

WOMEN'S VOICES WITHIN AND BEYOND THE COURTROOM: CREATING TEGAN WAGNER

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I INTRODUCTION

This paper analyses forms of legal testimony through the lens of life writing theory and practice. Taking as its focus the case of Tegan Wagner, it explores two dimensions of the complex relationship between life narrative and the justice process: the construction of the sexual assault victim witness in courtroom testimony and in post-judicial memoir. Wagner's many voices – as a young and naïve rape victim, defiant victim witness, media spokeswoman for rape victims and reflective memoirist – make her case particularly apposite for exploring how self-construction is mediated in juridical and extra-judicial contexts.

In June 2002, fourteen-year-old Tegan Wagner and two friends were picked up by a group of young men in south-west Sydney. They were driven to a house and supplied with alcohol. Wagner was then raped, allegedly by three men, though only two were convicted when the case went to trial between May 2005 and April 2006. The identities of the men have been suppressed because two of them were under eighteen years of age at the time of the rape; however, they were known throughout the trial and in media coverage as MSK, MAK and MMK. During the trial Wagner was extensively cross-examined by counsel for the three defendants, an ordeal that lasted three days and involved almost two thousand questions. The trial, and particularly Wagner's cross-examination, were extensively covered in the media, particularly by the *Sydney Morning Herald* journalist Paul Sheehan, who in 2006 published *Girls Like You: Four Young Girls, Six Brothers and a Cultural Timebomb*.¹ Following the case Wagner went public about her experience as a rape victim and as a witness within the justice system. She effectively became the public face of rape survival and a public champion for the rights of sexual assault victims in the criminal justice system. In 2007 she also published a memoir, *The Making of Me: Finding My Future After Assault*.²

Tegan Wagner's case achieved such public interest that it became a factor in reform of sexual assault laws in New South Wales. As Penelope Pether notes, 'some of the recent statutory reforms were indeed directly responsive to Sheehan's and Wagner's (and other victims of the Skaf and K perpetrators) telling stories about rape, and law, and visions of justice rather than to the recommendations of professional law reformers'.³ In his Second Reading Speech in support of the Criminal Procedure Amendment (Sexual and Other Offences) Bill 2006, which introduced greater protections for sexual assault victims, New South Wales MP Chris Hartcher directly referenced Wagner's case and triumphant public appearances:

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¹ Paul Sheehan, *Girls Like You: Four Young Girls, Six Brothers and a Cultural Timebomb* (Pan Macmillan, 2006).

² Tegan Wagner, *The Making of Me: Finding My Future After Assault* (Pan Macmillan, 2007).

³ Penelope Pether, 'What is Due to Others: Speaking and Signifying Subject(s) of Rape Law' (2009) 18(2) *Griffith Law Review* 237, 250.

In April 2006, the extraordinary cases involving some gang rapes in Sydney had been heavily reported in the media, and Tegan Wagner walked from the court and proudly spelt her name out loud to reporters after seeing the conviction of the brothers who had so disgracefully raped her. Sexual assault counsellors hailed her courage and the resulting publicity was a major turning point.⁴

In addition to prompting reforms in New South Wales and other jurisdictions, Wagner's case has also been analysed by Annie Cossins, who analyses the linguistic and rhetorical devices used by defence counsel in her cross-examination. Highlighting the rhetorical construction of 'scenarios that mirror commonly believed rape myths and stereotypes',⁵ Cossins argues that such questions 'are likely to confirm juror beliefs and prejudices where the complainant becomes confused, changes their testimony or retracts their complaint'⁶ and calls for further reforms to protect child sexual assault complainant witnesses from questioning that is designed to confuse.⁷

Rather than analysing legislative reform or the contest between the scrutiny of evidence and the protection of sexual assault complainant witnesses, this paper approaches Tegan Wagner's case from a different perspective, asking how theories of life writing and life narrative can be used to explore women's voices within and beyond the adversarial courtroom. Using ideas drawn from life writing theory, this paper highlights the dynamics of narrative and self-creation in the evidentiary process of the adversarial courtroom, contrasting them with the kinds of testimony and textual identity that are possible beyond the trial context.

II TEXTUAL SELF-CREATION AND TRAUMA IN LIFE WRITING AND LAW

In recent decades, life writing scholarship has recognised that the subject of autobiography is an authorial construct that is mediated through language and constituted in the text of the autobiography itself. Drawing on structuralist and post-structuralist analyses, theorists of life writing practice such as Sidonie Smith have influentially adopted the view that 'the autobiographical text becomes a narrative artifice, privileging a presence, or identity, that does not exist outside language'.⁸ This identity – or 'self' – that an autobiographer creates through language is understood 'not to be an a priori essence, a spontaneous and therefore "true" presence, but rather a cultural and linguistic "fiction" constituted through historical ideologies of selfhood and the processes of our storytelling'.⁹ It is created through a process 'of assigning meaning to a series of experiences, after they have taken place, by means of emphasis, juxtaposition, commentary, omission'.¹⁰ Shari Benstock takes a similar approach to theorising autobiography, arguing that 'autobiography reveals the impossibility of its own dream: what begins on the presumption of self-knowledge ends in the creation of a fiction

⁴ Mr Chris Hartcher MP, Second Reading Speech Criminal Procedure Amendment (Sexual and Other Offences) Bill 2006, Wednesday 25 October 2006, 3404.

⁵ Annie Cossins, 'Cross-Examination in Child Sexual Assault Trials: Evidentiary Safeguard or an Opportunity to Confuse' (2009) 33 *Melbourne University Law Review* 68, 88.

⁶ *Ibid.*, 90.

⁷ *Ibid.*, 99-101.

⁸ Sidonie Smith, *A Poetics of Women's Autobiography: Marginality and the Fictions of Self-Representation* (Indiana University Press, 1987) 5.

⁹ *Ibid.*, 45.

¹⁰ *Ibid.*, 45.

that covers over the premises of its construction'.¹¹ As Paul John Eakin succinctly states, 'the self that is the center of all autobiographical narrative is necessarily a fictive structure'.¹²

The process of selective inclusion, omission and emphasis that lies behind autobiography provides an author with power and control over their interpretation of experience, and over the self they create and publicise, constituted through the text. In her desire to impose 'narrative form on an otherwise formless and fragmented personal history',¹³ the autobiographer 'may even create several, sometimes competing stories about or versions of herself as her subjectivity is displaced by one or multiple textual representations'.¹⁴ Since the 1990s, there has been an explosion in the production, distribution and consumption of personal narratives in which authors reflect on their experience, particularly of trauma and persecution. Leigh Gilmore argues for the integral relationship between memoir and trauma: 'memoir in the '90s was dominated by the comparatively young whose private lives were emblematic of unofficial histories ... the memoir boom's defining subject has been trauma'.¹⁵ Kate Douglas and Gillian Whitlock also note this relationship, attributing the memoir boom to the culture of confession in the mass media and its production and distribution of stories of trauma, suffering and recovery, creating 'a market for personal story and a proliferation and innovation in genres of creative non-fiction that expand those with stories to tell, and those with the desire to read life-writing'.¹⁶

The power and control that life writing offers the autobiographer regarding the story they tell and the self they create possibly accounts for its popularity among victims of trauma. Leigh Gilmore attributes the relationship between memoir and trauma to the autobiographical subject's desire for healing: 'Telling the story of one's life suggests a conversion of trauma's morbid contents into speech, and thereby, the prospect of working through trauma's hold on the subject'.¹⁷ Suzette Henke argues for a similar function of life writing in relation to trauma recovery:

What cannot be uttered might at least be written – cloaked in the mask of fiction or sanctioned by the protective space of iteration that separates the author/narrator from the protagonist/character she or he creates and from the anonymous reader/auditor she or he envisages. Testimonial life-writing allows the author to share an unutterable tale of pain and suffering, of transgression and victimization ... It is through the very process of rehearsing and re-enacting a drama of mental survival that the trauma narrative effects psychological catharsis.¹⁸

The temporal and psychological distance between the trauma victim/survivor and the self they create in text makes autobiography an appealing form for victims of trauma. It enables them to interpret and reflect on traumatic experience and to construct a self that is dictated by themselves rather than by external, often traumatic events and influences.

¹¹ Shari Benstock, 'Authorizing the Autobiographical' in Shari Benstock (ed), *The Private Self: Theory and Practice of Women's Autobiographical Writings* (University of North Carolina Press, 1988) 10, 11.

¹² Paul John Eakin *Fictions in Autobiography: Studies in the Art of Self-Invention* (Princeton University Press, 1988) 3.

¹³ Suzette A. Henke *Shattered Subjects: Trauma and Testimony in Women's Life-Writing* (St. Martin's Press, 1998) xiv.

¹⁴ Smith, above n 8, 47.

¹⁵ Leigh Gilmore, 'Limit-Cases: Trauma, Self-Representation, and the Jurisdictions of Identity' (2001) 24(1) *Biography* 128, 128.

¹⁶ Kate Douglas and Gillian Whitlock, 'Trauma in the Twenty-First Century' (2008) 5(1) *Life Writing* 1, 2.

¹⁷ Leigh Gilmore, above n 15, 129.

¹⁸ Henke, above n 13, xix

Arguably, this dynamic relationship between narrative, self-creation and trauma is not only present in reflective memoirs and other autobiographies that offer ‘an interpretation of life that invests the past and the “self” with coherence and meaning that may not have been evident before the act of writing itself’.¹⁹ It is present in all personal narratives, which can, according to Sidonie Smith, be considered autobiographical: ‘autobiography can be defined as any written or verbal communication. More narrowly it can be defined as written or verbal communication that takes the speaking “I” as the subject of the narrative, rendering the “I” both subject and object’.²⁰ Such a definition of autobiography would include a range of personal narratives created in the course of the justice process, including statements provided to police, testimony given as evidence in court and victim impact statements. In each of these forms, the witness is both the author and the subject of the narrative. Such narratives are created through a paradigm of ‘truth’, key components in a process that ostensibly seeks ‘fact’. Yet, according to theories of life writing and narrative, such a goal is impossible; the textual self is always, to some extent, a fictive construct. It is created reflectively, through interpretation of events and experience, and does not come into being until it is spoken or written in text. What, then, are the challenges posed by legal testimony and autobiographical narrative in terms of truth and self-creation?

III CREATING A SELF IN THE COURTROOM

As in all forms of autobiography, the genre and the conditions through which the personal narrative is constructed in the courtroom impact the witness’s story and self-creation. Victims of crime may have some opportunities to tell their own stories to police or legal representatives, depending on the approach taken by the individuals involved. In the courtroom, however, the victim’s personal narrative and consequently their self-creation are constrained by the rules of the process. Ana Douglass and Thomas A. Vogler analyse some of these circumstances of production of courtroom testimony: In courts of law, where the referent of narrative is supposed to reign supreme, competing narrative discourses struggle in adversarial combat to produce ‘the facts’, or the story of ‘what really happened’. What is allowed to enter the discourse is based not solely on what happened but also on the rules of ‘evidence’ that determine what the jury is allowed to hear. It is not only the narrative referent that counts but the proper construction and presentation of stories.²¹

The witness’s story and therefore the self they create are limited to those parts of the narrative that law deems relevant to the guilt or innocence of the accused. In a case of sexual assault this amounts to the events of the assault itself and preceding it, with little or no interest in the aftermath of the assault for the victim until sentencing, should the defendant be convicted. In giving courtroom evidence the victim is asked to reflectively create, in testimony, a self that predates the trauma, excluding the impact of the trauma and its subsequent interpretation by the victim. Testimony is also constrained by a rigid question-and-answer model, in which the victim is only permitted to speak in response to questions by a legal representative or judge.²² In a traditional courtroom process, and in cross-examination, the victim’s self-creation is

¹⁹ Smith, above n 8, 46.

²⁰ Ibid, 19.

²¹ Ana Douglass and Thomas A. Vogler, *Witness and Memory: The Discourse of Trauma* (Routledge, 2003) 2.

²² Increasingly, sexual assault victims are able to provide their examination-in-chief through a pre-recorded statement or, in some jurisdictions, through a written rather than oral statement at the committal hearing. Further research is needed to ascertain whether such changes improve the victim’s experience with personal narratives in the justice process.

effectively controlled by legal representatives – the prosecution, defence counsel or the judge – rather than by the victim themselves. As ‘Lisa’, a sexual assault victim witness commented, ‘I wasn’t given the opportunity just to talk. I was asked questions and I responded to the questions I was asked’.²³

Arguably, all personal narratives presented as oral testimony – constructed through examination-in-chief and cross-examination – in the adversarial courtroom are subject to these conditions of production in terms of victim self-creation. However, this dynamic takes on additional complexities and effects in the context of sexual assault victim testimony for two reasons: first, sexual assault trials turn extensively on the characterisation of the victim – on the question of who the victim really is; and second, courtroom testimony for sexual assault victims is often a traumatic experience in itself, triggering retraumatisation of the assault.

A Who is Tegan Wagner?

As for many sexual assault victim witnesses, the question of Tegan Wagner’s character was at the centre of the trial of MAK, MSK and MMK. Studies have shown that factors relating to a victim’s character and credibility affect the outcome of sexual assault cases at each stage of the criminal justice process, including the decision to prosecute, conviction and sentencing. Such factors include whether the victim engaged in ‘risky behaviour’, the victim’s sexual experience, whether she was in a monogamous relationship and whether she had previously had consensual sex with the accused, whether she used drugs or alcohol prior to the sexual assault and inconsistencies in her story.²⁴ In the context of a sexual assault trial, both prosecution and defence will draw on these and other factors to create an image of the victim’s character: her identity, and a sense of who she really is. This version of the victim’s self is adduced by the prosecution and disputed by the defence, becoming a site of contest at the centre of the adversarial trial. Melanie Heenan notes that in most rape trials ‘the defence is likely to devote considerable attention to attacking the victim’s character and credibility’.²⁵ Cross-examination is the central tool by which this is achieved, as defence counsel challenges the victim’s self-creation, emphasising instead an alternative view of her identity consistent with the innocence of the accused.

Studies of defence counsel cross-examination of sexual assault victim witnesses have exposed some strategies used to render suspicious the character and credibility of the victim. Patricia Easteal, for example, argues that ‘rhetorico-grammatical processes can be especially effective in muting the complainant’s voice: these include ridiculing her testimony; attacking her character, asking questions in a way that only permits a ‘yes’ or ‘no’ response and may address events out of time sequence; interrupting often and asking the same questions repeatedly’.²⁶ Mary Heath also notes that defence counsel project the testimony of the victim witness into commonly-held myths about sexual assault: ‘defence lawyers undermine the credibility of complainant witnesses by implying that statistically common contexts for or

²³ ‘Lisa’, quoted in Patricia Easteal and Louise McOrmond-Plummer, *Real Rape Real Pain: Help for Women Sexually Assaulted by Male Partners* (Hybrid Publishers, 2006) 201.

²⁴ Brigitte Bouhours and Kathleen Daly, ‘Rape and Attrition in the Legal Process. A Comparative Analysis of Five Countries’ (2010) *Crime and Justice* 565, 613.

²⁵ Melanie Heenan, ‘Just “Keeping the Peace”: A Reluctance to Respond to Male Sexual Partner Violence’ (2004) 1 *Issues* (Australian Centre for the Study of Sexual Assault) 7.

²⁶ Patricia Easteal, *Less Than Equal: Women and the Australian Legal System* (Butterworths, 2001) 135-36.

responses to rape are unusual or inappropriate. Common characteristics of rape, such as delay in reporting or the absence of physical resistance or physical injury, alcohol use or a partner assailant may be portrayed as suspicious'.²⁷

These tactics of defence counsel cross-examination are clearly evident in Tegan Wagner's experience of testifying in the New South Wales Supreme Court. The bulk of Wagner's examination-in-chief was provided through the video-recorded interview she gave to police the day after she was raped. This video presented Wagner as a naïve and innocent fourteen year old girl who went out with two friends, was picked up by two brothers – the friends of one of her companions – taken to their house, plied with alcohol and brutally raped. In their cross-examination of Wagner defence counsel suggested instead that she had initiated and driven the events of the evening – that she had suggested they buy alcohol on the way back to the house, and was excited by the opportunity to drink it; that her nervousness in the car resulted from her anticipation of her first sexual encounter; that she had flirted with each of the brothers and initiated the sexual activity; that her reporting the rapes to the police afterwards was a cover because she was worried she would become pregnant. To Adam Morison, counsel to MAK, Wagner was a habitual liar seeking to blame others for her actions: he described her as changing 'from passionate, willingness, wanting to hysterical crying because you thought "My God, I could get pregnant!"'.²⁸ Annie Cossins has noted that despite the considerable efforts of defence counsel and the accused themselves to 'portray Tegan as the sexual aggressor who became deliberately drunk in order to overcome her inhibitions and then cried rape due to fears of pregnancy', her credibility 'remained intact because of her consistency in giving evidence, her immediate report to the police, the medical evidence and the bizarre and disruptive behaviour of the three accused during the trial'.²⁹

However, despite her success in maintaining her character and credibility under cross-examination, Wagner's memoir reveals its impact on her and the self she created through testimony: 'Morison made me feel like a little piece of dirt who'd decided to tell a whole lot of lies about a nice bunch of boys because I was such an evil, lying, filthy little slut'.³⁰ She expresses her frustration at being unable to contest the self created by defence counsel, and the self she was required to assume in the courtroom: 'It felt like the defence could say whatever they liked about me, and I couldn't do anything to hit back or even show how I felt, because it might harm my chances. I had to be sweet and nice and good and patient while the defence barristers made me out to be something I'm not'.³¹ Wagner clearly understands the dynamics of creating a public self – authorised as 'fact' by judicial process – in sexual assault trials:

When you're the victim in a rape trial, what you're experiencing is an argument about what kind of person you are: whether you're a naïve fourteen-year-old who let herself get drunk and was preyed upon by a group of guys who'd done this before and would do it again in the most ruthless manner. Or whether you're a slutty fourteen-year-old who couldn't wait to offer a sexual smorgasbord to a bunch of guys she'd only just met and whose only concern was that she might get pregnant.³²

²⁷ Mary Heath 'Women and Criminal Law: Rape' in Patricia Eastal (ed) *Women and the Law in Australia* (Butterworths, 2010) 88, 90.

²⁸ Quoted in Sheehan, above n 1, 220.

²⁹ Cossins, above n 5, 90.

³⁰ Wagner, above n 2, 159.

³¹ *Ibid.*

³² *Ibid.*, 241.

Although Wagner asserts that ‘it was an argument about who Tegan Wagner really was’,³³ ultimately Tegan Wagner is neither of the selves presented by either the victim or the defence counsel: neither are ‘real’, because both are fictive creations,³⁴ constructed reflectively for particular purposes, under the very specific conditions of legal and judicial process. At the heart of what purports to be a truth-seeking enterprise lie fictive constructs that, in sexual assault trials particularly, have been shown to profoundly impact the outcome of cases.

B Trauma and courtroom testimony

The second respect in which the dynamics of self-creation are particularly fraught in sexual assault trials concerns the relationship between trauma and testimony. The re-traumatising effect that courtroom testimony, and particularly cross-examination, has on sexual assault victim witnesses is well documented.³⁵ Wagner’s memoir registers the traumatising effect of cross-examination: ‘I felt like I was going to cry, but I didn’t want to cry in front of the boys. I’d been on the witness stand for a full day now and he’s just been repeating the same questions over and over and over again. The rapes themselves didn’t take that long’.³⁶ Indeed, in writing her memoir Wagner needed to refer to the transcripts: ‘The stress was so intense I’d simply shut down. I was still standing in the witness box, I was still answering questions, but I have no recollection of what was said to me or what I said in reply. (I’ve had to look at the court transcripts in order to write this chapter.)’³⁷

The impact of cross-examination does not only re-traumatise the victim. By requiring the victim to construct a self that predates the trauma and excludes its effects, the adversarial system denies the victim the opportunity for healing and recovery that other autobiographical forms, such as memoir, offer.³⁸ The restrained, controlled self that the victim is permitted to create in examination-in-chief is systematically destroyed by defence counsel in cross-examination, limiting the therapeutic possibility of testimony in the courtroom. The failure of the adversarial system in this regard may account for victims of sexual assault turning to other autobiographical forms, such as memoir, for recovery through story and self-creation.

IV CREATING A SELF BEYOND THE COURTROOM

The nature of the adversarial system and its treatment of victims means the process fails to provide the healing and recovery from trauma that, as a justice process and a species of autobiography, sexual assault victims might be entitled to expect. Having been failed in this respect by the justice system, Tegan Wagner turned instead to an alternative autobiographical genre, publishing *The Making of Me: Finding My Future After Assault* in 2007. Based on the Victim Impact Statement she read to the court at the sentencing hearing, this text continues to bear the marks of legal process: as two of the men were under eighteen years of age when the assault took place, their identities have been suppressed. Wagner, on the other hand, publicly named herself on her emergence from the courtroom when the sentences were handed down,

³³ Ibid.

³⁴ See Smith, above n 8; Eakin, above n 12.

³⁵ See for example Rebecca Campbell, ‘What Really Happened? A Validation Study of Rape Survivors’ Help-Seeking Experiences with the Legal and Medical Systems’ (2005) 20(1) *Violence and Victims* 55-68; Denise Lievore, *Prosecutorial Decisions in Adult Sexual Assault Cases: An Australian Study* (Australian Institute of Criminology, 2004).

³⁶ Wagner, above n 2, 162.

³⁷ Ibid, 164.

³⁸ See Henke, above n 13; Gilmore, above n 15.

a key component of her agenda to shift the discourse of shame surrounding sexual assault away from victims and towards perpetrators. Wagner's autobiography is less a response to the men who raped her and the ensuing trauma than it is to the justice system itself. Indeed, the vast majority of the memoir concerns the trial rather than the assault, and in this sense could perhaps be described as 'post-judicial' rather than 'post-traumatic'. It not only tells the story and creates the self that aspects of the justice system sought to challenge, shut down and silence, but also critiques the adversarial system and the justice process as a whole.

The title of Wagner's memoir – *The Making of Me* – invites us to consider it as an exercise in self-creation. Approaching the text, the reader anticipates a story of personal development, climaxing in a self that is both real and whole at the memoir's conclusion. In this respect, Wagner's memoir delivers on its title. It is a journey from naivety, through self-destruction, and finally to self-knowledge and the expression of an authentic, mature selfhood, made possible by the experience of trauma. As she reflects on and interprets her experience, Wagner presents her self at the time of the assault as an unconfident and self-conscious teenager. Recognising the different selves present in the courtroom trial, she writes of watching her videoed police interview in court:

It was strange watching my fourteen-year-old self giving evidence, because I really looked like a little girl. I looked tiny. Not tiny thin, but I looked like a young kid: I had a bad fringe that I'd pulled down and bobby-pinned, and a big ponytail on top of my head, and really bad make-up, and bad clothes my nan had picked out. It was obvious how shy I was, because I had my head down and I was playing with my hands the whole time.³⁹

By the time of the trial, Wagner says, she has developed a different self: 'I wasn't that girl anymore. I'd grown up a lot in three years. The Tegan the jury saw in court was much stronger, much thinner, and a whole lot more confident than the Tegan the boys had met'.⁴⁰ Wagner argues that the presentation of these different selves in fact served her cause in the courtroom: 'You could see from the tape how young and how vulnerable I'd been, you could see how upset and traumatised I was, and most importantly, everything was still horribly fresh and clear in my mind'.⁴¹

The strong and confident Tegan who appeared in the courtroom, Wagner suggests, is the product of the sexual assault itself and its ongoing effects. Her subsequent drug addiction, bulimia and depression are reflectively interpreted in the memoir as obstacles that in fact prepare her for the greatest challenge: the trial itself, and specifically cross-examination. Wagner writes of her mental strength in the witness box: 'What if I stuffed things up? What if I blew it? ... All the stress, the anxiety, the waiting, would have been for nothing, and even worse, the boys wouldn't have been held to account for what they'd done to me. I couldn't let that happen'.⁴² Her anger is channelled into strength under cross-examination: 'instead of breaking down, I turned to look at the boys just to see if they could feel my telepathic waves of hatred. I just wanted them to know how much I despised them. I wasn't going to let them get to me. I wasn't going to cry in front of them. I was going to win'.⁴³ She was concerned that the strong self she presented in court would make the jury suspicious:

Most people think that when something bad happens to you, you should be upset and crying. At the beginning I was worried that because I wasn't an emotional wreck the jury might not believe I

³⁹ Wagner, above n 2, 155.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid, 151.

⁴³ Ibid, 160.

was telling the truth. By the end of it I trusted them to have worked out that I wasn't the crying type – I was a strong girl who was standing up for herself, who wasn't lying, and who was just defending herself in a court of law.⁴⁴

In her memoir, Wagner emerges as the innocent triumphant – over both her rapists and the justice system – against all odds. She attributes the success of her appearance in the witness box to her own personal strength:

I'd come to court wanting to make the boys feel powerless, to make them feel that no matter what they tried, or what they threw at me, I was always going to be around and I was never going to let them get away with it. I was the reason they were in court, and I was the reason they were going to be made to pay for what they'd done. They'd made me feel powerless, but now I had the power, and I'd used it to bring the full weight of the law down on their heads.⁴⁵

This strength becomes the defining feature of the mature and ostensibly authentic self she presents at the memoir's conclusion: 'If this had to happen to someone, I'm glad it happened to me because I was strong enough to take it. Other people might have been completely destroyed by it, but not me. I survived. I'm strong, and I know I'm strong, because I've proved it'.⁴⁶ She attributes her healing and recovery to her seizing 'the power' and using it against her attackers: 'I was able to move on because I took the power back. I took those boys to court, I saw it through and I stared them down. It really is the best feeling, and that's why I tell every victim to come forward. Do something about it. Take back the power. Make them pay. Because once you have, you can move on'.⁴⁷

Given the conviction rates for sexual assault offences,⁴⁸ the conviction and sentencing of MSK and MAK was, indeed, against all odds. There is no doubt, as Cossins notes, that Wagner's testimony played a key role in convincing the jury of their guilt. Wagner attributes her success to the fact that she had 'truth' on her side: 'I told my version of the story, and a jury of twelve people agreed that I was telling the truth ... But I had the truth on my side. The truth, and evidence, and a fantastic team who weren't going to let the boys get away with it'.⁴⁹ Countless other sexual assault victims, no doubt, also have 'truth' on their side, and evidence, and a fantastic team, but are not successful in securing a conviction. Yet although she credits the prosecution, Wagner denies the justice process itself a role in either the conviction of MSK and MAK or in the creation of the mature, victorious self that emerges at the memoir's conclusion. Although Wagner notes 'I would have been devastated if we'd gone to court and lost',⁵⁰ she does not consider the kind of self she could or would have been able to create, had the innocent triumphant not been available because of a finding of 'not guilty'. Indeed, throughout the memoir the justice system appears on the one hand as silencing Wagner's story and on the other as providing her with a means and a power to exact revenge on her rapists. Paradoxically, the justice system that Wagner in many respects so reviles in fact creates the circumstances for the strong, empowered self she presents at the memoir's conclusion.

⁴⁴ Ibid, 168.

⁴⁵ Ibid, 169.

⁴⁶ Ibid, 239.

⁴⁷ Ibid, 242.

⁴⁸ Daly and Bouhours, above n 24, 568

⁴⁹ Wagner, above n 2, 241.

⁵⁰ Ibid.

V CONCLUDING THOUGHTS

Tegan Wagner's voices in courtroom testimony and in memoir highlight complexities and questions concerning relationships between self-creation in personal narratives and the justice system. This paper begins an inquiry into how the justice process frames the circumstances for the production of particular selves, whether externally controlled and contested, as in the courtroom, or reflective and empowered, as in the memoir. Each self is, to an extent, a fictive construct, created reflectively in text through interactions between the individual and the justice process. The ramifications of the justice system recognising the essentially constructed and inauthentic nature of the self presented in the courtroom, despite its pretensions to fact and truth, need to be explored. Life writing theory demonstrates that the process of creating a self through empowerment and reflection, as in a post-judicial memoir, can bring healing and recovery for trauma victims that is not available from the justice system itself.