.8) and in support of hegemonic masculinity. Thus, where women do kill, they have transgressed gender role prescriptions, which support this notion of hegemonic masculinity and the patriarchal structure of society and control. Nicolette’s commission of the killing of her parents arguably operates to this effect and the discursive reaction to such an action makes for an interesting subject of analysis in light of the above.

1.3. AIMS

This study sought to add to the limited body of theoretical work regarding the discourses of female criminality within the unique South African milieu by examining discursive presentations of the female killer arising in the legal and media contexts as they present in the Lotter Case, particularly in relation to Nicolette Lotter. This research aimed further to explore how such discourse operates to preserve gendered relations of power in contemporary, post-Apartheid society. Specifically, this study examined the nodes of intersection in discourses operational in the construction of Nicolette generated in the aforementioned contexts to understand how the co-dependency of such discourses provides linkages of power, which effect the preservation of patriarchal ideology. This study aimed further to contribute to the underdeveloped theory regarding discourse networks to examine the mutuality of discourse and context in the construction of the subject.

1.4. RESEARCH QUESTIONS:

Following from the above the research questions of this study are derived as follows:

- 1) What are the gender related discourses present in legal reports of the female killer, Nicolette Lotter, within the context of the Lotter Case?
- 2) How do such discourses generated in the legal context for Nicolette Lotter operate to reinforce gendered relations of power?
- 3) What are the nodes of intersection in discourses of the female killer, Nicolette Lotter, generated in legal and media contexts within the context of the Lotter Case?
- 4) How do such discourses generated in the legal and media contexts operate in conjunction to reinforce patriarchal power relations within the context of the Lotter Case?
- 5) How do both context and discourse operate in co-dependence in legal and media derived accounts of the female killer, Nicolette Lotter, within the Lotter Case to establish a discourse network?

1.5. STRUCTURE AND OUTLINE OF THE RESEARCH REPORT

Chapter 2 offers a review of the literature to locate the study within the context of gendered constructions and orients to a Foucauldian Feminism approach to the concepts of gender, discourse and ideology. It provides a genealogical account of femininity to locate the subject

within historically derived social norms. The subject of gender normativity is extended to proffer an account of gender deviance and discipline, whereby female perpetrated killing is outlined accordingly. Gender regulation is established further as contextually derived; that is, context is understood as providing boundaries wherein discursive practices operate to permit or deny the operation of a particular discourse. This notion is the foundation upon which the idea of a discourse network becomes permissible; that is, this chapter proffers the interconnectivity of discourse at the level of context and practice to derive linkages of power which are ideological in nature and derive proclamations regarding the nature of the subject.

Chapter 3 outlines the research design and method utilised in order to derive the results and conclusions of the study. The sampling techniques, means of data collection and data analysis approaches are described in relation to the theoretical approach adopted within the former chapter of the report. Ethical considerations are examined and self-reflexivity is addressed in an effort to account for the researcher's role in the research process, particularly in light of issues of subjectivity.

Chapter 4 provides the results of the analysis, which draws a distinction between discursive practice and discursive construction as it pertains to female perpetrated killing to advance the notions presented within the literature review section of the report.

Chapter 5 presents a discussion of the research findings to further the arguments made in the in the previous chapter. It highlights the interconnectivity of discourse at the level of both context and practice to derive linkages of power with respect to the subject to produce discursive constructions thereof of mutual co-dependency.

Chapter 6 operates in conclusion of the report to present a summary of the findings. It offers further both theoretical and practical recommendations and acknowledges both the strengths and limitations of the study.

CHAPTER 2

LITERATURE REVIEW

2.1. THE DISCURSIVE CONSTRUCTION OF GENDER:

2.1.1. The Power of Discourse

The construction of the gendered subject is founded primarily on Foucault's concepts of discourse and power, specifically, Foucault's (1978) notion of disciplinary power. Although the aim of his work was not to derive a theory of power itself or an analysis thereof, Foucault's work into the manner in which human beings are made subject inevitably became married thereto. According to Foucault (1982, p. 791) it is impossible to divorce the subject from relations of power, which he deemed as being "rooted deep in the social nexus, not reconstructed above society". Although failing to offer a single or coherent definition of power (Gallagher, 2008), Foucault (1982, p. 789) appears to conceptualise power as a force, which acts indirectly upon the individual, acting on their actions rather than the physical body, stating that:

What defines a relationship of power is that it is a mode of action which does not act directly and immediately on others. Instead it acts upon their actions: an action upon an action, on existing actions or on those which may arise in the present or the future.

Importantly, Foucault ultimately became concerned with the notion of *disciplinary power* as a form of governmentality and normalisation with respect to the notion of docility. For Foucault (1995, p. 25), the body is politicised, that is "power relations have an immediate hold upon it; they invest in it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs". Thus the body is invested in relations of power which act on the body to the extent that the "docile" body may be "subjected, used, transformed and improved" (Foucault, 1995, p. 136). Such "strict powers" make possible "the meticulous control of the operations of the body" ensuring "the constant subjection of its forces" and "a calculated manipulation of its elements, its gestures, its behaviours" and imposing upon them a "docility-utility" duality or "discipline" (Foucault, 1995, p. 136 – 138). Ultimately, then, discipline:

increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience). In short, it dissociates power from the body; on the one hand, it turns into an 'aptitude', a 'capacity', which it seeks to increase; on the other hand, it reverses the course of the energy, the power that might result from it, and turns it into a relation of strict subjection (Foucault, 1995, p. 138).

Thus, for Foucault (1995, p. 170 - 194), discipline is productive to the extent that it "produces" and "makes" individuals. That is, "it is the specific technique of a power that regards individuals both as objects and as instruments of its exercise" (Foucault, 1995, p. 194).

To the above Foucault (1995) adds the power-knowledge complex. Foucault (1995, p. 28) contends that power produces knowledge and that the "body politic" presupposes "power and knowledge relations that invest human bodies and subjugate them by turning them into the objects of knowledge". Such formulations entail an intersection of relations of power with the discursive sphere. For Foucault, "power is inscribed *within* discourses"[original emphasis] deriving its "own intrinsic technology" that "transmits, produces and sustains power and in this way constitutes social subjects" (Purvis & Hunt, 1993 as cited in Kramer, 2010, p. 6).

Parker (1992, p. 5) defines a discourse as "a system of statements, which constructs an object". This mirrors Foucault's (1972) formulation of discourse as a body of declarations, which assembles an object at a particular moment in time. It is important to note, however, that Foucault's notion of discourse is not simply linguistic but also practical; it accounts for both language (what one says) and practice (what one does) in reference to the object (Hall, 1997). In this manner, Foucault (1981) understands discourse as an event and notes the one must "restore to discourse its character as an event". Whilst this 1981 definition of discourse is not contentious within the context of this report, Foucault's understanding of the relationship between discourse and ideology is and represents a fundamental tension at the level of ontology.

Following Kramer (2010, p. 6), whilst Foucault's conceptualisation of power is useful, "it does not account for the relationship between gender and patriarchal forms that is necessary for the understanding of female... offending" given that his understanding thereof suggests

that patriarchal relations are the result of diffuse discursive practices rather than the result of patriarchal rule, which effectively ignores the operation of ideology. Contemporary authors such as Parker (1992), Brooks (1997), Kramer (2010) and Merskin (2010) argue, then, that it is necessary to extend Foucault's appreciation of power to incorporate notions of 'patriarchy' and 'ideology' (Kramer, 2010). Accordingly, discourse might be understood as being composed in such a manner that it mirrors and reflects power relations which exist in society and structures ideology (Parker, 1992), whereby discourses are "sets of institutionalised norms [and] practices", which "constitute both knowledge and objects and in this manner enable the reproduction of power relations and ideological effects such as patriarchy" (Kramer, 2010, p. 12). Such understandings of the relationship between discursive ideology and gender construction are embodied in the theorisations of Foucauldian Feminists such as Judith Butler.

2.1.2. A Genealogical Account of Gender Construction

Butler's work on the construction of the gendered subject exhibits a preoccupation with the notion of genealogy and performativity and these notions are fundamentally adaptations and extensions of Foucault's ideas (Brooks, 1997). According to Brooks (1997, p. 51) Foucault utilised the genealogical as "a method of studying history through the analysis of discourse". Consequentially, Butler (1988, p. 519) contends that gender cannot be conceptualised as "a stable identity or locus of agency" but rather as "an identity tenuously constituted in time – an identity instituted through *a stylised repetition of acts*" [original emphasis]. Butler (1988, p. 521) notes further, however, that "one is not simply a body, but, in some very key sense, one does one's body and, indeed, one does one's body differently from one's contemporaries and from one's embodied predecessors and successors as well". In this manner she adds both temporal dimension to gender construction and a locus of agency in terms of feminist ontology. In "doing", Butler (1988, p. 521) contends, firstly, that one dramatises and reproduces an historical situation (possibly a patriarchal one) and one achieves a "stylistics of existence", one in which one is "never fully self-styled"; that "to be a woman is to have *become* a woman" and to have compelled "body to conform to an historical idea of 'woman', to induce the body to become a cultural sign, to materialise oneself in obedience to an historically delimited possibility, and to do this as a sustained and repeated corporeal project" [original emphasis]. Secondly, Butler (1988, p. 521) advances the reconstitution of gender in her assertion that "gender is not a radical choice or project that reflects merely an individual choice, but neither is it imposed or inscribed upon the individual" (Butler, 1988, p. 526); it is

whatever is “put on” by the individual, be it in accordance with expected gender identity as historically instigated or otherwise. It is through the above, then, that gender comes to be understood as “performativity”:

Gender is performative insofar as it is the *effect* of a regulatory regime of gender differences in which genders are divided and hierarchised *under constraint*. Social constraints, taboos, prohibitions, threats of punishment operate in the ritualised repetition of norms, and this repetition constitutes the temporalised scene of gender construction and destabilisation (Butler, 1993, p. 21) [original emphasis].

Performativity, then, “is a matter of reiterating or repeating the norms by which one is constituted” (Butler, 1993, p. 22). Butler thereby suggests that the repetition of acts produces an effect of either masculinity or femininity and this effect and its subsequent repetition is regulated by social sanction derived at the level of ideology. Following Foucault (1995, p. 217), “the play of signs defines the anchorages of power”. Thus, where such signs emitted by the body exemplify historically sanctioned masculinity and femininity, patriarchal ideology could be said to be operant.

Linked to Butler’s notion of performativity then, is that of discourse and its ability to constitute a subject, which relates further to Foucault’s subject as an “historical product” created through discourse and discursive practices (Brooks, 1997, p. 63). Note that in Butler’s account, however; discourse is understood as inscribing ideology as historically constituted. The performativity of discourse is said to “succeed” where “that action echoes a prior action, *and accumulates the force of authority through the repetition or citation of a prior, authoritative set of practices...*no statement can function performatively without the accumulating and dissimulating historicity of force” [original emphasis] (Butler 1993, p. 19). Discourse, then, through its efforts at constraint and regulation, is able to effect a powerful influence on the construction of women as inferior to their male counterparts and to contribute to their oppression. However, it can also be a powerful tool for their liberation. It is here that the work of Butler and that of Hekman can be seen to intersect. Hekman (1992) argues for a *critical* genealogy of discourse to produce novel discourses, which express novel ways of being both feminine and political. Thus, according to the Foucauldian feminist approach, discourse has the unique power to alter the construction of femininity and enable

female liberation. This mimics Weedon's (1987, p. 48) contention that it is possible to create alternative forms of knowledge by means of an analysis of power and the creation of the subject through discourse and in this manner it is possible to develop "alternative meanings which do not marginalise and subordinate women, and which in the process transform the hegemonic structures of masculinity". According to Foucault, the concept of power necessarily implies the notion of resistance (Foucault, 1982) and Ramazanoglu (1993 as cited in Brooks, 1997, p. 63) maintains that "resistance to power...can take the form of new discourses producing 'new truths'".

2.2. DISCOURSES OF FEMININITY

Gender prescriptions are historically a bourgeois affair, where men who occupied a privileged position in the social hierarchy "produced institutions based on masculinity and constructed into those institutions assumptions about the social world [and femininity] they came to have by virtue of their powerful positions in the social system" (Kramer, 2010, p.15). Foucault (1981) comments that "true discourse...the discourse which inspired respect and terror, and to which one had to submit because it ruled, was the one pronounced by men". For Butler (1990; 2004) gender regulation stems further from the operation of heterosexist normativity and the fortification of gender binaries. Consequentially, the masculine (heterosexual) standard came to be regarded as the norm and the female experience a deviation from that norm and, following Butler (2004, p. 13), it is these norms which have sustained male supremacy, given that such norms "encode operations of power". Historically, male authors have accordingly conceptualised women in undifferentiated terms regarding them as an homogenous group about which generalisations and pronouncements could be made, seeing "women as a group as the Other, an object for their analysis" (Wiesner-Hanks 2011, p. 66). Discourses of femininity, therefore, display a domineering tendency towards the constricting notion of female homogeneity.

Within the South African context, sustained hetero-normativity and the binary taxonomy of masculinity and femininity is better understood through an analysis of the colonialist (Apartheid) legacy and discourse, which was saturated by classification and homogeneity as it pertained to the feminine (Salo & Gqola, 2006) whereby the feminine was relegated to the inferior. Following Ramphela (as cited in Yates, Gqola & Ramphela, 1998, p. 90), "the language didn't have space for women, partly because it was a language borrowed from a

culture, English culture, which never accepted women really as full citizens". Within the post-colonial context, such discourses continue to be influential and have "hardened into the central basis for defining personhood, gender and sexuality" (Salo & Gqola, 2006, p. 2).

Butler (2004, p. 13) contends that relations of power come to be encoded in norms. She extends this argument to suggest that this power comes to "emerge in language" (Butler, 2004, p.13). Such norms or assumptions then come to represent "lenses of gender", which are "so entrenched in social discourses, institutions and individual psychologies that they are able to invisibly reproduce patriarchal power across generations" (Bem, 1993; Kramer, 2010, p. 23). For Foucault (1978), such norms are constituent of knowledge and indeed social reality, and it is therefore, the "creators and sustainers of such knowledge" who possess "a social power that permits organisation, regulation and control" (Kramer, 2010, p. 23), foreclosing the possibility of patriarchal hegemony demolition (Butler, 2004) and rendering gender agency difficult (Kramer, 2010).

Locally social norms of femininity are akin to those observed within the global context, highlighting concerns of hierarchy, homogeneity, passivity and inferiority. Females are defined in terms of "domestic roles, child care and moral education" (Moodley, 1991 as cited in Gqola, 2001a, p. 137) and are excluded from the public and political sphere (Yates, Gqola & Ramphela, 1998). Discourses of femininity are thus dominated by considerations of motherhood and nurturing (Gqola, 2001a). Furthermore, the feminine is defined in relation to the masculine, emphasising females' significance, almost exclusively, in terms of their gender roles as "wives, mothers, girlfriends and sisters" (Gqola, 2001a, p. 138; Yates, et al., 1998). Gqola (2007, p. 116) suggests that the predominant insinuation in contemporary social discourse is that women should adhere to restrictive and "very limiting notions of femininity" and that the "cult of femininity" continues to be pervasively "recycled".

2.3. DISCOURSES OF FEMALE DEVIANCE:

Pervasive norms and discourses concerning gender have delineated women as obedient, silent and chaste (MacDonald, 1986) and incapable of committing violent crimes. By virtue of their role as "bearers of life", women are purported to be unable to terminate it (Pistorius, 2004, p. 1). Twentieth century discourses concerning women who commit criminal offences display two divergent tendencies in regard to these women. The first is to consider these women as feeble, imprudent and lacking in self control. Gleucks, (1934, as cited in Simon,

1976, p. 32) argues that “women are themselves on the whole a sorry lot” and that “the major problem involved in the delinquency and criminality of our girls is their lack of control of their sexual impulses”. More recently, Giallombardo (1966, as cited in Simon, 1976, p. 32) describes female criminals as “erring and misguided creatures”, who are in “need [of] protection rather than dangerous criminals from whom members of society should be protected.” A second and antithetical belief is displayed by Honye and his contemporaries, which holds female killers to be especially precarious to society by virtue of their gender role transgression (Adler, 2002). Adler (2002, p. 867) comments that “like many of his contemporaries... Honye believed that [these] women tended to be particularly dangerous precisely because she [*sic*] had deviated from her [*sic*] natural role in society”.

In line with the above, society, and consequentially the law, is rife with contention and ambivalence concerning the appropriate manner in which to explain and reprimand female criminality generally and violence more specifically (Adshead, 2011; Kowalsky, 2003). It is suggested that methods of punishment and explanatory accounts are patriarchal and reflect stereotypical societal accounts of women, contributing to the oppression thereof (Adshead, 2011). Beginning with the latter of these two issues, a paradoxical dilemma exists in that women have traditionally been punished both more and less severely than their male counterparts for the commission of their crimes (Chesney-Lind, 1986; Pistorius, 2004). In the latter instance, Victorians adopted a lenient approach to female criminality, whereby women were imprisoned less frequently than men as a result of male chivalry (Chesney-Lind, 1986; Pistorius, 2004). Accordingly, where women were prosecuted, the judgements served upon them were increasingly lenient and their sentences less severe in comparison to men. This suggests females to have traditionally been pursued legally less vigorously than males (Pistorius, 2004). This ‘chivalry hypothesis’, the unwillingness of males to accuse and condemn females, became commonplace and resulted in the asymmetrical judicial treatment of women and girls (Chesney-Lind, 1986).

In regard to possible explanations posited for female criminality, one must consider historical accounts as well as contemporary accounts thereof. These explanations are said to reflect persistent socio-cultural beliefs *vis-à-vis* the position of women in society and are indicative of the operation of patriarchy (Kowalsky, 2003). It is suggested that understandings and explanations of female perpetrated murders do not allow women to ‘own their crimes’, which bears an ironic and poignant reflection to early discourses of women as “property” (Wiesner-

Hanks, 2010, p. 100). This reduces their moral agency and responsibility, preventing them from engaging in their identities as an offender and rendering their “capacity for cruelty and hostility ‘unspeakable’ in a way that is not true for violent men” (Adshead, 2011, p. 42; Kowalsky, 2003). Historically, violence and deviance on the part of women has tended to be rationalised as the product of witchcraft (Ashforth, 1998; Bever, 2002; Ganis, 2005; Gijswijt-Hofstra, 1990; Harnischfeger, 2000; P.F., 1974) or insanity (Eigen, 1999; Houston, 2002; Kromm, 1994; Pedlar, Yuen & Fortune, 2008). This reinforces traditional beliefs that women are suggestible and evil or feeble-minded respectively (Pistorius, 2004). Other explanations of female perpetuated killing, such as ignorance, rampant sexuality and male-driven influence, have formerly been proffered to strip women of their capacity for responsibility (Kowalsky, 2003; Zimudzi, 2004). More recently, female violence is understood as a product of battery (Dutton et al., 1994; Follingstad et al., 1996; Pretorius & Botha, 2006) rendering these women “victims-turned-offenders” (Zimudzi, 2004, p. 505), which confirms conventional beliefs of women’s inferiority.

2.4. TOWARDS A DISCOURSE NETWORK

Ferguson (2008, p. 716) understands a discourse network as “layered sites of struggle, where hegemonic understandings are produced, contested and reproduced” and as being comprised of “linkages of power, technologies, signifying marks and bodies”. Ferguson (2008, p. 716) thus, proceeds to demonstrate how “discourse generating networks” “converge” to construct and represent a unified understanding of a category or subject and delineates the legal and police apparatus, press networks and medical and psychiatric technologies as instrumental in this regard. In modification of this conceptual model, this research sought to demonstrate how the legal context is instrumental in the production and limitation of institutionalised discourses of female-perpetrated killing and how such discourses are pervasively recycled in those discourses arising within the media context. Furthermore, this study suggests that the effect of the linkage and co-dependency of these discourses are necessarily ideological and assist in the preservation of the patriarchal project.

2.5. THE INSTITUTIONALISATION OF DISCOURSE

2.5.1. *The Importance of Context*

Foucault (1981, p. 69) notes that there exist features external to discourse, or extra-discursive features, which are “external conditions of possibility” and “give rise to the aleatory series of these events, and fixes [*sic*] its limits”. Foucault then hints at the significance of context, the extra-discursive, in establishing a discourse. Hook (2001) commends this concession by Foucault and suggests that the material conditions which come to define and restrict a discourse merit attention and analysis. Hook (2001, p. 524) appears to adopt a more limited understanding of discourse than Foucault does in considering the extra-discursive to comprise of “institutions, social structures and practices” where social structures and practices would arguably form part of the discursive for Foucault. Regardless, serious consideration must be given to Hook’s (2001, p. 524) claim that a “thorough analysis” of discourse should consider the extra-discursive features, which “limit and constrict the free flow of discourse, that both reinforce and renew it”. As such, consideration will be given within the report to two contexts (involving time, place and setting), which enable and delineate the production of institutionalised discourse (comprised of its language and practices) concerning the female killer, namely the media context and the legal context.

2.5.2. *The Media Context*

Hall, Critcher, Jefferson, Clarke and Roberts (1978, p. 65) comment that it is “undeniable that the *prevailing tendency* in the media is towards the reproduction, *amidst all their contradictions*, of the definitions of the powerful, of the dominant ideology” [original emphasis] and that the media “tend, faithfully and impartially, to reproduce symbolically the existing structure of power in society’s institutional order” (Hall et al., 1978, p. 58). This reproduction of dominant patriarchal knowledge paradigms has lead to an assessment of “media power” through an analysis of its “representational force” (Couldry & Curran, 2003, p. 3) given the potential of representational practices to connect meaning, culture and language (Hall, 1997). For Hall (1997), representation occurs discursively and attributes meaning to an object where meaning functions to derive an identity for that object which is malleable in nature in and “is constantly being changed and exchanged” (Hall, 1997, p.3). The result of this process is the creation, perpetuation or reconfiguration of ideology. Gqola (2001b, p. 95) holds that “identity is never complete but is defined, inscribed and accessible

in language [discourse]” and despite identity being pliable as a result, “systems of dominance” have come to “inscribe themselves primarily through [discourse]”.

Similarly Carter and Steiner (2004a, p. 1) maintain that the power of the media rests in its ability to represent “socially acceptable” manners of being and relating and both to attribute and to deny public recognition, status and honour to different groups of individuals (Carter & Steiner, 2004a). Where this representation pertains to notions of femininity, such representations are the result of patriarchal ideology and the structures of inequality are re(produced) accordingly (Carter & Steiner, 2004b). Butler comments briefly on the notion of representation as it pertains to the category ‘women’. Butler (1990, p. 2) suggests that “representation is the normative function of a language which is said either to reveal or to distort what is assumed to be true about the category of women”. A feminist and critical gender research investigation into the “ways in which media perpetuate narrow gender identities and sexual hierarchies” is argued for with particular emphasis on the role of discourse in this regard (Carter & Steiner, 2004b, p. 30) especially in a cultural climate where “women’s lives are either misrepresented or not represented at all” (Butler, 1990, p. 2).

When considering print media’s relationship with gender, the overwhelming majority of research in the field considers the media’s influence on women’s body image (Barriga, Shapiro, & Jhaveri, 2009; Dittmar, & Howard, 2004; Hawkins, Richards, Granley & Stein, 2009; Jefferson & Stake, 2009; Mahler, Beckerley & Vogel, 2010; Muren, Smolak, Mills & Good, 2003; Roberts & Good, 2010; Slevac & Tiggeman, 2010) and their eating habits (Eddy, Hennessey & Thompson-Brenner, 2007; Goodman, 2001; Hawkins et al., 2009; Hesse-Biber, Leavy, Quinn & Zoino, 2006; Himes, 2011; Knobloch-Westernwick & Crane, 2012; Krahé & Krause, 2010; López-Guimerà, Levine, Sánchez-Carracedo & Fauquet, 2010; Mask & Blanchard, 2011; Slevac & Tiggemann, 2011). Antithetically, relatively little attention has been given to the manner in which women are depicted in the print media, most especially in news reports, and this is noted as a cause for concern (Collins, 2011). Research by Collins (2011) indicates that the media in general and print media in particular, displays an overarching propensity towards either the under-representation of women or the depiction thereof in circumscribed gender roles. In the latter of these instances, such discursive representations are homogenous in their disposition and are “degrading” and “blatantly oppressive in their representation” contributing to “sex role ideology” (Carter & Steiner, 2004a; Smith, 1993, p. 63). Femininity has been portrayed in media accounts as being

aligned with beauty, emotionality and timidity. Furthermore, modern media has contrasted “good girls (pretty, quiet, sensitive, selfless and nurturing) with ‘evil’ girls, who are assertive, sexual, stubborn and selfish” (Carter & Steiner, 2004b, p. 12). Representations of femininity are further noted as inherently hierarchical, with masculinity depicted as dominant and femininity as passive, submissive and inferior (Carter & Steiner, 2004b). Carter and Steiner (2004b, p. 2) argue that these hegemonic definitions of femininity are both “naturalised” and normalised and therefore reduced to notions of “common sense”.

In illustrating the above, Merskin (2010, p. 359) observes a media tendency towards the portrayal of women as the “sexual other”. Similarly, Del Zotto (2002) argues that the infrequent representation of women in media coverage of war constructs them to meet masculine versions and interpretations of conflict for ideological reasons defining them as non-state actors in accordance with patriarchal standards of woman as the passive inferior. Considering stereotypical representations of the female sex-industry worker, Hallgrimsdottir et al. (2006, p. 265) note further that print news media is active in “constructing, reproducing and deepening social stigmas”. These results demonstrate that media narratives of such women provide little insight into their lived reality but rather accord with socially defined expectations thereof, following “relatively rigid and standardised cultural scripts” (Hallgrimsdottir et al., 2006, p. 278). Similarly, Mishra (2007, p. 273) considers media representation of females to argue that the media agenda is unified in an attempt at “disciplining the female body” and this effort at discipline is perhaps epitomised in research by Naaman (2007, p. 951) who examines print media representations of a Palestinian suicide bomber to conclude that such “narratives tend to frame the actions of women suicide bombers in ways that minimise and subvert the overt confrontation of gender politics”.

Locally the South African print media continues to be influenced by the legacy of Apartheid (Hadland, Louw, Sesanti & Wasserman, 2008). During the Apartheid era, the media was active in both legitimising and resisting this bourgeois philosophy and undertook an ideological, political and cultural repositioning pursuant to the redefinition of identity (Hadland et al., 2008). Contemporarily, it has been influential in its attempt to produce, enhance and refute social identities (Hadland et al., 2008). Examination of media discourse in relation to identity construction in the South African context displays a tendency towards homogenisation and a “lapse into binary thinking” in line with precedent practice and historical ideology (Hadland et al., 2008, p. 4). Within this environment, the creation of

identity through discursive representation is effected to advance particular conjectures regarding social character (Van der Vaal, 2008), which serves the nation's embedded ideology of separation and difference.

In demonstrating the above, research concluded by the Community Agency for Social Research indicates that females continue to be either under-represented in the South African media or sexualised or confined to restricting gender role stereotypes (Fenyves & Everatt, 1995; Prinsloo, 1996). This leads Prinsloo (1996, p. 40) to enquire, “Where are all the women? Not barefoot in the kitchen, it appears. But, maybe pregnant!” It is disconcerting, then, that “there remain, nonetheless, traces of very disturbing tendencies in the print media” despite its ability to act as a vehicle for redefinition (Gqola, n.d.). Gqola (2001a, p. 146) notes a similar tendency towards print media's stereotypical representation of femininity, depicting women as supportive mothers in the promotion of “support of abstention from transgressive behaviour”.

2.5.3. Media Discourse: The Lotter Case:

Preliminary research concerning the discursive representation of the female killer has been conducted within the South African context by Stead and Howard-Payne (2012). The analytic focus of this research was print media's representation of the female killer within the context of the Lotter Case and its focus was, therefore, limited to an analysis of the gendered construction of Nicolette Lotter as it was ideologically derived. The results of this study demonstrate that media discourses generated in the context of female killing operate to reinforce conventional notions of femininity and female inferiority and instigate a climate of forgiveness. They further effect the dismissal of both the individual and her acts and ultimately ignore these gender role transgressors. Consequentially, such women are demonised in the media discourse, which serves to discourage similar female violations. Overall, media discourses exerted a powerful effect over the female gender by virtue of their ability to subvert the overt confrontation of gender politics (Naaman, 2007, p. 951) in regard to female perpetrated killing and to relegate and confine the feminine to the diminutive in accordance with patriarchal ideals (Stead & Howard-Payne, 2012).

2.5.4. *The Legal Context*

The institutionalisation of deviance occurs not insignificantly through its related systems of power including the legal system (Foucault, 1978). The legal system is considered to occupy a powerful position by virtue of its occupation as a “principle vehicle of standard-setting” and is a prime example of how “dominant groups draw on and control discursive practices in order to sustain social power” (van Dijk, 2001; Kramer, 2010, p. 34). Mertz (1994, p. 441) notes that “legal language can be found at crucial ‘crossroads’ where social power and language interact” and continues to suggest that

Law is, in effect, the locus of a powerful act of linguistic appropriation, where the translation of everyday categories into legal language effects powerful change. Through legal language, the State imposes its interpretations and appropriations (of physical and symbolic power), and social actors struggle to shift existing power relations.

In this manner, formal legal rules come not only to be regulated by, but also to regulate norms and social practices and to be not only constructed by but also constructive of same (Mertz, 1994). Naffine (1990, p. 7-8) argues further that the law is imbued with legal power to the extent that it is “made by men and therefore tends to entrench their position and dominance...it is conceived through the male eye; it represents the male perspective. It starts from the male experience and fails to recognise the female view”.

The 1994 shift toward South African democracy was lauded by legal feminists as an opportunity to “advance gender equality and the status of women in political, social and economic life” where the “human rights entrenched in the Constitution, provided important political and legal resources for this struggle” (Albertyn, 2005, p. 217). Gender activists have argued for the “transformative potential of the law” to move beyond mere inclusion of women towards a metamorphosis of their “reality” (Albertyn, 2005, p. 220). Albertyn (2005, p.221) argues that in this regard “resort to the law is often disappointing” in that “The law is more likely to reproduce existing social and economic relations than to change them” and that “potentially transformatory policies and laws can be limited by inadequate enforcement”. Albertyn (2005, p. 221) notes further that

Court victories may extend rights to women on terms that reinforce, rather than challenge, the *status quo*. The law often includes or accommodates women *in an existing set of social and economic relations – where the fundamental power remains unchanged*. It is less likely to address the social and economic power relations of society: the way we think about women...their roles and relationships [own emphasis].

2.5.5. The Female Trial:

Fundamental to the evolution of the transformation agenda is the “legal method that is used to adjudicate claims” (Albertyn, 2005, p. 221). However, legal feminists argue that courts have resisted this agenda through insularity in a reliance on practice and “method that defines issues narrowly” in terms of “mechanistic and formal thinking” that delineates “boundaries” with respect to the feminine subject (Albertyn, 2005, p. 221 - 229). To this end, court practice which relies on legal formalism is shown to “reinforce gender differences in stereotypical terms” in affirmation of “men’s reality” and “the underlying patterns of stigmatization [*sic*]” and “falls short of developing that argument to a legal conclusion that seeks to dismantle that subordination” (Albertyn, 2005, p. 228 - 229).

Similarly, Foucault (2003) suggests that criminal trials represent a method of governance and normalisation which effect the preservation of social and political order. Historically, legal systems have come to exert control over “perversions, for the sake of a general protection of society and race” (Foucault, 1978, p. 122). A primary example of gender “perversion” arguably exists in the case of the female legal subject, specifically, the female killer. It is argued that where “perversion” relates to gender transgression in the form of female perpetrated killing, the legal context provides a platform on which novel discourses, that is, new language and practices, which challenge and expand the limits of restrictive and subjugating female gender constructions might be generated, however, this possibility is resisted in the interests of perpetuating patriarchal ideology.

Research into the constrained body of work concerning the female killer indicates that the criminal trial itself has a gendered nature in that it focuses on a characterisation of the woman to the extent that she is female as well as her traits and roles (Follingstad et al., 1996).

Research into the trials of parents who have killed or severely abused their children suggests

gender discourses to be overt within this setting with gender discourse being used as a resource more frequently in the cases of female child abusers and murderers than in those cases of their male counterpart (Gurevich, 2008). Trials of infanticide demonstrate the manner in which patriarchal and paternalistic discourses of motherhood and maternal responsibility saturate the narratives constructed by both the defence and the prosecution and suggest that even in a climate of “destabilisation” regarding gender prescription, “the old notions still retain a grip on cultural, political and legal institutions” (Gurevich, 2008, p. 531).

Such appropriation of gender discourse is significant and concerning given the constructive nature of the criminal trial. Historically, the trial represented a method for the extraction of knowledge and truth and subsequently, the “investigation was the sovereign power arrogating to itself the right to establish [such] truth” (Foucault, 1995, p. 225). Interrogation and consultations are effected in an effort at rectifying “the mechanisms of discipline” and the enquiry mechanisms are said to betray “the penetration of the disciplinary examination into the juridical inquisition” (Foucault, 1995, p. 226 – 227). With respect to the female killer then, it is arguable that “problematization [sic] of the criminal behind [her] crime” extends to the level of gender deviance (Foucault, 1995, p. 227). That is, the disciplinary mechanisms target not only the perversion of character but also the perversion of gender and discipline the subject in accordance with patriarchally derived gender norms.

Bennett and Feldman (1981, p. 3) hold that at its core “the criminal trial is organised around storytelling”. Trials are thought to be “shot through with narrative” such that information is “organised and mobilised into a relatively coherent and temporally logical form by witnesses, attorneys and judges, and directed at and consumed by various audiences including other attorneys, judges...the press, and the public” (Umphrey, 1999, p. 397). Owing to the inherent instability of the narrative form, courtroom narrative demands the “production of multiple, discontinuous and discordant stories” in line with rival reconstructions of events and oppositional motives” (Umphrey, 1999, p. 403). Importantly, constraint is placed on the multiplicity of narrative construction by way of the appropriation legal rules. Said differently, “through the operation of various rules, law attempts to regulate what is able to be narrated; that is, it attempts to discipline both the form and substance of narrative” to “produce conditions of possibility for some kinds of narratives while undercutting others” (Umphrey, 1999, p. 403-404).

Narratives are not isolated phenomena, which occur in a vacuum. Rather they are contextually bound incidences which are “socially organised” and “told within particular historical, institutional, and interactional contexts that shape their telling, meaning and effects” and “accordingly, reflect the cultural and structural features of their production” (Ewick & Silbey, (1995, p. 199). Bakhtin (1981, p. 279) comments that discourses “cannot fail to be oriented to the ‘already uttered,’ the ‘common opinion’ and so forth”. Bakhtin thus hints at discursive hegemony, which has been noted by Ewick and Selby (1999) in trial narratives. Hegemony is understood, then, in terms of Comaroff and Comaroff’s (1991, p.23) definition of the hegemonic as “the order of signs, practices, relations and distinctions, images and epistemologies – drawn from an historically situated cultural field – that come to be taken-for-granted as the natural and received shape of the work and everything that inhabits it”. Umphrey (1999, p. 404) argues then that the power of a particular narrative form in the legal context, apart from being subject to the existence of legal rules, derives its force from being “constituted and elaborated historically”, that is, from appealing to the hegemonic discourses of its subjects.

Narrative is not merely that which is imposed upon the social world and its subjects. Rather narrative is considered as being constructive, as “constitutive of that which it represents” (Ewick & Selby, 1999, p. 1999). Specifically, within the legal setting and within the trial itself, narrative is instrumental in the construction of different character identities (Cobb, 2010). Narrative usage in the context of the legal setting is notorious for its tactical invocation (Ewick & Selby, 1999). Within the context of trial narratives of female perpetrated killing, it is argued that the discourses embodied therein are adopted in a strategic manner in the construction of the female legal subject to the extent that its effects are ideological and political and promote the furtherance of the patriarchal agenda through its appropriation of hegemonic discourses. As Ewick and Selby (1999, p. 211) note,

Because narratives are social practices that are constitutive of, not merely situated within, social contexts, they are as likely to bear the imprint of dominant cultural meanings and relations of power as any other social practice. More importantly, the stories and accounts that are told to and by litigant, clients, lawyers and jurors and other legal actors are not simply reflective of or determined by those dominant meanings and power relations. They are implicated in the very *production* of those meanings and power

relations. Through various discursive practices, legal categories, symbols, and authority are organised and maintained across time and space [original emphasis].

CHAPTER 3

METHODS:

3.1. INTRODUCTION:

The body of this report is comprised of two discursive analyses: legal and media elements of the Lotter Case, which together constitute the discourse network of female perpetrated killing. Each aspect, then, is considered independently below.

3.2. RESEARCH DESIGN:

This study employed a qualitative case study design. The case examined was that of the Lotter Case discussed above in the introductory section of this report. In its relation to an analysis of discourse, the research is aligned then to the constructionist (or more recently, the relativist/postmodernist) paradigm and thus, ontologically speaking, assumes a socially constructed reality; one that is constructed through discourse (Edwards, Ashmore & Potter, 1995; Ryan, 1999; Terre Blanche & Durrheim, 1999). Note, however, that such a paradigm, and its ontological assumptions, does not necessarily entail the denial and exclusion of the material, but suggests rather that reality entails a construction through discourse (Edwards, Ashmore & Potter, 1995; Ryan, 1999). This allows for the marriage of three discursive analytic techniques adopted herein. In terms of constructivist epistemology, the observer is suspicious and political and continually constructs versions of reality (Terre Blanche & Durrheim, 1999).

3.3. SAMPLE AND SAMPLING:

Archival data specific to the Lotter case was purposively sampled. Two sources of archival data sampled included (1) data relating to the legal element of the Lotter Case, and (2) data relating to the media element of this case. The media data for this study which has been collected and analysed for the previous Stead and Howard-Payne (2012) study is, nonetheless, described briefly below.

3.3.1. Legal Archival Data:

Primary reliance was placed on the trial data, the transcript, of the Lotter case, with supplementary insights being gained from the case judgement. Trial data has been adopted for analysis in a number of previous studies (Gurevich, 2008; Gurevich, 2009; Umphrey,

1999). It is argued that criminal trials, and subsequently their transcripts, comprise “legal stories”, which are “discursive attempts to produce compelling versions of reality, and they include not only creative reconstruction and interpretation of the evidence and the context of the offence but also active construction of the defendant’s character and identity” (Bennett & Feldman, 1981; Gurevich, 2008, p. 518). In addition, Ferguson (1996, p. 87) notes that “the struggle of attorneys to find the best accounts for their clients turns courtroom transcripts into excellent barometers of what is said and thought in any culture at any given moment of time”. Thus, trial data provides an appropriate implement for an analysis of both the micro-process of discourse and the macro-process of power and ideology. It must be noted that arguments of both the defence and the prosecution were considered relevant and both warranted consideration given that each presents a separate and disparate construction of the accused aligned to their respective aims, being the construction of her innocence or guilt accordingly.

The case judgement is available electronically and was accessed via the search engine Google using the search criteria “Nicolette Lotter Case Judgement”. The case judgement considers the judge’s reason for his verdict and is, therefore, believed to be influential in the construction of an accused’s proclaimed guilt. Furthermore, judges are believed to occupy a position of power and, therefore, their discursive construction of a defendant’s character is an important consideration.

3.3.2. *Media Archival Data:*

At the level of media discourse, the sample is comprised of archival data. The analysis of media archival data was conducted during a previous study (Stead & Howard-Payne, 2012) and consisted of 58 articles regarding the Lotter Case, accessed from the online database SA Media (available at www.wits.ac.za), from the newspapers the City Press, the Daily News, the Independent on Saturday, the Saturday Star, the Star, the Sunday Independent, the Sunday Times, the Sunday Tribune and the Witness. These 58 articles underwent a discursive analysis so as to explore the construction of female killers in the print media in relation to the case of Nicolette Lotter. The results from this previous study were utilised within the context of this current study for the purposes of a comparative analysis in accordance with the aims of the research outlined above and given that this research is largely an extension of this previous work. Please refer to Stead and Howard-Payne (2012) for further details regarding the sampling procedure, analysis and findings concerning the media element as it pertains to its inclusion in this study.

3.4. PROCEDURES

3.4.1. Legal Archival Data:

The Durban High Court was contacted telephonically by the researcher in order to obtain access to the trial transcript. The researcher was subsequently referred to Sneller Recordings, the company responsible for the audio-recording and transcription of the trial proceedings. After having made telephonic contact with the requisite contact person at the aforementioned company, a request was made that the researcher be provided with the transcript of the applicable trial proceedings. After having accepted the quotation in this regard a reprint of proceedings was prepared for the researcher and forwarded to her via courier services. Proceedings dated 24, 25, 26, 27, 28 and 30 October 2011, 1, 3, 4, 7, 8, 9, 10 November 2011 and 5, 6, 7, 8, 9, 12, 13, 19 March 2012 amounted to 12 volumes comprising 1366 pages for analysis (including judgement and sentencing). These volumes were then stored under lock and key at the researcher's private residence for the duration of the research process. These will continue to be preserved indefinitely. As noted above, the researcher accessed the case judgement via the search engine, Google. This data was stored as a hardcopy under lock and key and in electronic format in conjunction with the trial transcript throughout the course of the execution of the research. As all of the aforementioned data is available for public consumption, it is unnecessary to destroy this data post-research execution.

3.4.2. Media Archival Data

The data collection procedures involved in addressing discourses in media reports have been described elsewhere (Stead & Howard-Payne, 2012). Please refer to Stead and Howard-Payne (2012) for further information regarding the methods of data collection adopted in this regard.

3.5. DATA ANALYSIS:

3.5.1. Legal Archival Data:

The data was analysed by way of discursive analysis. The discursive analytic techniques adopted within this research included Foucault's (1981) critical and genealogical means of analysis, a critical discourse analysis and the discourse analytic method proposed by Parker (1992). Foucault's (1981, p. 61) method suggests that analysis should focus on the "restrictive and constraining function" of discourse by investigation of history and archives to

discover “the scarcity of meaning in discourse” (Kramer, 2012, p. 51). Moreover, analysis for Foucault (1981) should highlight what is discursively excluded in considering extra-discursive factors that present in text and society. Critical discourse analytic approaches, specifically those approaches offered by Fairclough and Wodak (1997), concentrate instead on the manner in which discourse is a function of both the text and society and their co-dependency and accounts for the effects of ideology (van Dijk, 2001). This method, then, is not in opposition to Foucault’s, but rather an extension thereof. Foucault’s (1981) method was thus appropriated as a preliminary analysis and in accounting for genealogy and the extra-discursive element of context whereas critical discourse analysis was adopted as an extension of this work to consider the ideological effects of the discourses. Parker’s (1992) method was used to supplement the critical discourse analysis in an effort to account for a discourse network as Parker’s (1992) method suggests that discourse makes reference to other discourse, establishing points of contrast and overlap (please see Appendix C for a further consideration of Parker’s 1992 Criteria Distinguishing Discourse).

Foucault’s (1981) method of analysis comprises two ‘sections’ or levels: a critical level and a genealogical level. The critical level considers Foucault’s (1981, p. 69) principle of reversal and those processes involved in the “rarefaction of discourse”. The genealogical level then has regard to principles of “discontinuity”, “specificity” and “exteriority” in understanding how discourses are “juxtaposed” and “discontinuous”, how discourses are a “violence which we do to things, or...a practice we impose on them” and “the material conditions of possibility” respectively (Foucault, 1981, p. 69). The genealogical level thus, considers

how did series of discourse come to be formed, across the grain of, in spite of, or with the aid of these systems of constraints; what was the specific norm of each one, and what were their conditions of appearance, growth and variation (Foucault, 1981, p. 69).

Fairclough and Wodak (1997, p. 271-280) delineate eight tenants of critical discourse analysis, which can be summarised as follows: 1) critical discourse analysis addresses social problems, 2) power relations are discursive, 3) discourse constitutes society and culture, 4) discourse does ideological work, 5) discourse is historical, 6) the link between text and society is mediated, 7) discourse analysis is interpretative and explanatory and 8) discourse is a form of social action. These principles formed the framework of how data was selected and understood and this framework was accompanied by a Foucauldian Feminist (Butlerian)

interpretation of the data. After reading and re-reading of the transcripts, the data was coded and assembled into discourse and sub-discourses, which were reworked until they resembled an appropriate representation of the data.

3.5.2. Media archival data:

As previously noted, media data has already been analysed according to an approach to discourse analysis described in Stead and Howard-Payne (2012).

3.6. ETHICS

3.6.1. Legal Archival Data:

Ethical clearance followed internal procedures at the University of the Witwatersrand. However, owing to the archival nature of the data analysed, no clearance certificate was obtained (please see Appendix B, however, for the ethics reader's letter of approval to conduct the research). Given the archival nature of the data, ethical concerns are limited. As such, issues of voluntary participation and informed consent become a non-issue within the context of this research. Confidentiality was not in issue given that the subjects are in the public eye and the details of their case have already been widely publicised. Risks or benefits in relation to both the researcher and the various players of the Lotter Case were neither foreseeable or an issue within the context of the research. The trial transcript was stored under lock and key at the researcher's private residence for the duration of the research process. The case judgement was saved as a password protected PDF file on the researcher's computer and was stored similarly under lock and key at the researcher's residence. Both the trial transcript and the case judgement, however, have not and will not be destroyed as this data is available for public consumption but will continue to be stored as per the aforementioned procedures.

Given that the research involves an analysis of the discursive construction of subjects, subject positions are inevitably created. However, attempts were made to report the data in such a manner that it was not derogatory or defamatory to either the various participants within the Lotter Case or the authors of the material. The analysis, therefore, remained fact-based rather than motivated by personal assumptions although some level of inference is necessary to gain an insight into the subtext of the discourses.

3.6.2. *Media Archival Data:*

Ethical clearance to collect and analyse the media data has previously been obtained from the University of the Witwatersrand (please see Appendix A). Please note the protocol number for this research is HONS/12/027 IH.

3.7. REFLEXIVITY:

Reflexivity in the research process is initiated primarily in the interests of deconstructing the researcher's impact on both the data collection process and the data analysis (Macbeth, 2001). However, reflexivity regarding data collection is traditionally aimed at unpacking the social relationship which exists between the researcher and her participants which is understood as being characterised by power and status positions (Stevens, 2008). Despite the absence of a social relationship existing within the data collection process of this research, a relationship of power can nonetheless be understood as existing between the researcher and the data. As researcher, I had control over what data to collect or neglect and to include or exclude in the analysis. This has important implications with respect to the portrayal of the individuals party to the Lotter Case. As a consequence of the data collection method, I was given 'authority' over the subjects to derive a construction of their characters without their consultation involved therein. It was for this reason that a decision was taken to analyse the trial transcript in its entirety rather than specific and 'relevant' sections thereof as advised, as I was conscious of the possibility that this would lead to my disregard for certain key discourse that would alter the constructions. Furthermore, I was careful to note data pieces that both facilitated and impeded the aims of my research as I was cognisant that such data pieces might be significant to the aims of my subjects. Interestingly, this decision lead to a fortification of the analytic argument as the multiplicity of constructions facilitated a multifaceted analysis.

The researcher's motivation for conducting research on the discursive constructions of female killers is two-fold. Firstly, I am interested in discursive constructions, specifically their ability to inscribe relations of power and ideology. With respect to gender construction, I believe such a phenomenon is particularly relevant in the South African context given its political history of oppression and discrimination and the contemporary inclinations towards liberalism and equality. Secondly, I am especially interested in gender non-conformists, chiefly female gender role transgressors, and the negotiation of same within modern

progressively orientated society. I have always considered myself as being a strong woman who acts independently of societal norms. Despite this tendency, I found it difficult to reconcile female acts of violence with my expectations of femininity. It is perhaps this inner tension which fuelled my interest accordingly to determine how such behavioural displays are traversed more generally. Consequentially, it must be acknowledged that I found it difficult to remain impartial towards both the subject matter and the subjects and to maintain analytic neutrality in presentation of the research findings. I was often inwardly sceptical regarding the discourse that arose and self-censure was often necessitated. The maintenance of a self-reflexive journal was beneficial in this regard as it provided an outlet for such personal criticism thereof which could then be directed away from the analysis itself (please see appendix D). Covert operations of power again became pertinent herein and it became important for me to remain cognisant of the fact that despite my authority as researcher, I had no authority over the reality of the subjects and it was not for me to impose my own interpretations or constructions but rather to distil the constructions imbibed within the text. As a result, the research process can be construed as having been imbued with complex and shifting dynamics of power. It was therefore important to remain sensitive and cognisant of their impact on the unfolding analysis.

In addition to the above, the high profile nature and resultant publicity of this case was another factor complicating the impartiality of process. When questioned about the research I was in the process of conducting, those I was in discussion with were almost without exception aware of the facts of the Lotter Case and had come, during the unfolding of same, to form their own impressions thereof which were often imparted to me. It was not uncommon for these impressions to be in line with those I had formed myself and those which I was battling against during the process of analysis. Thus, for the most part, I made a concerted effort to avoid public commentary regarding this case to avoid distortion of the results.

CHAPTER 4

RESULTS AND ANALYSIS:

6.1. MEDIA ANALYSIS

Stead and Howard-Payne (2012) examined and demonstrated the complex nexus that exists between power, discourse and knowledge in media accounts of the female killer. Specifically, Stead and Howard-Payne (2012) demonstrated the ability of media discourse to structure knowledge regarding the subject and the ability of such knowledge to influence the (re)production of patriarchal power relations. Stead and Howard-Payne (2012) suggest that prevalent and pervasive historical discourses concerning femininity reverberate within the context of media accounts of female gender transgression and that their portrayal is ideological in nature. Media discourses of female perpetrated killing construct the female killer in such a manner as to confirm ones hegemonic expectations of femininity and the subject is constructed in accordance with entrenched, albeit often ignored, knowledge paradigms. In this manner patriarchal ideology, which structures society, is reproduced and reinforced within the context of media discourse of gender transgressors which should serve instead as a vehicle for the confrontation and termination thereof. Where conventional notions of femininity cannot be maintained, the media constructs these women as the ‘other’ and demonises them within their discourse. As Biggs, (1981, as cited in Frodred-Green, 2000, p. 709) submits:

From a rational, “monological” world, otherness cannot be known or represented except as foreign, irrational, “mad” or “bad”. It is either rejected altogether, or polemically refuted, or assimilated into a “meaningful” narrative structure, rewritten or written out as romance or as fable.

In summation, media discourses of the female killer in a South African context accord with research by Naaman (2007, p. 951) and entail an overarching agenda and effect of subverting the “overt confrontation of gender politics”, relegating the feminine to the comfortable realm of the inferior prescribed by masculine ideals (Stead & Howard-Payne, 2012).

To this effect, several gender-related discourses presented in the print media reports regarding female perpetrated killing were identified and analysed in Stead and Howard-Payne (2012). Such discourses were outlined as: Paragon of Virtue Discourse, Womanly Wife/Doting Daughter/Diminutive Sister Discourse, Ridiculousness Discourse, Weakly Woman/Strengthened Saviour Discourse, Discourses of Reattribution, Evil Temptress Discourse, Warrior Princess Discourse and Appearance Versus Reality Discourse (Stead & Howard-Payne, 2012). Such discourses concerning Nicolette Lotter were shown to be constructed primarily in a manner which reinforces traditional notions of femininity including, piety, goodness and morality. As such, one is compelled to offer forgiveness for transgression and the feminine is relegated to a diminutive standard. Furthermore, an emphasis on fragility and weakness establishes Nicolette as a platform upon which violence might be executed and renders her as transgressor a victim herself. Reattribution is a means of preventing women from owning their crimes and therefore assists in their deprivation of agency. In prohibiting Nicolette from a declaration of responsibility she is deemed inadequate of full citizenship and is subsequently stripped of her respect and validity. Given that “rights and responsibilities go hand in hand, if women are not allowed full responsibility for their actions, they will be accorded neither full rights, nor full respect” (Adshead, 2011, p. 64) as “equal democratic citizenship can proceed from no other premise than that of equal personal responsibility for decisions and actions” (Rapaport, 1991, p. 368). In ridiculing Nicolette, it is suggested that her humanity can effectively be ignored and when coupled with an emphasis on gender role conformity and a de-emphasis on gender role indiscretion, media discourses ultimately dismiss and ignore both the individual and her actions within the context of female gender transgression. Finally, where the aforementioned efforts failed, Nicolette was positioned as evil and this serves to discourage similar displays of patriarchal sedition. Therefore, despite the act of female perpetrated killing being one of strength and, therefore, a violation of gender expectations, media discourse of the perpetrator acted in confirmation of the status quo and prescribe this confrontation.

South Africa is country that prides itself on and is celebrated for gender equality. Such ideologies are indeed entrenched in the Constitution and are purported as being a cornerstone of the environment’s modern jurisprudence. However, in light of the pervasiveness of patriarchal discourses and their ensuing ideologies which presented within the media context in relation Nicolette, concern is raised regarding the permissibility of the aforementioned claim. South Africa’s legal system is lauded as being progressively orientated and it is

arguable then that it serves as an example to foreign jurisprudence. Thus, an analysis of the South African legal environment and its associated discourses in relation to a female accused is warranted in the interest of establishing whether gender related discourse is a phenomenon external to South Africa's legal context or if it remains embedded therein.

6.2. LEGAL ANALYSIS

A distinction must be made at the outset of this analysis between discursive practice and discursive constructions, where the former can be shown to be utilised in pursuance of the latter. That is, discursive practices are understood below as 'techniques' employed by legal practitioners in the interest of fashioning discursive constructions or formulations of the accused. Discursive practices which are identified as being present within the trial of Nicolette are Co-Authorship of Construction, Demonstration of Feminine Conventionalism, Building a Case, Discrediting a Case, the Juxtaposition of Construction and the Proclamation of Judgement and Sentencing. The discursive constructions of Nicolette are shown to be co-authored in sum by her co-accused, the counsel for the prosecution and the defence, the respective witnesses and the judge and assessors. Discursive practice within the context of this trial is shown at the outset to emphasise the gender of Nicolette and to highlight the key aspects of her gender class through the demonstration of Feminine Conventionalism.

Nicolette is constructed as the Conventional Female and such a construction is aided by constructing her as the Conventional Wife, the Conventional Sister and the Conventional Daughter. In this manner pervasive gendered discourses of femininity become entrenched within the legal context. In building a case, the defence and its opposition aim to establish the innocence or guilt of the accused respectively. In submission of Nicolette's innocence, various constructions are forwarded: the construction of Nicolette as weak, the construction of Nicolette as easily influenced and the construction of Nicolette as emotional. Reference is made in formulating these constructions to her construction as the Conventional Wife where she is positioned as submissive to her male counterpart. Such constructions, therefore, emphasise gender role conformism. In the antithesis, in proposition of Nicolette's guilt, the opposition forwards a construction of her as strong, a construction of her as influential and a construction of her as cold-hearted. In composition of such construction, reference is made to her subversion of the expectations demanded of her by virtue of her construction as the Conventional Wife, the Conventional Daughter and the Conventional Sister and accordingly

gender role transgression is emphasised therein. Within the practice of discrediting a case, the establishment of the trustworthiness of the accused also becomes paramount. Nicolette and her associated constructions are therefore positioned as being trustworthy and untrustworthy by the defence and its opposition accordingly. That is, in constructing Nicolette trustworthy, the defence seeks to deny claims of her strength, influence and cold-heartedness and of her gender role transgressions whereas in constructing Nicolette as untrustworthy, the opposition seeks to validate such claims. In the juxtaposition of such constructions, gender role transgression becomes aligned with guilt and gender role conformism aligned with innocence to reinforce patriarchal expectations of femininity and to relegate the feminine to the inferior. Finally, in the proclamation of judgement and sentencing, adjudication is passed on the accused to inscribe truth regarding the subject. Where this verdict is guilty, Nicolette (and subsequently the female killer) is rendered a gender role transgressor and castigated accordingly in an effort to dissuade similar contraventions and to discipline the female gender in accordance with patriarchal ideals of male dominance.

6.2.1. Co-Authorship of Construction

Within the legal context discursive constructions of an accused are produced through a process of co-authorship. That is, neither the accused nor their legal representation nor the witnesses, nor the judge alone is responsible for the accused's construction, but rather it is the interaction between the various parties that produces various accounts of the subject. With respect to Nicolette, her discursive constructions are produced through the interaction between her and her Counsel (Botha), Mathew and his counsel (Sivakumoor), Hardus and his counsel (Parsotham), the prosecution (Ramouthar and Mina), the Judge (Gyanda) and any called witnesses. Furthermore, all questioning by Sivakumoor, Parsotham, Ramouthar and Mina of Nicolette (or of any witness in relation to Nicolette) is understood as instrumental in the formulation of a case against her and in favour of the party they represent. Similarly, all questioning by Botha of Nicolette, Mathew, Hardus and any witness is understood as a case in favour of Nicolette and against alternative parties. It is within these cases that discursive constructions of Nicolette are inscribed. This understanding becomes pertinent with regard to the demonstration of Nicolette's guilt.

6.2.2. *Demonstration of Feminine Conventionalism:*

6.2.2.1. *The Conventional Female*

Conformist discourses of femininity traditionally include reference to womanly beauty, gentleness, righteousness, passivity, submissiveness and fragility (MacDonald, 1968; Kent, 2006, Stead & Howard-Payne, 2012). Where the subject standing accused is female, discursive practices within the legal environment appears to display a notable tendency towards the establishment of the accused's femininity and an alignment of same with traditionally sanctioned constructions thereof, that is, the accused is demonstrated as aligning herself with feminine conventionalism. Thus, both the defence and its opposition emphasise Nicolette's stereotypically feminine attributes and prominent in this regard is an accentuation of Nicolette's religiosity, her good nature and compassion, her gentleness, her morality and her physical beauty. In accordance, legal contextually bound accounts of Nicolette are effective in rendering her the quintessential Victorian female.

As argued in Stead and Howard-Payne (2012), the Victorian era can be delineated as the height of feminine conformism and orthodoxy with strict societal sanctions governing gender code. Thus, in conferring Victorian traditionalist ideals to Nicolette, legal discourse effectively delineates her as the prototypical female. Victorian values dictated devotion and religious fidelity with secular life being regulated by the spiritual. Multiple references are made to Nicolette's religious affiliation, including her "strict...religious upbringing" (Gyanda, p. 937), her ability to "quote all sorts of verses and chapters and so on" (Schlebusch, p. 1227) and her "hyper-religiosity" (Schlebusch, p. 1205) which reveals the vehemence of her faith and fervour of her devotion. Her "destiny" and "purpose" are described by her as having been "set by God" (Nicolette, p. 887) and her actions, both current and past, as being dictated by a belief in their conformance to the "will of God" (Botha, p. 873; Nicolette, p. 401; Nicolette, p. 413). A guiding principle of her existence is obedience to God's commandments of her. In this respect she states, "when he told me to look in my heart the only thing that I knew is that I have to obey God and...if I don't obey God I am disobedient" (Nicolette, p. 1053). Accordingly, Nicolette is constructed as having "researched aspects of Christianity beyond the normal ambit", "almost to the point of being fanatical about it" (Sivakumoor, p. 1227). Her time spent in imprisonment is said to have been devoted to the study of "theology" (Schlebusch, p. 1204) and her post-imprisonment life is furthermore consigned by her to the "ministry" (Assendorp, p. 1299).

Religious symbolism is furthermore prominent within such constructions and is allied with Nicolette, emphasising her resolution of religious ministry and accentuating her religiosity. References to her physical description accentuate her devotion by highlighting the presence of a “rosary” in the “right hand” of Nicolette (Sivakumoor, p. 936). Other religious symbolism includes reference to the “Bible” (Hardus, p. 309; Nicolette, p. 413; Nicolette, p. 1056), “prayer” (Hardus, p. 269; Mathew, p. 498; Parsotham, p. 433), “angels” and “demons” (Nicolette, p. 806), “pastors” (Nicolette, p. 731) and “minister” (Ramouthar, p. 712) and “churches” (Mathew, p. 359, Nicolette, p. 731). Religious ritual is furthermore present in Nicolette’s reliance on the “redemptive power of the blood of Jesus” (WFA, p. 1287). In this manner she is established as the Archetypal Christian.

Nicolette’s religious conviction, however, is not without question. By her own admission she is said to have “shared a measure of intimacy” with Mathew which “is not in accordance with the Word of God” (Parsotham, p. 490). Furthermore, in the murder of her parents she had contravened the sixth of the Ten Commandments, “You shall not murder” (Exodus 20:13) and, therefore, the will of God which arguably amounts to disobedience of the divine. Apart from such violence being untenable spiritually, it is untenable in light of patriarchally sanctioned expectations of female gentility and docility. In defence thereof, reference is made to Nicolette’s construction as the Archetypal Christian. Nicolette suggests in this regard that,

[she] did not stab [her] mother out of hatred at all. [She] did it because [she] loved God and wanted to show it even if it meant taking [her] mother’s life. It did say in the Bible if you love your mother and your father more than God you can’t enter the Kingdom of Heaven (Nicolette, p. 1055 – 1056).

In suggesting that such acts, which are traditionally understood as equitable with sin, were executed as a result of religious conviction, Nicolette’s construction as the Archetypal Christian is reinforced. Such violence then is converted from gender role disobedience to gender role obedience as it is understood as having been enacted in accordance with the Victorian expectation that female behaviour be guided by religious prescription.

In an effort to confirm Nicolette’s gentility and docility, Professor Schlebusch, criminal psychologist, Professor at the University of Kwa-Zulu Natal and expert witness for the

defence, indicated Nicolette as having “lived the life of a musician and a student” with “no evidence of a history of violence or dangerousness” (p. 1203). Such testimony specified further that “she was not a violent person” (Schlebusch, p. 1212), “did not have any predisposition to violence” (Sivakumoor, p. 1212), and did not “pose a danger to society” (Botha, p. 1298). The violence of the alleged offence is positioned instead as contextually specific rather than as being intrinsic to Nicolette. Schlebusch (p. 1212) adds further with regard to the acts of violence committed by Nicolette, that “people who commit a violent act are not always necessarily violent in their life. They can be swept away on a certain event or by a certain event or by a certain set of circumstances”. Similarly, in her evidence in chief, Nicolette (p. 1118) explains that she was required to defer to Mathew for instructions as to how to execute the stabbing of her mother as “[she] didn’t know how to kill anybody”. Botha (p. 1321) validates this proposition in his statement that “when [Nicolette] stabbed her mother...she had not intended to be violent but the situation escalated and spiralled out of control”. Thus, violence as a character trait is removed from the accused and imputed to external events, re-establishing her female tenderness.

Nicolette’s good nature and compassion as well as her morality are depicted as fundamental and intrinsic to her character. Discursive constructions of Nicolette centre on her consideration of others and a devotion to their needs. She is said to believe herself as having been called by God to “help women”, more specifically “abused women” (Nicolette, p. 750), with “her vision” being “to educate” and to enable “especially young people to learn from her mistakes” (Botha, p. 1319). In illustration thereof, Nicolette is shown to have demonstrated compassion for her domestic helper whom she perceived as practising witchcraft against her and “feeling really, really guilty” that if she did not “help this woman she’s going to go to hell and it’s going to be [her] fault” (Nicolette, p. 734). Similarly, in her relationship with her brother she is identified as being a “support” to him, wanting “the best for him” and wanting “him to have a wonderful future” (Nicolette, p. 897). In her romantic relationship with Mathew, she is said to “give a lot of joy” and “make [him] very, very happy” (Mathew, p. 445), having given him “everything [she] had of value” (Nicolette, p. 907). Such selflessness is demonstrated further as being religiously inspired. Nicolette (p. 907) suggests

I would have to give everything that I had, like my time, all my money, my car, my job, everything that I had I had to give it to God because to be a servant of God we had to take a poverty vow. So I took that vow.

In addition to the above, Nicolette is portrayed as being faithful to the adherence of morality. She is demonstrated as possessing a preoccupation with “doing the right thing” and in this manner she is identified as being committed to her studies and “wasn’t going to clubs”, “wasn’t drinking” and “wasn’t taking drugs” (Nicolette, p. 731). Because of her spiritual complications she “didn’t really want to communicate with men” and “wanted to stay away from men and rather speak to ladies” (Nicolette, p. 737). On her admission, she “didn’t have a big social life”, the relationships with her band members being considered but “acquaintanceship[s]” for fear that “a social life that is too booming...would affect [her] studies” (Nicolette, p. 1101). To this end, Nicolette would “prefer staying at home on a Friday and a Saturday, practising for hours in [her] room on [her] instrument” (Nicolette, p. 1101). Furthermore, she is depicted as having a deep respect for the feelings and privacy of others, feeling “bad to ignore [Mathew]” on meeting him and not wanting to “be rude” (Nicolette, p. 738) despite her initial perception of him as being a “loud, irritating and attention-seeking” (Nicolette, p. 737) individual and not wanting to intrude into “his private, personal book” without first asking his “permission” (Nicolette, p. 1110).

Nicolette’s physical beauty and subsequently her femininity are attributes most commonly emphasised. Initial descriptions of Nicolette by Mathew centre on racial dimensions, her ‘whiteness’, and it is intimated that Mathew’s original attraction to Nicolette was premised upon her being white. The identification thereof is significant in terms of its evocation of connotations of Aryanism. The identification of Nicolette as “white” by an Indian individual arguably attributes her membership of the Aryan race and it is common cause that said race has been deemed the ‘master race’ by virtue of the whiteness of their skin colour. In aligning Nicolette with this superior race, she is identified further as a superior female and as being female perfection embodied. This assertion is furthered by claims that she was both “beautiful” and “attractive” (Mathew, p. 653) as do references to her other attributes such as her youthfulness and slender physical form in descriptions of “that thin young girl” (Assenderp, p. 712).

In addition to the revelation of religiosity, goodness and compassion, gentleness, morality and beauty, conventional femininity should further exhibit a tendency towards the fostering of relational ties (Butler & Wintram, 1991). Within the context of the Lotter case, the demonstration of feminine conventionalism is furthered by the establishment of traditional

gender roles in relation to Nicolette. Such gender roles generally include wife, mother, sister and daughter, amongst others, but are materialistically limited within this case to the construction of Nicolette as the Conventional Wife, the Conventional Daughter and the Conventional Sister.

6.2.2.2. *The Conventional Wife*

The romantic relationship which existed between Mathew and Nicolette is delineated as central to the Lotter Case and Nicolette's status as well as the status of the other accused and is defined primarily in relation to her role as girlfriend and prospective wife. Mathew, accused No 2, is identified by Hardus not as Hardus' friend or acquaintance but rather as "accused No 3's [Nicolette's] former boyfriend" (Hardus, p. 265). Similarly, Hardus, accused No 1, is identified by Mathew as "the brother to my ex-girlfriend" (Mathew, p. 357). Thus, the relationships of the three accused are united in terms of the romantic relationship concluded between Mathew and Nicolette.

Nicolette is constructed as being devoted to the pursuance of a marital relationship. Accordingly she is illustrated as having "prayed that God would choose [her] husband one day" because she felt "she wasn't very good at choosing" (Nicolette, p. 848). It became apparent to Nicolette that this choice had been rendered in the presence of Mathew. The relationship between the two is then identified as progressing in a conventional fashion from courtship through to marriage. Consequentially, Mathew and Nicolette had been "courting" (Gyanda, p. 1187; Mathew, p. 525) with the intention "to marry" (Mathew, p. 525) prior to and during the commission of the alleged offences.

Furthermore, the relationship between the two is described as being "an intimate relationship" (Parsotham, p. 444) with the pair delineated as "lovers" (Parsotham, p. 533) and with Mathew's "nickname for Nicolette" being branded as "'love'" (Mathew, p. 485). It must be noted that the concept of pre-marital sex is at odds with religious orthodoxy (1 Corinthians 6:18; 1 Corinthians 7:2). However, in the act of sexual intercourse, Nicolette suggests that she was cleansed of the spiritual beings that had been tormenting her. In this manner, such acts are re-aligned with religiosity as they are purported as having been executed for the purposes of spiritual cleansing and therefore sanctioned by God.

In furtherance of her construction as the Conventional Wife, Nicolette is described as having “trusted [Mathew] because [he] was her boyfriend” (Mathew, p. 495) and “did have love for him” (Nicolette, p. 1141) and is depicted as “a woman at that time [Mathew] adored and cherished” (Mathew, p. 643). The relationship is described as having reached its climax when Mathew “bought [Nicolette] a thin gold ring” and told her that he was her “soul mate” and that “God had meant [for them] to be together” (Nicolette, p. 739) and the “couple” then “lived together as husband and wife” (Botha, p. 1202) with Nicolette considering Mathew as being her “husband” (Gyanda, p. 965). Their future plans together are said to have included “one day buying a house, moving to a certain area...having kids” (Mathew, p. 614). Mathew suggests that such plans accord with societal relational norms as these expectations “you plan when you are courting somebody” (Mathew, p. 614).

Nicolette’s construction as the Conventional Wife is typified in her portrayal as the doting housewife who submits to her husband’s authority in conformance with “a religious perspective where the male is the predominant figure” (Schlebusch, p. 1202). In this manner, Nicolette is defined as the fulfiller of her “husband’s” domestic needs in that “[she]’d wash his clothes and hang them there [in her room] and the ceiling fan would be on and they would dry” (Nicolette, p. 1113). Furthermore, Nicolette is represented as having given Mathew “everything of value [she] had” (Nicolette, p. 885), rendering financial control to him. Accordingly, Mathew was given “signing rights on [Nicolette’s] card” and “had control of [her] account and he would be the one in charge of the finances” (Nicolette, p. 759). In this manner, Nicolette is rendered financially dependent on the financial authority of her male counterpart which accords with historical patriarchal expectations that the man is the party to the relationship who is responsible for providing in such a manner. Such expectations are reinforced in her parents’ concerns regarding Mathew’s ability to “support [their] daughter right now” and to “support their daughter in the future” and whether or not he had “good and decent prospects, that [he is] studying, that [he is] on the verge of qualifying in some profession that would be a reason enough to allow [him] to court their daughter” (Gyanda, p. 525).

6.2.2.3. *The Conventional Sister*

A keen sibling bond is established as having existed between Nicolette and her brother. When asked to describe his relationship with his sister prior to their accusation, Hardus suggests their relationship to have been “very good” (Hardus, p. 312). A deep level of

mutual affection and support is constructed as having characterised the relationship. Hardus states the he “got along better with her [Nicolette] than anyone else because [he] helped her with everything” and that he “always helped out [his] sister with whatever problems she has, that [he] can help, whether it’s money, carrying equipment in and out of the car” (Hardus, p. 312). Similarly, Nicolette is depicted as committed to the “support” (Nicolette, p. 402) of her brother, “strengthening” (Sivakumoor, p. 1010) him when he did not have the courage to perform the will of God and guiding him in what she believed was right. Nicolette’s devotion to the preservation of her relationship with her brother and to familial relationships in general, is evidenced in her statement that

As a loving sister towards my brother I would never have allowed him to do the wrong thing if I knew it was wrong. I am not going to mislead my brother because I do love him. As a sister you wouldn’t mislead your own flesh and blood if you believe something is wrong. If you believe something is right then, yes, you will support them (Nicolette, p. 887).

In addition to the above, the love of Nicolette for her brother is highlighted as the most significant feature of this relationship. Hearing that her brother is destined to commit suicide, she is cited as having given him “a hug” (Nicolette, p. 890), and told her “brother that [she] loved him” and that he would “always be [her] brother” (Nicolette, p. 417). Furthermore, what typifies the extent of this affection is her having “pleaded for [her] brother” not to be required by Mathew to plead guilty to the murders and to plead insanity (Nicolette, p. 1018). Nicolette suggests that she “felt for Hardus” (Nicolette, p. 420), that she “felt terrible” (Nicolette, p. 913) and she hoped that she and Mathew would “come up with a way to cause him not to go to jail” (Nicolette, p. 420). This interception is significant given that it represents the sole time that mention is made to Nicolette disobeying a direct order from God, as it is alleged that this punishment of Hardus was to be concluded at the behest of God. Such a disobedience has been discussed above as abhorrent to Nicolette and subsequently the portrayal of such action must be understood as testimony to the love of a sister embodied in a conventional relationship of sisterhood.

6.2.2.4. The Conventional Daughter

Nicolette is depicted as having a good relationship with her parents, prior to the implementation of 'mind control' by Mathew of Nicolette. Her parents are illustrated as

having provided for her both financially and emotionally. With respect to financial support, Nicolette is stated to have remained in her family home without having to afford rent to her parents for food or accommodation. The majority of her expenses are depicted as having been provided for by her mother and father with the exception of Nicolette's "petrol" (Nicolette, p. 1114) and her car repayments. With respect to emotional support, Nicolette suggests that she "was more closer [*sic*] to her father" than her mother but professes to have had a "good and close relationship with [her] mom", which signifies a level of affection within these relationships (Nicolette, p. 863).

Similarly Nicolette is showed to have feelings of deep concern for her mother, being "afraid for [her] mom" (Nicolette, p. 947), fearing for her "safety" (Sivakumoor, p. 954) and being "afraid of [Mathew] doing something to [her]" (Nicolette, p. 953). This relationship, however, is not defined in idealistic proportions but rather as vulnerable to normal disturbances as Schlebush (p. 1223) states, "there was [*sic*] obviously the normal difficulties that any young woman would have with her mother". These difficulties centred primarily on concerns that Nicolette's parents had regarding her relationship with Mathew. Descriptions of familial tension, therefore, suggest a reciprocated affection and concern, warranted of a daughter who is party to a conventional daughterly relationship. Nicolette's mother is described as having initially been "open and open-minded" to Nicolette's relationship and had wanted to meet Mathew "to see who her daughter is dating" (Nicolette, p. 941), however, after having "realised that accused No 2 is a dark horse", she "came to [Nicolette] and she would try and [*sic*] talk to [her]" (Nicolette, p. 1133). Regardless of these events, Nicolette suggests that "[she] loved [her] parents even though [she] was distant from them because of accused No 2 and all his lies and revelations from God" (Nicolette, p. 1073) and as having longed for the emotional support of her parents, professing herself as being "hurt" (Nicolette, p. 952) in times where they showed a disbelief in her.

6.2.3. Building a Case

The South African justice system dictates that for an individual accused of murder, it is the burden of the state, the prosecution, to prove the requirements of murder: the (1) intentional and (2) unlawful (3) killing of (4) another human being (Burchell, 2010). A detailed explication of these requirements is beyond the scope of this discussion, however, it is common cause that within the context of the Lotter case, it was not the positive element of the crime, the *actus reus*, which was in dispute, but rather the fault element thereof, or *mens*

rea. Said differently, it was common cause that the accused effected the killing of the deceased; what remained contentious was whether the accused, here, Nicolette, was responsible for the killing of her parents. That is, for a verdict of innocent to be passed in favour of her, it is the burden of the defence to prove her incapacity, that at the time of the killings she (a) did not appreciate the wrongfulness of her act and (b) did not act in accordance with an appreciation of the wrongfulness of that action (Section 78(1) of the Criminal Procedure Act, 1977). Nicolette's defence then was that she was so under the influence of Mathew that she lacked capacity; that she was unable at the time of the offence to appreciate the wrongfulness of her conduct and to act in accordance with that appreciation. Such a defence then constitutes a defence against the fault element or *mens rea* of the crime (Burchell, 2010).

Discursive practice within the trial setting can, therefore, be said to hinge on the establishment or refutation of the accused's guilt, which is exacted by way of the formulation of a case in respect of each of the parties that is the prosecution and the defence. Accordingly, the prosecution's case is instigated with the primary aim of the confirmation the above, here that Nicolette was responsible for her conduct, where the case of the defence then, specifically the case of Nicolette, is rendered primarily in rebuttal thereof. Where multiple parties stand accused, the aim of those parties is similarly to establish the innocence of the respective accused. This is demonstrated below as being accomplished by way of attempting to affirm the case of the prosecution against the other accused party/ies. That is, the cases of Mathew and Hardus are revealed as being effected with the aim of supporting the case of the prosecution in corroborating implications of guilt with respect to Nicolette.

The case of the prosecution and the case of Nicolette within this trial are shown to achieve their respective agendas through the foundation of character constructions of Nicolette and these constructions are founded further by way of reference to the gender role constructions outlined above, that is, her construction as the Conventional Wife, the Conventional Sister and the Conventional Daughter. Given that the case for the prosecution and the cases for Hardus and Mathew (referenced further as the opposition) and the case for Nicolette act in the pursuance of contradictory agendas, it is reasonable then that such competing discursive practices should produce contradictory constructions of the accused. It is show then that the discursive practices, the building of a case, by the opposition and the defence generate tension at the level of the discursive construction of Nicolette, in that such cases and their

ensuing constructions are positioned in the antithesis delineating her as strong versus weak, influential versus influenced, untrustworthy versus trustworthy and cold-hearted versus emotional respectively.

6.2.3.1. Demonstration of Guilt – The Case of the Opposition

6.2.3.1.1. The Strong Female

Nicolette is constructed as a woman of independence in her personal life and such a construction positions her as a strong woman. Mathew's case indeed suggests in this regard that he "thought she was a strong woman" and "carried herself well" (Mathew, p. 653). At the time of her meeting Mathew as well as during the early stages of their relationship, Nicolette is described as having "had a part time job" (Mathew, p. 446). She "started waitressing in about 2007 at Firkin at the Pavillion" and "was earning quite well for a waitress" (Nicolette, p. 745) with ambitions of acquiring "an assistant manager position" (Nicolette, p. 920) which were said to have been met in the November of 2007 with her having "started training for the position of assistant manager at Oscar's in Hillcrest" (Nicolette, p. 923).

Furthermore, Nicolette is demonstrated as having a passion for music, with "music" being [her] main interest" and "hobby" and her having "had a band of [her] own" (Nicolette, p. 727). Her proficiency in this regard is affirmed in claims that she was "qualified enough" "to get work at theatres like Catalina Theatre" (Nicolette, p. 1104). Constructions of industriousness enhance constructions of her independence and strength. Nicolette is portrayed as endeavouring to transform this "hobby" into a "business" (Botha, p. 616) in "trying to get the band going" (Nicolette, p. 944). Accordingly, she was "the musical director" of her band" (Nicolette, p. 727) and the "brainchild" (Parsotham, p. 496) and "people would ask for gigs and then [she]'d get members together and [they]'d perform and [they] got paid" (Nicolette, p. 727). Furthermore, Nicolette made an effort to provide gainful employment to Mathew having "asked him if he would be the manager of this band" (Nicolette, p. 757).

Nicolette's independence is, however, construed in the negative as evoking reference to demonstrations of her role as the Conventional Wife established above. It should be noted that the relationship established between Nicolette and Mathew is characterised as inter-

racial, which is noteworthy within the context of post-Apartheid South Africa. In this respect both parties could be construed as representing to one another the “exotic other” (Lalvani, 2009, p. 263). Such a relationship is arguably at odds with scriptural prescriptions against the mixing of “yokes” (2 Corinthians 6:14-18). Thus, in entering into such a relationship Nicolette is constructed as having contravened traditional Victorian and religious ideals pertaining to romantic norms. Moreover, this strengthens the positionality of her as a woman who acts in defiance of gender codes and social norms where inter-racial relationships are still fairly uncommon in South Africa.

Furthermore, membership to this category of the Traditional Wife traditionally implies further relative female subservience, here, more specifically, financial subservience, with the male being positioned as dominant in this regard. Nicolette herself makes reference to such knowledge paradigms in suggesting that she “felt bad that he’s a guy that needs a job” and she “decided to try and [sic] give him a job” (Nicolette, p. 945). Mathew’s case suggests further that Nicolette “was paying because she had the means and [Mathew was] not paying because [he] did not have the means” (Parsotham, p. 446) and that “financially the banks would give her a loan before [him]” (Mathew, p. 592).

Mathew portrays having felt “low” that Nicolette “pays all the time” (Mathew, p. 445) and as a result, the authority that a man should possess over a woman is negated with Mathew stating that he “never gave [Nicolette] commands of any kind” (Mathew, p. 412). Nicolette’s opposition submits, then, that because of her strength and independence Nicolette acted with capacity in the killing of her parents as such independence implies an ability to appreciate the wrongfulness of one’s actions and to act in accordance therewith. Such a submission proposes further a verdict of guilty be passed against the accused’s conduct on the basis of that independence and strength which intimates that transgressionary behaviour with respect to one’s role as the Conventional Wife implies punitive consequences and that women who violate such expectations be held accountable for their actions in a manner disparate to women who do not.

6.2.3.1.2. The Influential Female

Nicolette’s construction as influential is founded primarily on the above reference to her construction above as the Conventional Sister. The bounds of sisterhood are established above as extending to offers of support. However, Nicolette is shown to breach such

boundaries in her influence over her brother. Mathew's case suggests that Nicolette and her brother would frequently involve themselves in disputes where Nicolette "would always disagree with him, and get her way" (Mathew, p. 366). It is suggested further in Mathew's case that Nicolette would "belittle accused No 1 [Hardus] in [Mathew's] presence" (Sivakumoor, p. 366). In a similar vein, Hardus's case proposes that Nicolette as the elder party was successful in her ability to "persuade" him (Nicolette, p. 897), to "influence" (Parsotham, p. 589) and to "control" him in instances where he had doubts (Sivakumoor, p. 1215) and to "pressure" him to "comply" (Parsotham, p. 882). With respect to the murder of her parents, this influence is indicated to have taken the form of "shunning" Hardus into submission (Parsotham, p. 882) and "threatening him that he will go to jail" if he did not adhere to the "instructions" (Parsotham, p. 912). Accordingly, Hardus is established as having "looked up to" Nicolette "as an older sister and a sibling" and to have "looked to her for leadership and guidance" (Schlebusch, p. 1159), however, Nicolette is constructed as having "manipulated" him accordingly (Sivakumoor, p. 1176).

Such a construction of Nicolette negates the counter-construction of her as being easily influenced. Accordingly it is suggested that given her disposition towards being influential in nature, it is not plausible to propose that she was influenced by an external authority to the extent that she was unable to comprehend the wrongfulness of the killings and to act in accordance with that comprehension. Furthermore, the implication therein is that but for Nicolette's breach of conventional sisterhood relational boundaries in her movement from support to persuasion, such a construction would be permissible and a confirmation of her innocence. Thus, it is her gender role contravention that is chastised in the interest of disciplining the female subject in accordance with sanctioned gender norms.

6.2.3.1.3. The Cold-Hearted Female

In the construction of Nicolette as cold-hearted, reference is made to the violence enacted by Nicolette against her parents and her greed in her hopes of inheriting from their estate. Such a construction is founded upon negating Nicolette's portrayal as the Conventional Daughter. The stabbing of her mother by Nicolette is referred to during the case for Hardus as having been a "brutal stabbing" (Parsotham, p. 895). She is described further as having taken "a knife out the drawer and stabbed [Hardus's] mom on the neck and chest" and as having "stabbed her about three or four times" (Hardus, p. 165). The violence of the killing is exacerbated by reference to the "the first few attempts" being "unsuccessful" (Hardus, p.

294) as a result of a “blunt” “kitchen” knife having been used to commit the crime (Hardus, p. 292) as well as by reference to Nicolette having held “the knife high” to “plunge it into her” (Nicolette, p. 1054). She is further depicted as instrumental in “assaulting” her mother “to her facial area” (Nicolette, p. 1012) by being the likely party “that would have bust her lip” and “caused bruising about her eye” (Sivakumoor, p. 1012).

Nicolette’s apparent indifference to these occurrences despite the excessively violent nature thereof is highlighted in the case for the opposition in the interests of rendering her cold-hearted. It is evidenced as a cause of “concern” that “after the brutal stabbing of [her] mother” Nicolette “went around gallivanting” (Parsotham, p. 895), “dolling up now to go and paint the town red” (Gyanda, p. 1212) and that during her “evidence [she] showed very little emotions [*sic*]” (Parsotham, p. 895). The emotion that she did display is furthermore accused of having amounted to nothing more than “a small show” (Parsotham, p. 895). It is questioned as to why such violence and the declaration of love from her mother in her dying moments did not “touch [her] as a daughter” (Parsotham, p. 852), suggesting such acts and their effect on Nicolette as being at odds with the norms of conventional daughterhood. Such brutality is reconciled in allegations by Nicolette’s opposition as having been motivated by personal interest and by desire of her “inheritance” and a “better life” for herself (Nicolette, p. 906).

In support of the above, Nicolette’s construction as cold-hearted is furthered by the rebuttal of her role as the Conventional Sister in reference to her dismissal of the instruction by Mathew that Hardus commit suicide following the killings. Sivakumoor questions why Nicolette, as sister to Hardus, did “not think of it at this stage, that [she] could ask accused No 2 to intercede on behalf of accused No 1 to at least spare his life” (Sivakumoor, p. 1020). He suggests Nicolette to have been “quite willing” and “happy” to “bid accused No 1 goodbye” (Sivakumoor, p. 1021), to state ““See you in heaven more or less” (Mina, p. 1119) as an “answer” to all her “problems” as “he’ll [Hardus] be blamed for both their [the deceaseds’] deaths” (Sivakumoor, p. 1021). Thus, Nicolette is demonstrated as supporting the death of her brother in pursuance of self-interest which is antithetical to the demands of supportive sisterhood as established above.

Conventional discourses of femininity highlight depth of emotion as characteristic of the female gender. In denial of Nicolette’s emotionality, she is held accountable for her actions

as it suggested that a level of cold-heartedness is required on the part of a female to offend in such a manner who possessed an understanding of the nature of her conduct. Cold-heartedness amongst females is, therefore, persecuted accordingly in such construction of the Nicolette.

6.2.3.2. *Demonstration of Innocence – The Case of Nicolette*

6.2.3.2.1. The Weak Female

The construction of Nicolette as weak is instigated in reference to her physical weakness of appearance. She is described as a “tiny” (Assenderp, p. 687) and “thin young girl” (Assenderp, p. 712) who “looks like a teenager” (Ramouthar, p. 712) and amounted to just “half” (Mathew, p. 619) the weight of Mathew. Nicolette (p. 1126) states that “he’s [Mathew] a man” and “he is much more bigger [*sic*] than me. He weighs about 108 [*sic*]” whereas Nicolette “weigh[s] about 48 kilograms”. Witness testimony suggests Nicolette not to be someone for whom one would “get the impression that she was strong and big and one would associate broadly with somebody who commit [*sic*] murder” (Assenderp, p. 712). Furthermore, Nicolette is depicted as having required “help” (Nicolette, p. 730) and “protection” (Gyanda, p. 756) from the spiritual “troubles” which were plaguing her existence (Sivakumoor, p. 935). Additionally, Hardus references having to have assisted his sister when she needed it in the typical manner in which a brother might be socially required to assist his sister. These indications serve to position the male position as characteristically and physically superior to the female and are reminiscent of historical justification for distinction between the sexes with respect to violent propensities, that of physical dominance in favour of men.

Nicolette (p. 757) describes her character in relation to that of Mathew’s character in the following manner, “I also thought he was a lot better than me with talking to people. I wasn’t that confident, this small, little female trying to talk to people...I felt that he was taller and male”. Accordingly, displays of physical weakness are supplemented by displays of weakness of character in reference to Nicolette. Nicolette (p. 879; p. 1081; p. 735; p. 1081) describes herself at the time of meeting Mathew as not being “strong emotionally”, as being “vulnerable” and as having been rendered “desperate” by the “witchcraft” she believed was possessing her. Such desperation is established as having turned her “scared” and “defeated” (Nicolette, p. 735) and consequentially weak to the authority of Mathew, desiring his

continued “help” and “protection” to the extent that she “threw away all opportunities” until her life “had just been destroyed” (Nicolette, p. 1065). Her situation is accordingly described as having been so severe that Mathew had “given up his time, his job, his money, his family and all these things for [Nicolette]” in the interests of helping her “make something out of [herself]” and for her “life to come right with all these problems” that she was “having” (Nicolette, p. 757). Mathew is subsequently referenced in this regard as being Nicolette’s “knight in shining armour” (Nicolette, p. 805) promising “to take care of everything” for her (Nicolette, p. 780).

Descriptions of physical weakness are compounded by orientation to Nicolette’s weakness of character in the interests of ensuring that it becomes difficult “to merge the picture of this ‘killer’ with the picture...of Nicolette, a tiny, impressionable, confused teenager” (Ramouthar, p. 712) and consequentially to proclaim her guilt. That is, the construction of Nicolette as weak reinforces her construction as the Conventional Wife and vice versa. This subsequently acts as fortifications of demonstrations of her conventional femininity to position her as subject to the behest of her male counterpart and consequently not responsible for her actions as they emanated from his commands. She is portrayed then as having followed the will of her dominant husband in accordance with her role as the Conventional Wife and the dictates of conventionalism which renders her acts pardonable as a result. Conformist discourses of femininity are lauded accordingly.

6.2.3.2.2. The Influenced Female

Overwhelmingly, constructions of Nicolette centre on her portrayal as subject to the influence of evil. Nicolette is constructed as being under the “control” (Nicolette, p. 805) of the “influence” of Mathew (Nicolette, p. 1087) and as acting in accordance with every “suggestion” (Hardus, p. 294) and “instruction” thereof (Nicolette, p. 768). During her relationship with Mathew, it is established that she “didn’t question anything” (Mina, p. 1099) and that in all instances, “the best thing [she] could do was to do [her] best and to listen to him, do [her] best to obey him” (Nicolette, p. 749) as “he was [had claimed to be] the son of God” and “she had to obey him” (Nicolette, p. 782). Accordingly, Nicolette would “just receive instructions” and she “would just obey” without knowing why she “would do what he said” (Nicolette, p. 782) because “[she] believed [she] had to” (Nicolette, p. 875). Nicolette (p. 798) suggests,

At the time whatever Mathew told me I just used to do whatever he says. If he says: “I want you to jump”, I’d ask him: “How high?” If he says: “Go away”, I’d ask him: “Where and what do you want me to do?”

Such commentary is reminiscent of religious doctrine, which pronounces against the questioning of the word of the Lord in the interests of faith. It is written that, “my thoughts are not your thoughts, neither are your ways my ways...as heavens are higher than earth, so are my ways higher than your ways and my thoughts than your thoughts” (Isaiah 55: 8-9). That is, a genuine believer is bound according to religious conventions to believe unwaveringly and not question the commands of God.

Nicolette (p. 817) suggests further that “from moment to moment he would give [her] instructions. From moment to moment [she] would live and wait on this guy to tell [her] what to do next or what he wants next”. Consequentially, Mathew could be said to have been “controlling [her] in every way, in every aspect of [her] life” including her “finances”, “what [she] wore” and what she did (Nicolette, p. 803). To this end, she is said to have been “programmed”, (WFA, p. 1292) “psychologically brainwashed” (Nicolette, p. 1126) and subject to “mind control” (Botha, p. 1198), unable to “make up [her] own mind and [her] own choice” (Nicolette, p. 1056) rendering her a “puppet” and “zombie” (Mina, p. 1089) operating for the pleasure of Mathew. Nicolette describes herself in this regard as being “like an al-Qaeda suicide bomber” (Sivakumoor, p. 1228), “willing to blow [herself] up to satisfy the commands of [Mathew]” (Nicolette, p. 1228).

The influence of Mathew over Nicolette is explained in terms of having been effected by way of abuse as it is said that such programming “came after a lot of beatings and after time” (Nicolette, p. 1081). Disobedience of Mathew’s commands was repeatedly proceeded by physical chastisement. Expert psychological testimony suggests that Nicolette was subject to “coercive persuasion” where the “coercive part...often involved psychological, physical violence” (Sclibusch, p. 1211). In addition to having “verbally abused” (Ramouthar, 1331), “ridiculed” and “belittled” Nicolette, Mathew is said to have “punched her”, “slapped her” and “sexually punished her” for her disobedience (Sivakumoor, p. 362). Two instance of abuse by Mathew against Nicolette which are described in detail are his having strangled her to the point of unconsciousness and his having forced her to drink his urine. Subsequently, testimony of Schlebusch (p. 1196) suggests her to have suffered from “abused woman’s

syndrome” or “battered woman’s syndrome”, which is “not really a diagnostic category as such” but rather it denotes “a description of behaviour where a person, a woman, has been subject to either physical or psychological abuse”.

Such a construction is aided primarily by evoking reference to her demonstrations of conventionalism, specifically to the religiosity aspect thereof, and in light of her construction as the Conventional Wife. Nicolette has been referenced above as a “hyper-religious” person (Schlebusch, p. 1181) who was constantly seeking “spiritual help” and “guidance” (Hardus, p. 350). Such “inordinate levels of religious, spiritual problems...involving over-religiosity, obsessive and highly dysfunctional religious beliefs” (Botha, p. 1196) are suggested to have ensured that she was “fertile ground” for effects of “manipulation” (Gyanda, p. 1202) given that “particular people who are fanatical in their religious beliefs are very susceptible in that regard” (Schlebusch, p. 1198). Therefore, “one can almost say that in the case of Nicolette part of her vulnerability was her religiosity beforehand, her need to know more about religion, that was honed in on” (Schlebusch, p. 1200). In addition to the above, such control is said to have emanated from “this guy” whom Nicolette regarded as her “husband” (Nicolette, p. 806). According to religious doctrine, and subsequently Victorian ideals, the “the head of every woman is man” (1 Corinthians 11:3) and “the husband is the head of the wife” (Ephesians 5:23) and to disobey the commands emanating from same is to disobey the word of God. Accordingly, following Mathew’s orders is deemed correct in terms of both religious dictates and patriarchal norms, which reduced Nicolette’s ability to appreciate the wrongfulness of her conduct as to disobey would be an act of indisgression accordingly. Thus, a verdict of innocent is proffered as befitting of such actions as they arose from gender sanctions.

6.2.3.2.3. The Emotional Female

Nicolette is constructed as being a highly “emotional” individual (Mathew, p. 382). Following the murder of her parents she is described as having been “in shock” (Assenderp, p. 688) and as being “shaken up” (Nicolette, p. 1119). She refers to herself repeatedly as being “confused” by the events and “unsure of [herself]” (Nicolette, p. 841) and “doubting a lot of things” (Nicolette, p. 1140). After “reality kicked in” regarding the incidents that took place with respect to the deceased (Assenderp, p. 693), Nicolette is said to have had “inner pain” (Assenderp, p. 1297) and to have “started crying” where “tears just streamed down her face” and she “showed remorse”, feeling “bad”, “terrible” and “dreadful” “for what [she]’d

done” (Assenderp, p. 693). Furthermore, during the testimony of her bother regarding the progression of the murders, Nicolette is referenced as having been “weeping” throughout and during her own testimony she requested taking a short intermission in the proceedings “to compose” herself (Parsotham, p. 430). This is reminiscent of discourse pertaining to female hysteria (MacDonald, 1986), which is characterised by a lack of control over both behaviour and emotion and is in stark contrast to the composure demonstrated by Mathew throughout the course of the trial. It must be noted that such emotionality is attributed to Nicolette as being applicable post-commission of the violent events. In this matter, attributes of conventional femininity which include emotionality are removed from the violence itself. In this manner, acts of violence are positioned as divergent with respect to the female gender thus preserving patriarchal ideals of the feminine subject.

6.2.4. *Discrediting a Case*

Legal trial proceedings can be said to be concerned with determining the “truth” of the events relating to the crime in question. In attempting to establish same, it can be shown that an effort is made by the defence and the opposition to ascertain the “truth” with respect to the accused and her related competing constructions. Accordingly, there is an attempt on the part of the defence to construct the accused as trustworthy to establish the construction forwarded in her case as true of her character. In the antithesis, the opposition proffers a construction of the accused as untrustworthy in endeavouring to institute the construction forwarded in her case as untrue of her character and to reveal the constructions forwarded in the antithetical constructions thereof as truth.

6.2.4.1. The Case of the Opposition - The Untrustworthy Female

The case of the opposition displays a preoccupation with positioning Nicolette as a woman of intelligence. Nicolette is described as an “educated young woman” (Parsotham, p. 865) who “was a full-time student”, “studying at UKZN” and completing a “B Mus Prac [Bachelor of Music Practice] in Jazz and popular music” (Nicolette, p. 726). Accordingly, Parsotham (p. 860; p. 865) refers to Nicolette as “an educated young lady” and being such questions whether or not she “really [did] believe all this that was being told to [her]”. Similarly, Sivakumoor (p. 935) suggests that

What [he] can’t understand...is how a university-educated person can believe this [that Mathew was the son of God] because the first thing a university-

educate person would say is: “Ag, this is a load of mumbo jumbo” and be sceptical about it.

Mina (p. 1082) continues further in her comment that “you don’t seem like a very stupid girl. You seem very intelligent. I can’t believe that you could think all this could actually be true”. It is intimated then that as a women educated to the extent that Nicolette had been educated, she could not have accepted Mathew’s advances and that subsequently she is “lying” about her belief in him (Parsotham, p. 491) and that “what she has been telling the court now is a fabrication” (Sivakumoor, p. 1051). Such accusations cast suspicion regarding the trustworthiness of Nicolette and construct her as untrustworthy. Such untrustworthiness is extended accordingly to the constructions founded in her case in verification of the contradictory constructions of her as strong, influential and cold-hearted and subsequently to confirm her construction as a gender role transgression who demands a verdict of guilty.

6.2.4.2. *The Case of Nicolette - The Trustworthy Female*

In refute of the above, Nicolette does not deny her positioning as a woman of intelligence and education. She confirms such a position in the following statement that at the time of meeting Mathew, “I was a full-time student. I was studying at UKZN. I was doing a B Mus Prac in jazz and popular music” (Nicolette, p. 726). Nicolette, however, does resist her construction as untrustworthy in suggesting that despite her level of education and her inherent intelligence, she was naive with respect to her acceptance of Mathew. She suggests that she “wasn’t educated in spiritual matters” or “trained as a pastor” and when she started encountering “spiritual experiences”, she “didn’t have the knowledge to cope with them or to deal with them or to understand them” (Nicolette, p. 936). She suggests further that with respect to Mathew she was “just being fooled” (Nicolette, p. 872) and she herself questions, “How could I have believed it but I did?” (Nicolette, p. 1098). In this respect she considers herself as having been “gullible” (Nicolette, p. 1124), “naive” and “ignorant” (Nicolette, p. 1125) and wishes that she had “asked a lot more questions” (Nicolette, p. 954) and “exercised [her] mind” (Nicolette p. 1138). To this end Nicolette repeatedly professes to be “telling...the truth” (Nicolette, p. 900), which positions the constructions formulated in her defence, the constructions of her as weak, influenced and emotional, and subsequently her construction as a gender role conformist, as valid and deserving of a verdict of innocent.

6.2.5. *The Juxtaposition of Discursive Constructions*

Constructions of Nicolette as strong, influential, cold-hearted and untrustworthy are juxtaposed with constructions of her as weak, influenced, emotional and trustworthy. Such juxtaposition of the discursive constructions of Nicolette is shown above to produce an effect secondary to the establishment or rebuttal of the guilt thereof. Characteristics such as strength, influence and cold-heartedness are at odds with conventional discourses of femininity whereas characteristics such as weakness, ease of influence and depth of emotion are attributes which accord with such discourses. Therefore, in aligning constructions of Nicolette as strong, influential and cold-hearted with a verdict of guilty and aligning construction of her as weak, influenced and emotional with a verdict of innocent, such discursive practices promote a supplementary and indirect agenda – the confirmation of patriarchal ideals. That is, displays of strength, influence and cold-heartedness are condemned within legal discursive practices whereas displays of weakness, ease of influence and depth of emotion are reinforced therein and, subsequently, discourses of femininity which favour female passivity and subservience are affirmed to promote male dominance and female debility. Ultimately, the aforementioned discursive practices and their respective constructions of a female accused discourage gender role transgression in their denigration of gender transgression and their approbation of gender conformism.

6.2.6. *Proclamation of Judgement and Sentencing – The Guilty Female*

The judgement of Nicolette represented a judgement against her; that at the time of the offence she possessed the necessary criminal responsibility to be found guilty of murder as a result of her having appreciated the nature and consequences of her actions and having acted in accordance therewith. However, the judgement allowed for the success of arguments in mitigation of sentencing and as such, Nicolette was founded to have acted with diminished capacity in this regard as a result of her being under the influence of her male counterpart, Mathew which resulted in a reduction of the sentence imposed on her.

It is common cause that the judgement of a case embodies a settlement of events. Subsequently, the judgement can be understood as proclaiming the truth of the accused, the truth of Nicolette and the subject of the female killer. In passing a verdict of guilty, the judge accords with the constructions of Nicolette as strong, influential and cold-hearted and consequentially as a gender role transgressor warranting punishment for her actions. Such conduct is subsequently demonised in discourse. As ‘truth’ derives knowledge, knowledge of

the female killer is exemplified by transgression of sanctioned norms, which warrants denigration. Such transgression amounts to displays of strength, influence and self-interest which threaten to displace male dominance and female submissiveness and is denounced accordingly. However, as certain constructions of Nicolette remain permissible, that is she was influenced by Mathew but not to the extent of her being subject to his complete control. An argument in mitigation and its associated constructions therefore succeeds and Nicolette is construed as having acted with diminished capacity and is therefore permitted a reduction of the life imprisonment sentence required by law for murder. That is, credit is given for Nicolette's demonstration of gender conformism and is celebrated in discourse. Accordingly, attributes of female conventionalism such as weakness, influence and emotionality are reinforced in sentencing and, therefore, in knowledge of the female killer in the interest of the preservation of patriarchal ideology. Discourses arising during the practices of building and discrediting cases enable the permissibility of argument in mitigation. That is, but for the prior established constructions of the accused which are produced by way of the aforementioned discursive practices, arguments in mitigation of sentencing which both rely on and advance constructions arising prior thereto could not unfold in affirmation thereof.

CHAPTER 5

DISCUSSION

This report highlights the necessity to distinguish between discursive practice and discursive construction, where the latter is shown to be a product of the former. That is, discursive practices are understood as ‘techniques’ employed by legal practitioners in the interest of fashioning discursive constructions or formulations of the accused. Discursive practices identified within the trial of Nicolette are Co-Authorship of Construction, Demonstration of Feminine Conventionalism, Building a Case, Discrediting a Case, the Juxtaposition of Construction and the Proclamation of Judgement and Sentencing. Such discursive practices are utilised to derive constructions of Nicolette as the Conventional Female, the Conventional Wife, the Conventional Daughter, the Conventional Sister, the Strong Female, the Influential Female, the Cold-Hearted Female, the Untrustworthy Female, the Weak Female, the Influenced Female, the Emotional Female, the Trustworthy Female and the Guilty Female.

Following from the above, discourses pertaining to Nicolette referenced in Stead and Howard-Payne (2012) are as follows: Paragon of Virtue Discourse, Womanly Wife/Doting Daughter/Diminutive Sister Discourse, Ridiculousness Discourse, Weakly Woman/Strengthened Saviour Discourse, Discourses of Reattribution, The Evil Temptress Discourse, Warrior Princess Discourse and Appearance Versus Reality Discourse. In contrast with the current research, no distinction was made in Stead and Howard-Payne (2012) between discursive practice and discursive construction with respect to the subject. As such, the results of Stead and Howard-Payne (2012) must be reframed in light of this more recent theoretical division. Accordingly, it could be said that the ‘Ridiculousness Discourse’, the ‘Warrior Princess Discourse’, the ‘Appearance versus Realty Discourse’ and ‘Discourses of Reattribution’ can be reformulated as discursive practices. That is, media practitioners are understood then as adopting the discursive practices of Ridicule, Hyperbole, Appearance versus Reality and Reattribution to forward construction of Nicolette, and subsequently the female killer, as the Paragon of Virtue, the Womanly Wife/Doting Daughter/Diminutive Sister, the Weakly Woman/Strengthened Saviour and the Evil Temptress.

Discursive constructions of the subject within the legal environment are shown to reverberate within the media environment. Such a finding is anticipated given that discursive constructions generated within a media environment must draw their authority from and subsequently reproduce discursive construction derived within the legal environment where the subject is a criminally accused person. The primary construction of Nicolette produced within the legal institution is her construction as the Conventional Female, which is supported by her auxiliary construction as the Conventional Wife, the Conventional Sister and the Conventional Daughter. It is evidenced above that the initial discursive practice of legal practitioners hinges on the demonstration of Nicolette's gendered nature and such a practice is effected by way of establishing the aforementioned constructions. Such constructions are adopted within the media setting to position Nicolette as the Paragon of Virtue, the Womanly Wife, the Doting Daughter and the Diminutive sister. As such, discursive constructions of Nicolette within the media environment can be said to contain an element of magnification with respect to the original legally fashioned construction thereof. Accordingly, media practitioners can be said to adopt the discursive practice of Hyperbole in their construction of Nicolette.

The trial of Nicolette is founded upon necessary contradiction. Nicolette is constructed antithetically by the defence as the Weak Female, the Influenced Female and the Emotional Female and by the opposition as the Strong Female, the Influential Female and the Cold-Hearted Female in furtherance of her innocence and guilt respectively. Such contradictory discourses are embodied in the construction of Nicolette as the Weakly Woman and the Strengthened Saviour within media reports thereof. However, where constructions of Nicolette as weak, easily influenced and emotional and as strong, influential and cold-hearted are proffered in the legal environment through the practices of building a case for innocence and guilt, such constructions are hyperbolised within the media setting in the interests of polarisation of construction. Nicolette's innocence is instead forwarded in media accounts through the practice of reattribution and ridicule and her guilt forwarded in her construction as the Evil Temptress which takes its instruction from Nicolette's construction as the Guilty Female in the practice of proclaiming judgement and sentencing within the legal environment.

Constructions of Nicolette as Trustworthy and Untrustworthy are submitted by legal practitioners in the practice of discrediting cases. That is, the construction of Nicolette by the

defence as Trustworthy is forwarded to negate her construction as strong, influential and cold-hearted and in denial of her subsequent guilt where constructions of Nicolette by the opposition as Untrustworthy are forwarded to reaffirm such constructions. The practice of discrediting the subject within the legal environment is similarly adopted within the legal environment through the discursive practice of appearance versus reality with respect to Nicolette. That is, discursive practice aims to establish a level of falsity with respect to her character and select portrayals thereof.

Referenced above is the notion of ‘necessary contradiction’ with respect to the constructions of Nicolette submitted within the legal context. Such an idea is aligned with that of the juxtaposition of discursive construction. Where media discourse is shown within Stead and Howard-Payne (2012) to endeavour towards unification, legal discourse is shown to strive for divergence. Stead and Howard-Payne (2012 p. 40) suggest the following:

Female perpetrated killing is arguably a display of feminine strength and subsequently a contradiction of female gender roles which incapacitates patriarchal notions of femininity and contradicts embedded and defamatory discourses thereof. In reaction, media discourses of female perpetrated killing operate in four distinct and complimentary fashions. Firstly, such discourses serve to reinforce the status quo in regard to femininity to pardon her discretions thus holding her to a diminutive standard. Secondly, the reattribution of guilt is an habitual endeavour and this recurrent reattribution in discourses of female perpetrated killing effectively deprives women of agency in preventing them from owning their crimes. Where discourse fails or is incapable in this regard, such discourses evoke their final alternative solutions and display either tendency to demonise such actions and punish transgression or effectively to dismiss and subsequently ignore both them and the individual. In accordance with research by Naaman (2007, p. 951) media discourses of female perpetrated killing in a South African context entail an overarching agenda and effect of subverting the “overt confrontation of gender politics”, relegating the feminine to the comfortable realm of the powerless and the inferior as prescribed by masculine ideals.”

Accordingly, the discourses generated within Stead and Howard-Payne (2012) (at the level of

both practice and construction) were multiple, however, they all possessed a singular objective: the subversion of the transgression gender politics and the insurrection of the manifest violation of gender roles. As such, the ostensibly contradictory discourses present in print media accounts of female perpetrated killing constitute supplementary constructions of the female killer and are positioned not as opposing representations but rather as ancillary ones. In contrast, within the trial of Nicolette constructions of her as strong, influential, cold-hearted and untrustworthy are positioned in direct opposition to constructions of her as weak, influenced, emotional and trustworthy. Such a juxtaposition of the discursive constructions of Nicolette is shown above to produce the primary effect of establishing the guilt or innocence of the accused accordingly. In constructing Nicolette as strong, influential and cold-hearted it is implied that Nicolette was able to appreciate the nature and consequences of her actions and to have acted on that appreciation whereas constructing her in the antithesis implies the direct opposite.

However, secondary to this objective is the indirect objective of the adjudication of gender transgression. Characteristics such as strength, influence and cold-heartedness compete with conventional discourses of femininity and threaten to disrupt male dominance whereas characteristics such as weakness, ease of influence and depth of emotion are attributes which are aligned with such discourses and promote patriarchal stability. Therefore, in aligning constructions of Nicolette as strong, influential and cold-hearted with a verdict of guilty and aligning the constructions of her as weak, influenced and emotional with a verdict of innocent such discursive practices indirectly reinforce patriarchal ideologies. That is, displays of strength, influence and cold-heartedness are condemned within legal discursive practices. In contrast, displays of weakness, ease of influence and depth of emotion are reinforced therein. Subsequently, discourses of femininity, which favour female passivity and subservience, are affirmed to promote male authority and female submission. Gender role transgression is, therefore, discouraged in the legal practice's denigration thereof to reaffirm gender role conformity which promotes the masculine position as superior and such discursive practice accordingly regulates the female body in accordance with patriarchal ideals.

As noted above, Ferguson (2008, p. 716) considers a discourse network as "layered sites of struggle, where hegemonic understandings are produced, contested and reproduced" and as being comprised of "linkages of power, technologies, signifying marks and bodies" and

reveals how “discourse generating networks” “converge” to construct and represent a unified understanding of a subject. Ferguson (2008, p. 716) further delineates the legal and police apparatus, press networks and medical and psychiatric technologies as instrumental in this regard. This research, read in conjunction with Stead and Howard Payne (2012) both supports and promotes Ferguson’s (2008) understanding thereof. The legal institution is demonstrated above as site where discourse might be generated regarding an accused. Where the accused is female, the legal institution becomes a site where hegemonic understandings of femininity are contested. Female criminality generally, and female perpetrated killing specifically, is argued as being a display of female strength, influence and cold-heartedness and subsequently a contradiction of gendered roles with regard to femininity, which threatens patriarchal notions and challenges embedded debilitating discourses thereof. In response, hegemonic understandings of femininity are reproduced in the discursive construction of the subject to adjudicate on their guilt. In aligning feminine conformism with innocence and feminine transgression with guilt, the former is celebrated where the latter is denigrated.

Discursive practices within the legal context operate in an interdependent manner. That is, the demonstration of the gender of the accused, here the femininity of the accused, enable legal practitioners to build a case that hinges on the supportive or contradictory demonstrations of that femininity, to discredit contradictory cases and to proclaim judgement with respect to same. Similarly, constructions of the accused are mutually dependent as constructions of her as the Conventional Female, the Conventional Wife, the Conventional Sister and the Conventional Daughter enable and support constructions of her as Weak or Strong, Influenced or Influential and Emotional or Cold-Hearted. Subsequently, discursive practice is shown to enable discursive construction. Furthermore, feminine discourse is constructed in relation to Nicolette’s fulfilment or transgression of social roles to the advancement of the male agenda. To this end, the legal institution derives a discourse network with respect to the female killer with linkages established between each discursive practice with each other discursive practice, between each discursive construction with each other discursive construction and between each discursive practice with each discursive construction. Furthermore, this discourse network comes to inscribe operations of power with respect to the female body, regulating it in accordance with patriarchal ideals in applauding female submission and chastising female resistance and to inscribe truths regarding the female killer.

Similarly, the media institution is demonstrated as a site for the generation of discourse regarding a subject. Where the subject is a female killer, hegemonic understandings are again contested. However, discursive practices are shown to operate in conjunction to derive constructions of the female subject, which support hegemonic understandings thereof. Discursive practice and discursive construction have been shown to operate through a process of co-dependency to subvert the overt confrontation of gender politics in an effort to re-establish patriarchal norms regarding the female body. Accordingly, the media institution formulates a discourse network with regard to the female killer in a manner similar to the legal institution. That is, discursive practices are utilised in the interest of fashioning discursive constructions which are inter-related and complementary and which when read together position the subject in a manner which accords with societal norms regarding femininity. In this manner, the act of gender role transgression is undercut in the pursuit of patriarchal ideology to conscribe the feminine to the realm of the inferior.

In addition to the above, it is argued that a discourse network is established between that derived in the legal institution and that derived in the media institution with convergence at the level of construction and divergence at the level of practice. That is, the legal and the media institution employ disparate discursive practices to produce related discursive constructions of the female killer, where constructions within the media environment take their cue from constructions produced within the legal environment. In this manner, the legal and the media institutions are understood, in accordance with Ferguson (2008, p. 716) as being “layered sites of struggle”. Furthermore, both the media and legal institutions have as their direct and indirect aims respectively, the regulation of the female gender in support of male dominance. Ultimately, the legal discursive network and the media discursive network align to establish an overarching discursive network of female perpetrated killing which promotes gender role conformism and reproduces female inferiority.

The establishment of the discourse network and its ensuing ideological effects is significant in terms of its wider social implications. Discursive practice within the legal context, which confirms patriarchal notions of femininity, challenges the belief in the “transformative potential of the law” (Albertyn, 2005, p. 21). It echoes Albertyn’s (2005, p. 21) concern that “resort to the law is often disappointing” and confirms the proposition that “The law is more likely to reproduce existing social and economic relations than to change them” to suggest that the law’s transformative

power is limited by “inadequate enforcement”. To this end, within the legal context, women become imbedded within “*an existing set of social and economic relations – where the fundamental power remains unchanged*” rather than being moved beyond them which reinforces rather than destabilises the oppressive manner in which “we think about women...their roles and relationships” (Albertyn, 2005, p. 221).

That the legal trial remains untransformed is especially concerning in light of its authority in the proclamation of truth regarding the subject owing to its history as method for the extraction and as a representation of “the sovereign power arrogating to itself the right to establish [such] truth” (Foucault, 1995, p. 225). Pronouncements made against the female killer represent a “problematization of the criminal behind [her] crime”, which arguably extends to the level of gender deviance (Foucault, 1995, p. 227) and discipline and reprimand thereof by the legal system produces a powerful effect of discouraging such gender transgression within society to the benefit of the male form. The subsequent adoption of such adjudications within the media context acts as a proliferation of such discourse, which advances these ideological effects of same from the nucleus that is the legal system and entrenching the above within a wider nexus of discursive relationships leading to the fortification thereof and foreclosing the operation of resistance.

CHAPTER 6

IMPLICATIONS, RECOMMENDATIONS, LIMITATIONS AND CONCLUSIONS

6.1. THEORETICAL AND PRACTICAL IMPLICATIONS

This study utilised trial data in collaboration with print media to demonstrate the operation of pervasive discourses concerning femininity and the proliferation of patriarchal power to suggest that transformation toward gender equality cannot occur “without an honest look at our society, our language and our everyday practice” (Gqola, 2007, p. 119). The findings contained herein suggest that despite the advent of Constitutional democracy, personal and social identity continues to be constructed along gendered lines and exposes structures of gender inequality and unequal power relations between the masculine and feminine. The presentation of such discourse within modern legalism suggests, in accordance with Alberyn (2005), that the law is more inclined towards the reinforcement of the status quo than the disruption thereof. It calls for a movement away from juristic reliance on legal formalism towards a critical analysis of practice, which hinges on a legal system that is self-critical in its adoption of an appreciation of the role of its practitioners in the pronouncement of knowledge and truth. This requires a reformulation of legal language towards emancipation as opposed to subjugation to move past gendered assumptions in the construction of an accused’s guilt. The legal institution is unquestionably a site for social reformation, however, such action is impermissible in a context where the discourses used in the interests of reformation remain in themselves unreformed.

In terms of Section 8 (1) of the Constitution of the Republic of South Africa (2008, p.6) “The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state”. Furthermore, Section 8 (3) (a) (the Constitution of the Republic of South Africa, 2008, p. 6) mandates that in application of the provisions of the Bill of Rights, “a court – in order to give effect to a right in the Bill of Rights, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right”. Cases involving a female accused, here a female accused of murder, are demonstrated above as calling into issue the equality provision enshrined within Section 9 of the Bill of Rights (the Constitution of the Republic of South Africa, 2008). Section 9 (1) holds that “everyone

is equal before the law” (the Constitution of the Republic of South Africa, 2008, p. 7), however, this report has demonstrated that men and women are held to different standards and expectations within the legal context as a result of patriarchally sanctioned gender norms. Thus, in cases such as the Lotter Case, indirect application of the Bill of Rights is necessitated. Such indirect application operates not to supersede ordinary law, but rather in furtherance of Constitutional imperatives arbitrated through the procedures of common law (Clark, 2013). The courts of higher authority have an inherent power and obligation to develop the common law in the interests or reflecting change in the social, moral and economic composition of society (Clark, 2013). Despite this obligation traditionally pertaining to the refashioning of common law rules (Clark, 2013), it is arguable that a similar duty exists to modify common law practice. That is, the courts could be said to have a duty to transform the running of the trial in the interests of promoting the spirit and purpose of Section 9 of the Bill of Rights (Clark, 2013). Despite the South African legal system being accusatorial in nature, which prescribes a passive role with respect to the presiding officer, an inquisitorial role may be adopted by same in certain circumstances (Engelbrecht, Myburgh & Avgenikos, 2014). To this end, it is submitted that judges should *mera motu* intercede during the running of trial in order to ensure that evidence led centres on the circumstances of the *person* before the court as opposed to the *female* before the court. This is not to negate application of substantive justice and consideration of the lived reality of the accused (Albertyn, 2006) but necessitates consideration of general equality as considered in Section 9 above. Thus, one should similarly consider the lived reality of the *person* as opposed to the lived reality of the *female*. This development of the common law should be incremental and performed on a case by case basis (Clark, 2013). Furthermore, during post-trial and sentencing, whilst discretion within the sentencing phases is warranted, such discretion should be exercised reasonably and judicially (S V Pieters, 1987) to consider the *personal* circumstances of the accused as opposed to the *gendered* circumstances thereof. Such common law developments might further implicate development of legislation, specifically the Criminal Law Act and the Criminal Procedures Act as being pertinent in this regard.

In addition to the above, this report has advanced the somewhat limited and under-explored notion of discursive interconnectivity in its examination of a discourse network. In line with Ferguson (2008, p. 716), this study defined a discourse network as “layered sites of struggle, where hegemonic understandings are produced, contested and reproduced” and as being comprised of “linkages of power, technologies, signifying marks and bodies”. Ferguson

(2008, p. 716) demonstrated how “discourse generating networks” “converge” to construct and represent a unified understanding of a category or subject and delineated the legal and police apparatus, press networks and medical and psychiatric technologies as instrumental in this regard. In advancing the above, this study has demonstrated the importance of context in the derivation of discursive construction in that it delineates the boundaries of permissibility with regard to discursive practice and discursive results. That is, this report has demonstrated the ability of context to impose limitation on discourse. It has highlighted further that discursive practice derived within a particular context produces specific discursive constructions with regard to the subject and that such constructions are interconnected with discursive constructions derived through different discursive practices permitted in different contexts to form linkages of power with respect to same. Where the subject is female, and specifically a female killer, such discourses are shown as operating to regulate femininity in accordance with patriarchal ideals. However, given the case study nature of the research, firm theoretical conclusion cannot be drawn in this regard. This implies further research on the subject is warranted in the interests of theoretical refinement.

Furthermore, the novelty of this study cannot be ignored in terms of its reliance on legal and media archival data to perform a theoretical analysis within critical psychology. The research highlights how future researchers might profit from depending on such methods of data collection in cases where access to human participants is sorely restricted. Additionally, and most appreciably, the multi-disciplinary approach adopted within this report has significant implications in terms of the wider practical relevance of psychology as a discipline. It moves psychology’s application beyond fields typically associated therewith (for example, human, medical and social sciences) to make psychology and its theory pertinent to other, typically unrelated, disciplines such as media and law.

6.2. LIMITATIONS

The case study nature of the research is understood both as a strength and a weakness of this study. Such a study design allows for in depth analysis of the subject matter and for a thorough representation thereof, affording “researchers opportunities to explore or describe a phenomenon in context using a variety of data sources” and “supports the deconstruction and the subsequent reconstruction of various phenomena” (Baxter & Jack, 2008, p. 544). In contrast, Flyvbjerg (2006) outlines five criticisms frequently levelled against case study

research identified as: 1) the importance of theoretical knowledge as opposed to practical knowledge, 2) the inability of case studies to contribute to knowledge as a result of limited generalisability, 3) the role of case studies in generating as opposed to testing hypotheses, 4) the inability to summarise case study evidence and 5) the case study bias in favour of verification. Flyvbjerg (2006, p. 2) notes that case studies have been criticised further for their general inability to “provide reliable information about the broader class”. Such critiques rest on the assumption that “context-independent” knowledge is of greater value than “context-dependent knowledge” which overvalues generalisation for scientific development and undervalues “the force of example” (Flyvbjerg, 2006, p. 7; p.12). In the antithesis thereof, this report demonstrates the ability of context-dependent knowledge to inform and advance context-independent knowledge to celebrate the significance of example in scientific and theoretical development. However, generalisability of the case study as a means of hypothesis testing and theory development must ultimately rest on the “strategic” selection of the “representative”, “typical” or “average” case (Flyvbjerg, 2006, p. 13). In light of the specificity of the case under examination within the context of the current report, the generalisability/transferability of findings might be somewhat restricted. The religious, racial and contextual details of the case prevent it from being exemplary and demonstrative of normative criminal matters. The selection of this case, however, was in itself strategic as “the typical or average case is often not the richest in information” (Flyvbjerg, 2006, p. 13). Thus this research represents a trade-off between transferability and richness in favour of the latter.

The fifth of Flyvbjerg’s (2006) five criticisms of case study research, that of bias in favour of verification, that is, bias in favour of the researcher’s suppositions, is a criticism frequently levelled against qualitative research in general owing to its inextricable link to the perceptions, suppositions and preconceptions of the researcher. As Mishra (2007, p. 266) notes, “the researcher always speaks from a particular gender, class, racial, cultural and ethnic community perspective”. Given that this research was executed by a woman researching constructions of femininity in the media, the research may be especially susceptible to researcher bias. In order to limit this influence and to reduce possible researcher bias, a reflexive journal was kept throughout the research process detailing what was heard and seen regarding the case under investigation as well as personal experiences and feelings associated therewith (See Appendix D). Furthermore, the technique of free association was also employed during the process of analysis to contribute to the further reduction of researcher bias and an audit trail documenting the details of and decisions

regarding the research was kept to assist in this regard. Additional techniques such as persistent observation, negative case analysis and a third party/peer reference were employed to enhance the rigour and credibility of the research. In addition to possible researcher bias concerning notions of femininity, the researcher's personal alliance to the Anglican religion might also have influenced her perception of the results. It is assumed that the aforementioned procedures assisted with the reduction of the extent of this influence as far as possible.

Finally, given the dynamism and malleability implicit in the construct gender, this research calls for its reconstruction. This study served as a means of demonstrating the manner in which femininity is produced within the legal and media context and sought to suggest a need to alter the way in which transgressors thereof are portrayed. However, Kramer (2010) notes that the theoretical framework within which such an agenda is framed is couched in the language of oppression and therefore an attempt at the contestation of patriarchy is problematic owing to the its inherent own hegemonic biases. Furthermore, Kramer (2010) notes the potential for circularity in this endeavour given that an aspiration to terminate gender difference reinforces the embedded nature of that difference. That is, it might be argued that an analysis into the manner in which female constructions of an accused within the legal environment are established to further the male agenda in the interest of the termination thereof might inadvertently serve as legitimising same.

6.3. RECOMMENDATIONS FOR FUTURE STUDIES

A number of the aforesaid limitations derive important implications for future research, most notably with respect to the study sample. It is noted that the research was conducted in the South African context with a considerably unique socio-political milieu. Democracy is a comparatively recent framework in the South African context, having been in effect for little more than twenty years, is the notion of equality. Therefore, the results of this study might be limited in terms of their transferability to climates in which a more established democratic system is said to operate. In the interests of assessing transferability, a comparative discourse analysis examining a similar case within the context of a more established democracy, such as the United States, might be warranted. In addition, an analysis broadening its sample to include several cases as well as a comparative analysis with a male accused might extend the research's transferability implications and further establish credibility of the findings.

Additionally, research into the self-knowledge and self-construction of female killers might be justified in the interests of establishing the extent to which discourse arising in the media and legal context has influenced self-perception and self –determination and vice versa and the contribution of self-construction to the discursive network. This might additionally contribute a further layer to the dual-layered discursive network established herein.

This study demonstrates the manner in which discourse derived in the media and legal context structures femininity and points to the maintenance of unequal relations of power in society and the influence of patriarchal ideology. However, whilst highlighting the possibility for the generation of novel and transformative gender discourse, this research itself does not seek to produce such discourse. Indeed it could be argued that this research acts instead as a vehicle towards the entrenchment of oppressive and patriarchal constructions. Future research might examine self-produced discourse of gender transgressors such as female killers in the interests of constructing novel and politically subversive discourse.

Finally, a cautionary note is provided for future researchers interested in pursuing this line of enquiry through the associated data collection methods. Several difficulties were encountered in obtaining access to the trial transcripts. Trial transcripts are required to be obtained from the recording studio commissioned by the court to record the trial. As such, the researcher is required to follow several lines of enquiry before arriving at the location of the data. The data is furthermore extremely costly to obtain, especially if the data has not been previously transcribed for a prior matter, as the researcher must compensate for the transcription time in addition to printing costs. If the recording studio is located in another province, additional postage and insurance costs are incurred by the researcher. In addition to financial costs levelled against the researcher, time pressures are also stacked against her. Recording studios do not appreciate the urgency of the research agenda and are reluctant to pursue and comply with the time constraints associated therewith. This can result in heavy delay to the research's progress. Therefore, pursuing such an avenue of data collection is discouraged herein if the research is to be conducted for degree purposes.

6.4. CONCLUSIONS

The current study necessitated a distinction between discursive practice and discursive construction, where the former is demonstrated as enabling the latter. That is, discursive

practices are identified as ‘techniques’ employed in the interest of fashioning discursive constructions. In this manner the current research both builds on and extends the work of Stead and Howard-Payne (2012). Discursive practices identified within the trial of Nicolette are Co-Authorship of Construction, Demonstration of Feminine Conventionalism, Building a Case, Discrediting a Case, the Juxtaposition of Construction and the Proclamation of Judgement and Sentencing. Such discursive practices are understood as being utilised to derive constructions of Nicolette as the Conventional Female, the Conventional Wife, the Conventional Daughter, the Conventional Sister, the Strong Female, the Influential Female, the Cold-Hearted Female, the Untrustworthy Female, the Weak Female, the Influenced Female, the Emotional Female, the Trustworthy Female and the Guilty Female. Accordingly, the results of Stead and Howard-Payne (2012) are reframed to accord with this noted theoretical division. Subsequently, the discursive practices arising within Stead and Howard-Payne (2012) are noted as Ridicule, Hyperbole, Appearance versus Reality and Reattribution and such practices are shown to forward construction of Nicolette, and subsequently the female killer, as the Paragon of Virtue, the Womanly Wife/Doting Daughter/Diminutive, Sister the Weakly Woman/Strengthened Saviour and the Evil Temptress.

Within both the media and the legal context, the resultant discursive practices and constructions operate in the interest of demonising displays of female strength, influence and cold-heartedness. Such demonstrations are at odds with conventional discourses of femininity and jeopardise male dominance. In the antithesis, discourses arising in these contexts celebrate characteristics such as weakness, ease of influence and depth of emotion which are attributes understood according with societal expectations regarding femininity and promote patriarchal permanence. Therefore, discourses of femininity which favour female passivity and subservience are affirmed within both the media and legal environments to promote male authority and female passivity and to discourage gender transgression and promote gender conformity. Thus, such discourse has the overarching effect of regulating the female body in accordance with the patriarchal project to promote the perseverance of this ideological regime.

Ferguson (2008, p. 716) has referenced the concept of a discourse network to expose “layered sites of struggle, where hegemonic understandings are produced, contested and reproduced”. This research, read in conjunction with Stead and Howard Payne (2012) both supports and

promotes this preliminary exposé. As demonstrated above, the legal context becomes a platform for the contestation and (re)production of hegemonic understanding of femininity. Within this context, discursive practices are shown as operating in an interdependent manner to proffer constructions of the female accused which facilitate the male agenda. To this end, the legal context derives a discourse network with respect to the female killer with linkages established between each discursive practice with each other discursive practice, between each discursive construction with each other discursive construction and between each discursive practice with each discursive construction. The effect of this discourse network is the promotion of the ideological positions inscribed within each contributing discourse and ultimately the regulation of the female body to promote female submission and chastise female resistance.

Similarly, the media institution is demonstrated as a site for the contestation proliferation of constructions of the subject. Discursive practices within the media context are shown to operate in conjunction to derive constructions of the female subject, which uphold societal expectation as they pertain to femininity in relation to the female killer. Discursive practice and discursive construction have been shown to operate by way of co-dependency to subvert the overt confrontation of gender politics in an effort to re-establish patriarchal norms regarding the female body. Accordingly, the media context formulates a discourse network with regard to the female killer in a manner similar to the legal institution.

Furthermore, it is argued that a discourse network is established between that discursive network derived in the legal context and that discourse network derived in the media context with convergence at the level of construction and divergence at the level of practice. That is, the legal and the media institutions evoke divergent discursive practices to produce an associated discursive construction of the female killer, where constructions generated within the legal environment are appropriated within the media environment. In this manner, the legal and the media institutions and contexts are understood, in accordance with Ferguson (2008, p. 716) as being “layered sites of struggle”. Ultimately the legal and media discursive networks operate to form an overarching discursive network of female perpetrated killing

which acts in fortification of patriarchal ideology, solidifying the dominance of the masculine position and the subjugation of the female position in contemporary society.

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APPENDIX A: HONOUR'S ETHICS CLEARANCE CERTIFICATE

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

HUMAN RESEARCH ETHICS COMMITTEE (SCHOOL OF HUMAN & COMMUNITY DEVELOPMENT)

CLEARANCE CERTIFICATE

PROTOCOL NUMBER: HONS/12/027 III

PROJECT TITLE:

A discourse analysis of the Lotter case: an explication of a gendered society in relation to female killers.

INVESTIGATORS

Stead Morgan

DEPARTMENT

Psychology

DATE CONSIDERED

25.05.12

DECISION OF COMMITTEE*

Approved

This ethical clearance is valid for 2 years and may be renewed upon application

DATE: 26 June 2012

CHAIRPERSON 
(Professor K. Cockcroft)

cc Supervisor:

Ms. L. Howard-Payne
Psychology

DECLARATION OF INVESTIGATOR (S)

To be completed in duplicate and **one copy** returned to the Secretary, Room 100015, 10th floor, Senate House, University.

I/we fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure be contemplated from the research procedure, as approved, I/we undertake to submit a revised protocol to the Committee.

This ethical clearance will expire on 31 December 2014

PLEASE QUOTE THE PROTOCOL NUMBER IN ALL ENQUIRIES

APPENDIX B: MASTERS' ETHICS READER'S APPROVAL



Psychology
School of Human & Community Development
University of the Witwatersrand
Private Bag 3, WITS, 2050
Tel: (011) 717 4500 Fax: (011) 717 4559



May 17, 2013

Dear Lynlee

I am satisfied with the changes made to Ms. Stead's proposal and it may now be finally submitted.

Regards

Jill Bradbury

SUPERVISOR'S CHECKLIST FOR ETHICS PROPOSAL

Supervisor's Name: LYNLEE HOWARD-PAYNE

Student's Name: MORGAN JOAN STEAD

Programme: MA BY RESEARCH REPORT & COURSEWORK

Course Coordinator: KEVIN WHITEHEAD

Title of Research: THE LOTTER CASE - TOWARDS A
DISCOURSE NETWORK OF FEMALE PERPETRATED
KILLING.

	Appropriately Reflected	Not Applicable
A. Participant Information Sheet		✓
• Appropriate Greeting		
• Uses accessible language (appropriate to sample)		
• Researcher is introduced		
• Nature of research explained and motivated		
• Participants invited to participate		
• Guarantee of confidentiality		
• Guarantee of anonymity		
• Mechanisms of anonymity/confidentiality explained		
• Clear explanation of risks (even if none)		
• Clear explanation of benefits (even if none)		
• Clear explanation of what participation will involve		
• Right to withdraw explained (for interviews)		
• Explanation of how results will be disseminated		
• Explanation of where participants can access results		
• If recording: ➢ Request permission ➢ Explanation of how tapes will be kept ➢ Explanation that tapes will be destroyed		
• If research is sensitive: ➢ Arrangement for accessible counselling ➢ Statement of contact details for counselling ➢ Statement that it will be free		
• Contact details of researcher stated		

	Appropriately Reflected	Not Applicable
B. Consent Forms: Interviews		✓
• Guarantee of confidentiality		
• Explanation of risks and benefits (even if none)		
• Right to withdraw		
• Right not to answer question/s		
• Use of direct quotes		
• Signature of participant		
B. Guardian Consent Forms (14 years or younger):		✓
• Guarantee of confidentiality		
• Explanation of risks and benefits (even if none)		
• Right to withdraw		
• Right not to answer question/s		
• Use of direct quotes		
• Signature of guardian		
B. Assent Forms (14 years or younger):		✓
• Guarantee of confidentiality		
• Explanation of risks and benefits (even if none)		
• Right to withdraw		
• Right not to answer question/s		
• Use of direct quotes		
• Signature of participant		
B. Recording Consent:		✓
• Identity will be protected		
• Access to tapes restricted		
• Safe keeping of tapes		
• Tapes will be destroyed		
• Signature of participant		
Supervisor's input:	YES	NO
The sample is vulnerable		✓
The research is minimal risk/non-invasive	✓	
The researcher's personal safety is compromised		✓
The research is appropriate for student's level of expertise	✓	
The ethics proposal and research proposal match on issues of procedure, measures and ethics	✓	

Supervisor's signature: _____

[Handwritten Signature]

APPENDIX C: PARKER'S 1992 CRITERIA FOR DISTINGUISHING DISCOURSE

1. *A discourse is realised in texts*
 - a. Treating our objects of study as texts which are described, put into words and;
 - b. Exploring connotations through some sort of free association, which is best done with other people
2. *A discourse is about objects*
 - a. Asking what objects are referred to and describing them
 - b. Talking about the talk as if it were an object, a discourse
3. *A discourse contains subjects*
 - a. Specifying what types of persons are talked about in this discourse, some of which may have already been identified as objects
 - b. Speculating about what they can say in the discourse, what you could say if you identified with them (what rights to speak in that way of speaking)
4. *A discourse is a coherent system of meanings*
 - a. Mapping a picture of the world this discourse presents
 - b. Working out how a text using this discourse would deal with objections to the terminology
5. *A discourse refers to other discourses*
 - a. Setting contrasting ways of speaking, discourses, against each other and looking at the different objects they constitute
 - b. Identifying points where they overlap, where they constitute what looks like the 'same' objects in different ways
6. *A discourse reflects on its own way of speaking*
 - a. Referring to other texts to elaborate the discourse as it occurs, perhaps implicitly, and addressing different audiences
 - b. Reflecting on the terms used to describe the discourse, a matter which involves moral/political choices on the part of the analyst
7. *A discourse is historically located*
 - a. Looking at how and where the discourses emerged
 - b. Describing how they have changed, and told a story, usually about how they refer to things which were always there to be discovered

c. Auxiliary criteria:

8. *Discourses support institutions*

- a. Identifying institutions which are reinforced when this or that discourse is used
- b. Identifying institutions that are attacked or subverted when this or that discourse appears

9. *Discourses produce power relations*

- a. Looking at which categories of person gain to lose from the employment of discourses
- b. Looking at who would want to promote and who would want to dissolve the discourse

10. *Discourses have ideological effects*

- a. Showing how a discourse connects with other discourses which sanction oppression
- b. Showing how the discourses allow dominant groups to tell their narratives about the past in order to justify the present and prevent those who use subjugated discourses from making history

APPENDIX D: SELF-REFLECTIVE JOURNAL EXTRACT

27/12/2013

- * Final Stages of Reading through data transcripts & coding & about to begin analysis.
- * Family discussion re. facts of case & whether I think Nicolelle was telling the truth
 - parents consider her story unbelievable & think it's a fabrication.

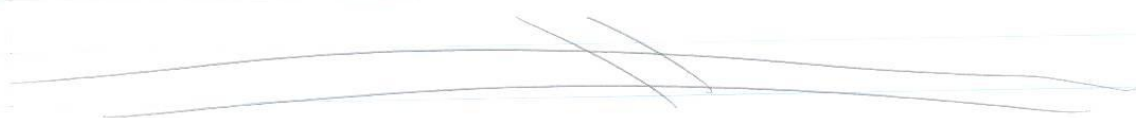


Q3 Did she REALLY BELIEVE MATHEW = GOD?!?

- * hard to believe an intelligent person could really believe all this.
- * Difficult to remain impartial & not form my own opinions of Nicolelle.

* FIND LEGAL FEMINISM ARTICLES ⇒ ALBERTYN (? DATE)!

* INCLUDE JUDGEMENT IN ANALYSIS.



28/12/2013

• Woke up early to work.

→ Need to remember to incl. page # in coding

* Tired: Deciding whether to include ENTIRE case in ANALYSIS OR ONLY PARTS/ NICOLELLE'S TESTIMONY.

- * valuable parts in Mathew & Hardus's evidence
 - ↳ Need to be included