

**Digitization and Access to Justice:  
What do privacy and equality have to do with them?  
(and with each other!)**

**Jane Bailey  
University of Ottawa**

**Digitizing Justice:  
Law, Crime, and Order in an Online World  
University of Winnipeg  
15 May 2019**



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The Identity Trail Project  
The eGirls Project  
The eQuality Project  
The Cyberjustice Project









the village

# VOICE

**GANGSTA,  
GANGSTA**

*R.I. Smith on Snoop Dogg.  
Tate on Ice Cube (P.28)*

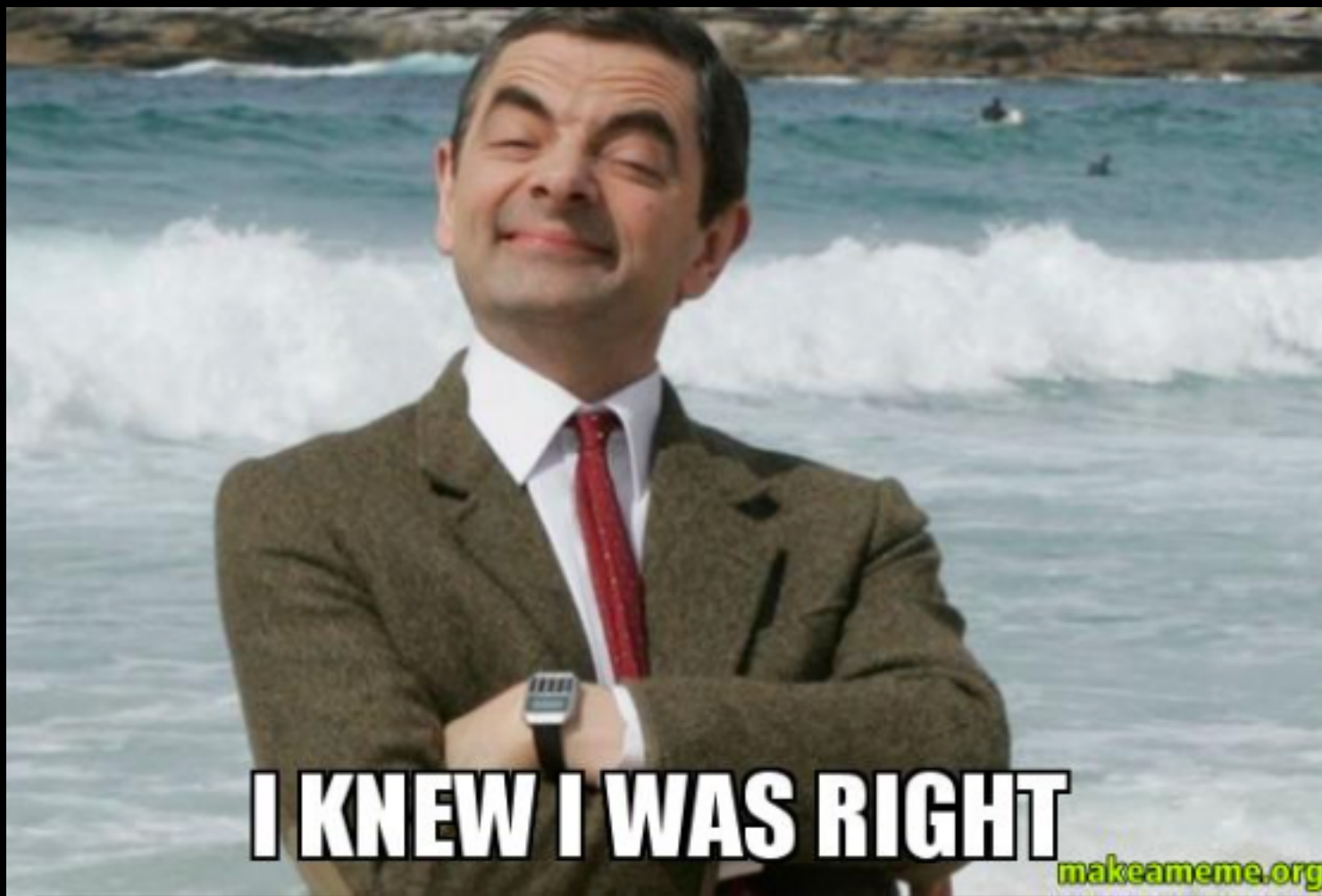


## RAPE

IN CYBERSPACE

A TALE OF CRIME AND  
PUNISHMENT ON-LINE

BY JULIAN DIBBELL (P.36)



**I KNEW I WAS RIGHT**

[makeameme.org](http://makeameme.org)



“the woman in Seattle who had written herself the character called legba, with a view perhaps to tasting in imagination a deity’s freedom from the burdens of the gendered flesh, got to read similarly constructed sentences in which legba, messenger of the gods, lord of crossroads and communications, suffered a brand of degradation all-too customarily reserved for the embodied female”

Julian Dibbell



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“immersed in the culture of the *Village Voice* ... a hotbed of left libertarianism”

Julian Dibbell



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“I can no longer convince myself that our wishful insulation of language from the realm of action has ever been anything but a valuable kludge, a philosophically damaged stopgap against oppression that would just have to do until something truer and more elegant came along.”

Julian Dibbell



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“technocultural fellow traveler”



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“affinities of interest”



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think & rethink



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“digitizing justice”



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access to justice  
privacy  
equality



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*AB v Bragg*  
online publication of court records  
*R v Jarvis*



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no admittance  
except on party business



# *AB v Bragg*



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~~privacy~~ equality



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world without equality



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NIELS\*



stopgap



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online publication of court records



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A photograph of a piece of brown, textured cardboard. A horizontal tear has been made in the cardboard, revealing a white surface underneath. The word "PRIVACY" is printed in bold, black, sans-serif capital letters on the white surface. To the left of the word, there is a circular hole in the cardboard, showing a dark interior. The entire image is set against a solid black background.

**PRIVACY**

privacy & equality



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“vicious cycle”

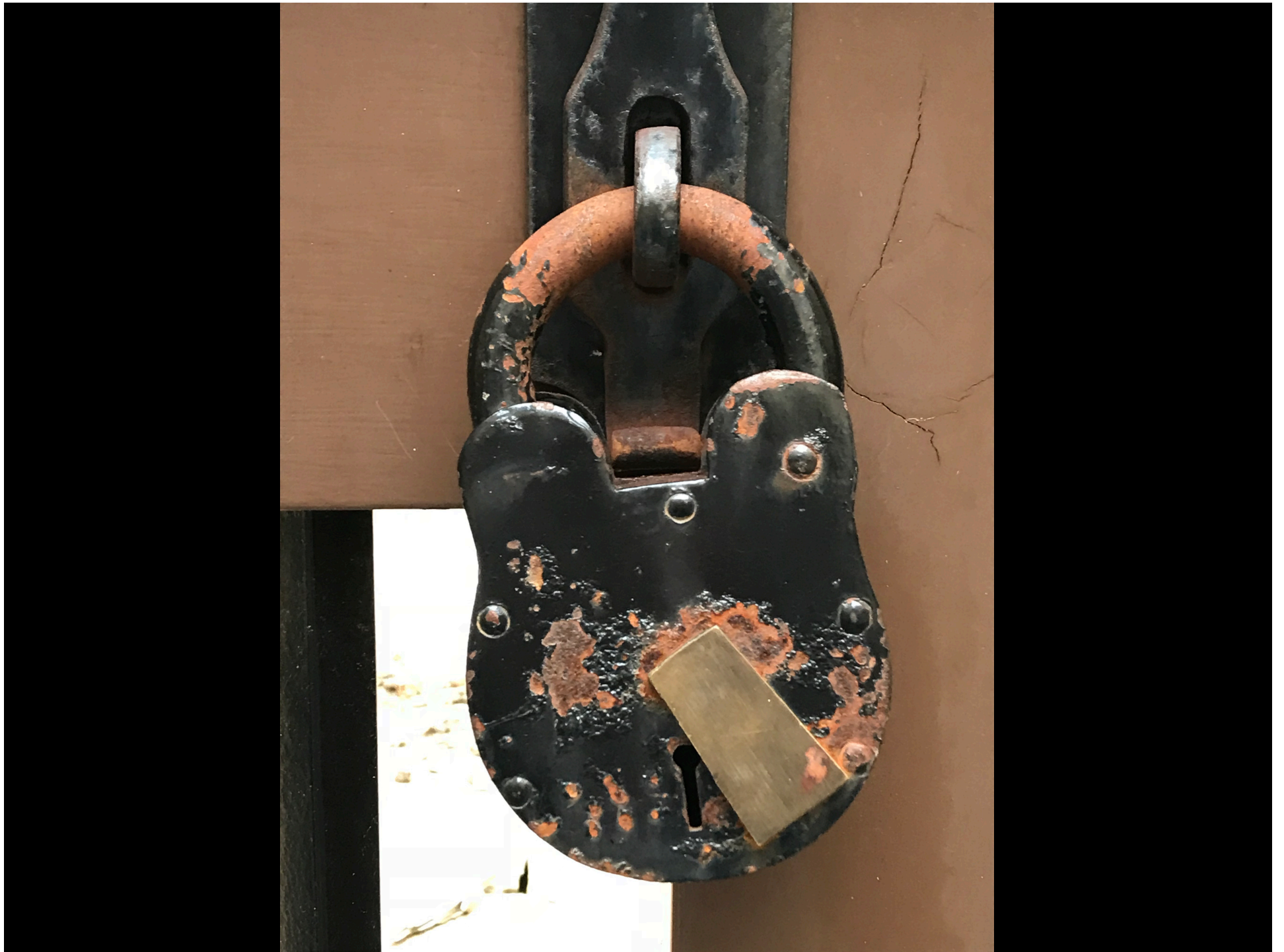


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- (i) over-represented in certain courts
- (ii) forced engagement with the justice system
- (iii) risk of further discrimination



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dignity  
autonomy  
self-determination



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# *R v Jarvis*



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- (1) sexual purpose
- (2) reasonable expectation of privacy



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acquitted at trial



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# Ontario Court of Appeal upheld the acquittal



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# Supreme Court of Canada



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affinities of interest



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state



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access to counselling records



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Helen Nissenbaum  
Anita Allen



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think & rethink  
privacy's relationship to equality



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public/private divide



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“If a person is in a public place, fully clothed and not engaged in toileting or sexual activity, they will normally not be in circumstances that give rise to a reasonable expectation of privacy.”  
(OCA, para 108)



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victim blaming



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completely ignoring s. 8 jurisprudence



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# privacy in public



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affinity of interest



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← PUBLIC

PRIVATE →



powers of observation  
record making capacity  
duration of “the look”



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*seen*



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digital era



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public/private divide



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# *R v Jarvis*



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SCC overturned the OCA



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- (i) the **location** of the recording or observation;
- (ii) the **nature** of the impugned conduct (ie whether an observation or a recording);
- (iii) **awareness or consent** of the person recorded or observed;
- (iv) **manner** of observation or recording;
- (v) **content** of the observation or recording;
- (vi) **any rules, regulations, and policies** governing the observation or recording in question;
- (vii) the **relationship** between the parties;
- (viii) the **purpose** of the recording or observation; and
- (ix) **certain personal attributes** of the person recorded or observed that are relevant to their ability to limit access to themselves and the spaces that they occupy (e.g. because they are a young person)



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equality



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“technocultural fellow travelers”



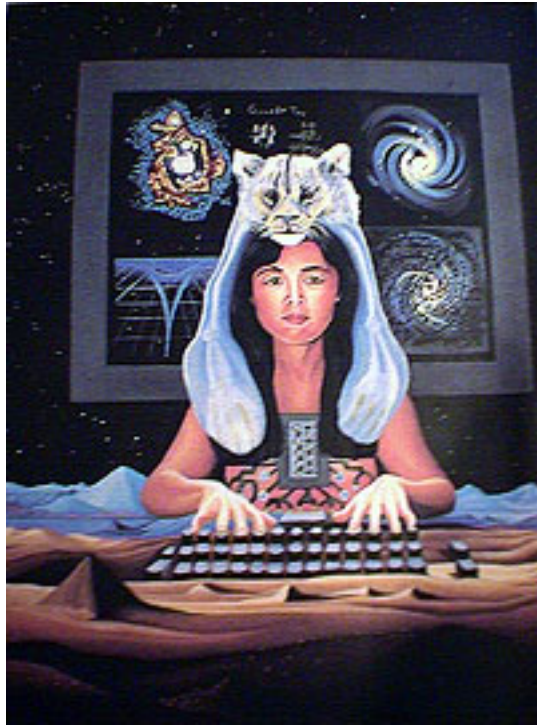
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thinking & rethinking  
the public/private divide



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access to justice  
privacy  
equality



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