

Communities of Practice, Gender, and the Representation of Sexual Assault

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Communities of practice, gender, and the representation of sexual assault

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ABSTRACT

This article investigates the utility of Eckert & McConnell-Ginet's concept of "community of practice" for an analysis of the language used by women in a sexual assault tribunal. It is shown how the questions asked by two tribunal members (a male and a female faculty member), in a university sexual "harassment" tribunal, function to (re)frame and (re)construct the events in question as consensual sex. Although the female complainants (i.e. victims) in the tribunal characterize their experiences as sexual assault, two of the tribunal members – one of whom is a female faculty member – ask questions that presuppose the inadequacy and deficiency of the complainants' signals of resistance, suggesting that their so-called lack of resistance was tantamount to consent. Clearly, any homogeneous notion of "woman's speech style" or "woman's point of view" would fail to account for the differences between the discursive patterns of this woman tribunal member and the women complainants in this context. However, if (as argued by Eckert & McConnell-Ginet 1992a,b) our linguistic practices arise out of the kinds of community of practice with which we are involved, then an understanding of such local practices and activities should provide greater insight into the differential linguistic behavior of the women involved in this sexual "harassment" tribunal. (Feminism, gender, institutional discourse, power, sexual assault, social practice, discourse analysis)

Much recent work in feminist theory generally, and in language and gender studies more specifically, has attempted to challenge universalizing and essentialist descriptions of women and men – descriptions that are more accurately characterized as contextually, historically, or culturally specific. For example, the assumptions informing early research in feminist linguistics (in the 1970s and 1980s) took "difference" between men's and women's linguistic behavior as axiomatic, and as the starting point for empirical investigations.¹ By contrast, the idea that women and men do not constitute internally homogeneous groups is one that pervades much contemporary feminist scholarship. Indeed, Eckert & McConnell-Ginet's notion (1992a, 1992b) of "community of practice" represents one attempt

to theorize the relationship between gender and language in terms of local communities and social practices. Eckert & McConnell-Ginet (1992a:472) advocate a consideration of gender within the communities where speakers participate:

Rather than try to abstract gender from social practice, we need to focus on gender in its full complexity: how gender is constructed in social practice and how this construction intertwines with that of other components of identity and difference and of language. This requires studying how people negotiate meaning in and among the specific communities of practice to which they belong.

The connection between linguistic behavior and social practices is perhaps the most significant aspect of Eckert & McConnell-Ginet's work, and it leaves open the possibility of intra-group variation and dynamism in our understanding of the relationship between language and gender. Rather than adopting a notion of community based on location or population, a community of practice "focuses on a community defined by social engagement ... A community of practice is an aggregate of people who come together around mutual engagement in some common endeavor" (Eckert & McConnell-Ginet 1992b:95). For these authors, like Ochs 1992, language INDIRECTLY indexes gender: The relationship is mediated by the social activities and practices – i.e. the communities of practice – in which individuals participate. According to Cameron 1996, 1997, the framework of Eckert & McConnell-Ginet reverses the traditionally posited relationship between social practices and social identity. The quantitative sociolinguistics paradigm has generally focused on establishing correlations between linguistic variables and social factors such as age, race, ethnicity and sex, assuming that these aspects of social identity exist prior to and determine linguistic behavior (and other social behavior). But as Cameron points out (1996:45):

Perhaps it is the practices people engage in that produce their identities, and not the other way around. People's patterns of linguistic behavior arise, in Eckert and McConnell-Ginet's view, from their habitual engagement in certain practices and their membership of the relevant communities. If women and men differ on that level, their language use will tend to differ; this is not a direct relationship, but one mediated by the crucial variable of practice.

Put another way, perhaps it is not gender per se that interacts with linguistic practices, but rather the complex set of "gendered" social practices, i.e. communities of practice, in which individuals participate. In Eckert & McConnell-Ginet's words (1992b:95), "Gender is produced (and often reproduced) in differential membership in communities of practice." Individuals produce themselves as "gendered" by habitually engaging in the social practices of a community – i.e. in different communities of practice – that are practically and/or symbolically associated with a community's notions of masculinities or femininities. Just as women's or men's involvements in "gendered" communities of

practice vary, so women's and men's relation to normative constructions of masculinities and femininities vary.

In a discussion of an experimental setting (Freed & Greenwood 1996) that produced similar linguistic behavior, i.e. a cooperative speech style, in both female and male subjects – same-sex friends in casual conversation – Freed (1996:67) provides a more concrete description of the way in which gender is produced through involvement in certain social practices or activities:

First, participating in the same practice produced in the women and men the same kind of talk; second, outside of this experimental setting, it is possible that women and men would be less likely to find themselves in such similar settings, given the sex- and gender-differentiated society in which we live ... Thus language and gender studies conducted in natural settings may often find differences, not similarities, in women's and men's speech simply because women and men are frequently engaged in different activities (see M. Goodwin 1990) and not because of any differences in women and men themselves. Since it is increasingly clear that speech patterns are products of the activities that people are engaged in and not inherent to the participants, we can conclude that communicative styles are customs related to actions, activities and behaviors differentially encouraged for women and men.

Eckert and McConnell-Ginet, like Freed, posit an indirect relationship between gender and language, a relationship "mediated by the crucial variable of practice" (Cameron 1996:45). By locating gender construction in the myriad communities of practice in which individuals participate over a lifetime, the "community of practice" framework allows for more local accounts of the relationship between language and gender, and a shift away from overarching generalizations about women, men, and "gendered" speech styles.

In this article, I investigate the utility of Eckert and McConnell-Ginet's community of practice model for an analysis of the language used by women in a sexual assault tribunal. As I have argued elsewhere (Ehrlich & King 1996, Ehrlich 1998), the questions asked by institutional representatives in institutional discourse can perform ideological work (Fisher 1991). More specifically, I have shown how the questions asked by two tribunal members (a man and a woman faculty member), in a university sexual "harassment" tribunal, function to (re)-frame and (re)construct the events in question as consensual sex. That is, although the woman complainants (i.e. victims) in the tribunal characterize their experiences as sexual assault, two of the tribunal members – one of whom is a woman faculty member – ask questions that presuppose the inadequacy and deficiency of the complainants' signals of resistance, suggesting that their so-called lack of resistance was tantamount to consent. Clearly, any homogeneous notion of "woman's speech style" or "woman's point of view" would fail to account for the differences between the discursive patterns of this woman tribunal member

and the women complainants in this context. But if, as argued by Eckert & McConnell-Ginet (1992a,b), our linguistic practices arise from the kinds of community of practice with which we are involved, then an understanding of such local practices and activities should provide greater insight into the differential linguistic behavior of the women involved in this sexual "harassment" tribunal. Therefore, in the remainder of this article, I consider the different kinds of community of practice in which these women participate (i.e. the tribunal member vs. the complainants), as a way of understanding the different discursive frames that emerge in the talk of this sexual assault tribunal.

UNIVERSITY DISCIPLINARY TRIBUNAL

The data presented here were transcribed from audiotaped recordings of a disciplinary tribunal at York University (Canada), dealing with sexual harassment. York University disciplinary tribunals are university trials which operate outside the provincial or federal legal system. Members of the university community can be tried for various kinds of misconduct, including unauthorized entry or access, theft or destruction of property, assault or threat of assault and harassment, and discrimination that contravenes the provincial Human Rights Code or the Canadian Charter of Rights and Freedoms. Each case is heard by three tribunal members, who are drawn from a larger pool consisting of university faculty members and students.² Penalties range from public admonition to expulsion from the university. Normally these tribunals are open to the public. In the case described here, two charges of sexual harassment had been brought against a man student (the defendant) by two women students (the complainants), all undergraduates at York University. The tribunal members hearing the case consisted of a man who was a faculty member in the Law Faculty (the tribunal's chair), a woman who was a faculty member in the Faculty of Arts, and a woman graduate student in the Faculty of Arts. The case against the defendant was presented by the university's legal counsel. According to the regulations of York University, sexual harassment is defined as "the unwanted attention of a sexually oriented nature made by a person who knows or ought reasonably to know that such attention is unwanted." The defendant was charged by the same plaintiffs under the Canadian Criminal Code on two counts of sexual assault.³ While the defendant's behavior fell under the category of sexual assault under the Canadian criminal code, York University's rules and regulations do not include sexual assault as a possible offense. Thus, within the context of York University, the defendant was charged with sexual harassment.

In colloquial terms, the defendant had been accused of two instances of "acquaintance rape" or "date rape." These instances occurred in the women's dormitory rooms two nights apart. Each woman had invited the defendant to her room, and in both cases he allegedly persisted in unwanted sexual behavior. Both

women reported that they were quite clear and insistent that he stop, but their demands were ignored. In one case, another man and woman were in the room while the unwanted sexual behavior took place; the woman served as a witness for the prosecution's case. The two complainants were casual acquaintances prior to the alleged instances of sexual harassment. They met coincidentally a short time after the incidents and discovered each other's experience with the defendant; each then lodged a complaint of sexual harassment.

Although it is not technically a criminal court of law, the York University disciplinary tribunal functions like one in that each side, the prosecution and the defense, presents its version of the events at issue to the members of the disciplinary tribunal. As others have noted (e.g. Atkinson & Drew 1979, Walker 1987, Conley & O'Barr 1990), courtroom talk assigns differential participation rights to individuals depending on their institutional role: Questioners in legal contexts have the power to allocate turns, to frame the topic of questions, and even to restrict the nature of responses through the syntactic manipulation of questions. In the case described here, the complainants, the defendant, and their witnesses testified under questioning by their own representatives (the defendant was represented by his mother, a family friend, and himself) and by the tribunal members. All participants were also cross-examined by representatives from the other side. Thus, in contrast to jury trials, the "talk" of this disciplinary tribunal was not designed for an overhearing, non-speaking audience – the jury (Atkinson & Drew 1979) – but rather for members of the disciplinary tribunal who themselves had the right to question the defendant, complainants, and witnesses.

ANALYSIS

I have chosen here to focus on two themes evident in the questions asked by the male and female faculty tribunal members: (a) the so-called "inaction" of the complainants, and (b) the minimizing of the complainants' fear of the defendant. It is through an examination of these two kinds of questions that we begin to see how the events in question are (re)constructed by two tribunal members – the two faculty members – as consensual sex. (For further discussion of these issues and other aspects of the tribunal, see Ehrlich & King 1996, Ehrlich 1998.)

The behavior of the complainants and their witness was a particular concern of one of the tribunal members, the female faculty member, who asked numerous questions about the women's options. Below are two examples from her questioning of Marg, one of the complainants.⁴

- (1) GK: What I'm trying to say and I realize what I'm saying is not going ... You never make an attempt to put him on the floor or when he leaves the room, to close the door behind him or you know you have several occasions to lock the door. You only have to cross the room. Or move him to the floor, but these things are offensive to you?

- MB: I was afraid. No one can understand that except for the people that were there. I was extremely afraid of being hurt. Uhm: as for signals, they were being ignored. I tried I mean maybe they weren't being ignored I don't know why he didn't listen to them. I shouldn't say they were being ignored but he wasn't listening. And I kept telling him, I kept telling him, I was afraid to ask him to sleep on the floor. It crossed my mind but I didn't want to get hurt. I didn't want to get into a big fight. I just wanted to go to sleep and forget about the whole entire night.
- (2) GK: I realize you were under certain stress but in your story I heard the men left the room twice on two different occasions And you and Melinda ((the other woman in the room)) were alone in the room. What might have been your OPTION? I see an OPTION. It may not have occurred to you but I simply want to explore that OPTION with you [emphasis added]. Uh, did it occur to you that you could lock the room so that they may not return to your room?
- MB: It did, but it didn't. Now it does. I mean looking back. Everyone was telling me nothing's going on. Don't worry about it. Forget about it. When your friends are telling you nothing's going on, you start to question ... maybe nothing is going on. I just ... I couldn't think.
- GK: It didn't occur to you that Melinda or you, I mean I understand you were under stress ... was Melinda also intimidated by Mr. A?

In these two examples, the tribunal member GK suggests that Marg has not acted appropriately, or perhaps that she has not "acted" at all. Ex. 1 shows GK listing a series of actions that were not pursued by Marg ("You never make an attempt to put him on the floor ... to close the door behind him or ... to lock the door") and then asking whether these actions were offensive to Marg. Indeed, although GK's comments sometimes take the form of interrogatives, they often have the illocutionary force of assertions, e.g., "You should have put him on the floor; you should have closed the door; you should have locked the door." Furthermore, it is clear that GK views Marg's performing of these actions as unproblematic in the context. (Note the use of *only* in "You only have to cross the room.") In ex. 2, GK asserts that Marg had another option, locking the door when Matt, the defendant, was in the washroom. By continuing to focus on actions or options not acted on by Marg, this tribunal member raises the possibility that Marg has not chosen – since options imply choices – the best means of resisting the sexual aggression of Matt.

While questioning Melinda, the witness for Marg, the tribunal member again discusses the options the witness had. This is illustrated below.

- (3) GK: In spite of Marg telling you that he was trying things that she didn't want, were you ... I don't know how to phrase ... did you feel you had some OPTIONS to do something for Marg? [emphasis added]
- MK: Well, I wanted to do something for her but I didn't know what to do. I was afraid that if I said anything to Matt or tried to do anything that he would hurt me or hurt Marg for trying to stop it. And everything was happening so fast. I didn't even think about knocking on the neighbor's door or anything.
- (4) GK: I mean ... that evening did you ever feel you knew Bob enough to get him involved because I think you were intimidated?
- MK: Yeah. I was close enough with Bob to –
- GK: – to tell him "Get up and do something. I hear some noises." Or you didn't feel that there was anything really going on. I don't want to put words in your mouth. Tell me how you felt.

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MK: Towards Bob?

GK: What OPTIONS you might have had to tell Bob something? [emphasis added]

MK: When I asked Bob to talk to Marg ... was the only thing I could think of ... to get someone to tell Matt to stop it. I thought Bob and Matt are friends. He'll listen to Bob but they didn't get the opportunity. I kind of think that Bob is very much influenced by Matt ... I think he's scared of Matt. I think Matt is a very intimidating person. He scares a lot of people ... the way he talks.

In ex. 3, the tribunal member has difficulty phrasing her question – as indicated by a couple of false starts, and her admission that she doesn't know how to phrase the question. This difficulty is perhaps related to her desire to assert (rather than question) what Melinda should have done to help Marg. In ex. 4, the tribunal member asserts, in both form and function, what Marg could have or should have said to Bob in order to provoke him into action. This repeated emphasis on the so-called options that the women did not pursue, in exx. 1–4, functions to characterize their behavior as lacking in appropriate resistance. Locking the door, putting Matt on the floor, and getting Bob to do something are all presented as unproblematic and reasonable “options” for the complainant and her witness. By focusing on actions that the women did not pursue in spite of “reasonable options,” the events begin to get constructed as the result of choices the women made. Options, after all – and this is the word used consistently by this tribunal member – imply choices. The women are represented as having had options; they simply did not choose the best ones. Put another way, the women are represented as having exercised some agency, or even having chosen to engage in the sexual activities. In a subtle and insidious way, then, this tribunal member suggests that the women chose not to resist the sexual aggression of the defendant, and thus engaged in consensual sex – or, in the case of the witness, in witnessing consensual sex.

Until the 1950s and 1960s, in Canada and the US, the requirement of utmost resistance was a necessary criterion for the crime of rape (Estrich 1987); that is, if a woman did not resist a man's sexual advances to the utmost, then rape did not occur.⁵ Although the criterion of utmost resistance is not currently encoded in criminal definitions of rape in Canada and the US, Crenshaw (1992:409) notes that a similar concept is often operative in the adjudication of rape and sexual harassment cases. When the female tribunal member asks questions and makes assertions that presuppose the inadequacy of the complainant's and her witness's behavior, in exx. 1–4, I suggest that she is invoking the criterion of “utmost resistance.” That is, in representing the women as not having pursued appropriate “options,” GK is questioning whether they have resisted to the utmost. Without “utmost resistance,” the events in question begin to get (re)constructed by the female tribunal member as consensual sex.

The most frequent response to questions concerning the complainants' and the witness's so-called “passive” behavior, in spite of “options,” was that they had been motivated by fear, as in exx. 1, 3, and 4. Indeed, when asked throughout the tribunal why they didn't pursue certain avenues of resistance, both the complain-

ants and their witness typically pointed to their intense and extreme feelings of fear. After the complainants' and witnesses' expressions of fear (and these occurred numerous times during the testimony and questioning), the tribunal members generally followed with questions attempting to deconstruct the cause or source of the fear. This can be seen in ex. 5, in which the chair of the tribunal, the male faculty member, is questioning Connie, the other complainant.

- (5) BW: In your statement, I think, twice, you mention "he was sounding very angry" and "I was scared" and I was wondering if you could elaborate on what you mean by that? What was he saying that you found scary? If you remember anything specific or whether it was an impression.
- CD: It was just rough. It was mostly ... he just ... it was demanding. I didn't feel like I had any more choice. And whatever he said was no longer a request. It was a demand.
- BW: So, in your statement when you say he said "I paid for dinner and you invited me up so what did you expect" ... that was something you perceived as demanding and rough. It wasn't like a joking comment in your mind.
- BW: No, it wasn't a joke at all.
- CD: Did he raise his voice? Or was it just very emphatic?
- BW: No, he didn't raise his voice but it was very blunt, very ...
- CD: Okay.

Here we see the tribunal member trying to get at the precise causes of Connie's fear: What was it about Matt that was frightening? Was it something he said? Was it his tone of voice? We also see here a suggestion that some of the defendant's frightening comments might have been jokes. This same tribunal member asks similar questions of Melinda, the witness for Marg. (This example follows directly after ex. 4.)

- (6) BW: Could you explain that? Because we've heard that twice and in your story the only time you mention about being scared of Matt was with the eavesdropping incident ... that he was very scary. He was insisting that you tell him. Were there other things that he did or is it a general demeanor? What do you mean by he's very scary?
- MK: He's ... the way he ... it seems to me if his way ... it's either his way or no way. The way he was talking to Bob like even his friend Bob when I asked Bob to come to the bathroom, Matt said "No, don't go." And Bob hesitated not to go which sort of led me to believe that Bob was scared of Matt and maybe Bob knows a history of [Matt]
- BW: [Well, let's just stick to what you know. The two times in that evening that you found Matt scary would be the eavesdropping incident and with Bob ... how insistent he was about Bob. You saw a side of him that scared you. Anything else than those two things?
- MK: No.

Here we see the questioner again trying to isolate the precise aspects of the defendant, or the defendant's behavior, that were frightening to the witness. These attempts to pinpoint so precisely and specifically the causes of the women's fear have the effect of reducing or minimizing it. Indeed, in the second line of ex. 6, BW comments that the *ONLY* time the witness has expressed her fear of the defendant is in relation to the eavesdropping incident. It seems that it was not sufficient for the women simply to report that the defendant "was a very scary guy" or "sounding very angry." Through this tribunal member's questioning, and his attempts to impute the women's fear to very specific aspects of the defendant or his behavior, its potential impact on the women's behavior is called into question.

In the last part of ex. 6, we see the tribunal member cutting Melinda off and rephrasing her comments about her fear of Matt. What begins as a description of how intimidating the witness found the defendant (“I think Matt is a very intimidating person”) is transformed into the witness feeling frightened only twice over the course of events (“The two times in the evening that you found Matt scary ...”). We see here how the attempt to deconstruct the witness’s fear has the effect of diminishing it. Minimizing the complainants’ and the witness’s fear serves to remove the motivation for the women’s behavior – specifically, why they didn’t pursue “options” deemed appropriate by the female tribunal member.

This is the two-part discursive strategy that functions to construct and define the events in question as consensual sex, rather than sexual harassment or acquaintance rape: First, the women’s so-called lack of resistance is established through questions that presuppose that other options for “action” are available; second, the explanation for the women’s “passive” behavior (i.e. their extreme fear of the defendant) is minimized and/or eliminated through questions that discount the paralyzing and pervasive nature of the women’s fear. With the motivation for the complainants’ behavior eliminated, their apparent lack of resistance can be construed as meaning that the sexual activity was consensual.

NEGOTIATING MEANINGS

I have argued up to now that the questions asked by the male and female faculty tribunal members function to characterize or construct the events in question in a particular way. That is, these two tribunal members jointly construct an interpretive “frame” which minimizes the complainants’ and witness’s acts of resistance and the motivation for these acts, and ultimately functions to (re)construct the events as consensual sex. This is not to say, however, that the complainants subscribe to this same interpretation of the events. Thus in ex. 5 we see the complainant, Connie, commenting on her lack of choice during the events, and on the fact that Matt’s utterances were demands, not requests. Other comments from Connie’s testimony suggest that the complainants DID resist the defendant’s sexual aggression, even if they did not pursue the “options” suggested by the female tribunal member. In ex. 7, Connie is answering a question from the male tribunal member about the possibility that she and the defendant had different understandings of what constituted non-consent on her part.

- (7) BW: We know that you don’t know but is it possible I guess is the question. Is it possible that he ... saw the events differently ... than you perceived them?
 CD: I suppose it’s possible. But ... I don’t see how, I mean ... hhh how many times do you have to say “No I don’t want to do this”? You know, how many times do you have to push a hand away? How many times does this have to come back and for you to push it away again? How many times do you have to say “No, please don’t” before somebody understands?

Indeed, throughout the hearing, the complainants and their witness provided an alternative characterization of the events: as sexual harassment or acquaintance rape. For example, Connie's comments in ex. 7 indicate that, from her perspective, the sexual activity was not consensual. The questions that arise, then, are: Was there a struggle over the meaning or interpretation of these events? And, if so, whose meanings prevailed?

Research on both courtroom discourse and doctor/patient discourse (e.g. Walker 1987, Fisher 1991) has highlighted the power of the questioners in these settings – the lawyers or judges, the doctors – to control interactions. Thus Walker (1987:79), in her research on courtroom discourse, discusses interviews with witnesses who “report a feeling of frustration at being denied the right to tell their stories their own way and complain of the lack of being in control.” Fisher (1991:162) compares a doctor/patient interaction to a nurse-practitioner/patient interaction and shows that the doctor, much more than the nurse-practitioner, interrupted the patient and questioned the patient in a way that allowed “a very limited exchange of information and leaves the way open for his [the doctor's] own assumptions to structure subsequent exchanges.” The nurse-practitioner, by contrast, used open-ended, probing questions to maximize the patient's voice and to hear how she constructed her life. In ex. 6 above, we have seen how the tribunal member cuts off Melinda's speculations about the relationship between Bob and Matt by saying, “Well, let's just stick to what you know.” Through the tribunal member's series of questions, Melinda's general comments – about how frightening and intimidating Matt is – become transformed into Marg's feeling frightened only twice over the course of the events. It seems, then, that through the tribunal member's method of questioning, his assumptions have restructured the way that Marg's fear is talked about.

This example is fairly typical of the way that the tribunal members' assumptions and concerns prevail in these interactions, because of the questioner's control. Note that the tribunal members are free to speculate during the course of the proceedings without being interrupted or cut off by a questioner, whereas Melinda is prevented from speculating as to why Bob was frightened by Matt. Indeed, one of the tribunal members speculates frequently on “options” that the complainants had: “I see an option. It may not have occurred to you but I simply want to explore that option with you. Uh ... did it occur to you that you could lock the room so that they may not return to your room?” (from ex. 2). As Walker (1987:79) says, regarding lawyers or judges who are legally sanctioned to question witnesses: “Choice belongs to the examiner, who because of his socially and legally sanctioned role ... has the right to present, characterize, limit and otherwise direct the flow of testimony. It is in the hands of the questioner that the real power lies.” Similarly, I have attempted to demonstrate that the assumptions and presuppositions underlying the male and female faculty members' questions had the effect of (re)structuring and (re)constructing the complainants' experiences of sexual assault.

OUTCOME OF THE TRIBUNAL PROCEEDINGS

The tribunal found the defendant's behavior to have fallen substantially below university standards. More specifically, their decision stated that both complainants were unresponsive to the defendant's sexual advances, that the defendant demonstrated an indifference to the complainants' wishes, and that the defendant's actions were disrespectful and insensitive. While the tribunal's decision acknowledged that some unwanted sexual aggression occurred, it also continued to minimize and discredit the complainants' feelings of fear (as the two tribunal members did during the proceedings):

Both complainants testified that they were deeply frightened by Mr. A.; whereas their actions seemed to undercut this claim. For example, both complainants remained in the room with Mr. A. after the sexual activity had finished and he had fallen asleep. It seems somewhat inconsistent to assert fear on the one hand and on the other hand to be comfortable enough to fall asleep alongside the feared individual. In my opinion, this inconsistency (and perhaps overstatement of the level of fear experienced) can be explained by the fact that, prior to the two complainants meeting on Jan. 30, 1993, both complainants felt ashamed that they had allowed the situation with Mr. A. to progress to a level beyond their control. Both complainants testified that they felt confusion and shame when they individually reflected upon their experiences. It was only during their coincidental meeting of Jan. 30, 1993 that they were able to recognize the fact that they had been violated, and their indignation in making this discovery might have led to a slight overstatement of their position. (York 1994:18)

By discrediting the women's feelings of fear, the tribunal's decision again focuses on the women's behavior, and it raises the possibility that the women's "inaction" or "lack of resistance" was curious, perhaps unjustified. While deeming Mr. A's behavior to fall "below the standard of conduct we must expect from all members of the University community" (p. 22), the tribunal did not accept the university legal counsel's recommendation regarding sanctions. Expulsion from the university was judged to be unjustified:

Mr. A. was clearly insensitive and disrespectful to the complainants and this insensitivity led to harm; however I do believe that Mr. A. will be far more careful, caring and sensitive in the future. Considering that we do not find that he poses a threat, it is our view that if there is any institution in which Mr. A. can be sensitized to the need for respecting the sexual autonomy of women, it would be in a university setting.

Rustication would be counter-productive to the educational mission which must be part and parcel of the University's disciplinary process. (York 1994:37).

Thus the decision was to allow the defendant to continue his studies, but to bar his access to various parts of the university, including its dormitories. I suggest that such a penalty is lenient for two convictions of sexual harassment or acquaint-

tance rape; but at the same time, it is entirely consistent with the interactional patterns of the adjudication process that served to (re)construct the events as consensual sex.

DISCUSSION

Following Fisher 1991, I have assumed that the questions asked in these kinds of institutional settings do ideological work. I have shown how the questions asked by two tribunal members (a male and a female faculty member) in this university hearing constitute a two-part discursive strategy by which the events in question are reconstructed as consensual sex. By focusing on the “options” not chosen by the complainants, the woman faculty member succeeds in characterizing the women’s behavior as lacking in resistance. Furthermore, in both the interaction (through the male faculty member’s questioning) and the tribunal’s written decision, the complainants’ and witness’s feelings of fear are minimized and invalidated, removing the justification for the women’s so-called lack of resistance. The claim that I have made elsewhere (Ehrlich 1998) is that the ideological frame structuring the tribunal proceedings – achieved, in part, by the female faculty member’s comments and questions – fails to acknowledge the particularities of women’s responses to the threat of sexual violence. That is, focusing on the apparent lack of resistance exhibited by the complainants does not take seriously their frequent expressions of fear, paralysis, and humiliation in the face of unwanted sexual aggression. Likewise, in diminishing the complainants’ feelings of fear, the two tribunal members fail to acknowledge that women’s submission to men’s sexual aggression often occurs in a context where physical resistance can escalate the risk of injury and violence.

Since the early 20th century, courts in the US have found it useful to invoke the notion of “a reasonable person” in considering whether certain kinds of behavior should be deemed harmful or offensive and thus punishable. The “reasonable person” is supposed to represent community norms; thus whatever would offend or harm “a reasonable person” is said to be more generally offensive or harmful. Feminist legal scholars (e.g. Abrams 1989) have recently challenged the generalizability of “a reasonable person’s” experiences, arguing that men and women may experience sexual advances or sexual harassment differently. Indeed, some state courts and lower federal courts in the US have modified the “reasonable person” standard and introduced “a reasonable woman” standard for evaluating charges of sexual harassment. One such US court justifies introducing the “reasonable woman” standard in the following way:

We realize that there is a broad range of viewpoints among women as a group, but we believe that many women share common concerns which men do not necessarily share. For example, because women are disproportionately victims of rape and sexual assault, women have a stronger incentive to be concerned with sexual behavior ... We adopt the perspective of a reasonable woman pri-

marily because we believe that a sex-blind reasonable person standard tends to be male-biased and tends to systematically ignore the experiences of women. (Ellison v. Brady, 924 F.2d 872, 878-81 [9th Cir. 1991])

Of relevance to the tribunal proceedings under discussion here is the fact that the questions asked by the two tribunal members stem from a profound ignorance of the complainants' experiences. Questions such as "Why didn't you leave the room?," "Why didn't you lock the door?," "Why didn't you put him on the floor?," "Why didn't you talk to Bob?" do not take seriously the complainants' and witness's frequent expressions of fear, paralysis, and humiliation in the context of sexual violence. That is, most of the tribunal's proceedings are structured by the assumptions of "a reasonable man"; they are "male-biased" and tend "to systematically ignore the experiences of women."

The fact that a disciplinary tribunal at a major university in Canada is androcentric in its procedures and decision-making process is not in itself surprising. For Marxist scholars such as Antonio Gramsci, the cultural hegemony of the ruling class is developed through the institutions of a society. Among the range of structures and activities that would undoubtedly function to promulgate an institution's dominant belief-system are the discourses of that institution. Indeed, Gal (1991:197) talks about the non-neutrality of institutional discourse: "Institutions are far from neutral arenas: They are structured along gender lines, to lend authority not only to reigning classes and ethnic groups but specifically to men's linguistic practices." In the sexual assault case described here, the androcentric discourse that dominates is one that is co-constructed by a man and woman faculty member. These tribunal members constitute a "community of practice"; i.e., they are mutually engaged on a regular basis in university disciplinary tribunals in which members of the university community are tried for various kinds of misconduct. It is perhaps not surprising, then, that BOTH the female and male tribunal members jointly construct an interpretive "frame" that minimizes the complainants' resistance, and ultimately functions to (re)construct the events as consensual sex. Members of university disciplinary tribunals presumably represent the university's interests as opposed to any particular individual's interests. In addition, these particular members of the university disciplinary tribunal are faculty members (not students), and they therefore represent a powerful constituency within the university. That is, in being both a faculty member and a member of a university disciplinary tribunal, the woman tribunal member is invested with the responsibility of upholding the standards and values of the institution – standards and values that do not necessarily serve the interests of many women.

As Eckert & McConnell-Ginet argue (1992b:97), constructions of femininity arise out of participation in a variety of communities of practice. Thus they are variable across women, and dynamic within a single individual:

And so although the identity of both the individual and the individual community of practice is experienced as persistent, in fact they both change con-

stantly. We continue to adopt new ways of being women and men, gays and lesbians and heterosexuals, even changing our ways of being feminists or being lovers or being mothers or being sisters. In becoming police officers or psychiatrists or physicists or professors of linguistics, we may change our ways of being women and perhaps of being wives or lovers or mothers ... And there are many more unnamed ways of thinking, being, relating, and doing that we adopt and adapt as we participate in different ways in the various communities of practice to which we belong.

As a representative of the university, entrusted with upholding the institution's dominant cultural values, GK's "way of being women" departs dramatically from that of the victims of the sexual assault: undergraduate students at the same institution. In the context of the university tribunal, the woman faculty member exhibits an androcentric perspective on violence against women, to the extent that she ignores the socially structured differences between men and women that may have influenced the complainants' perceptions of harm and danger in a situation of male sexual aggression. By considering the very different kinds of community of practice in which these women participate (i.e. the tribunal member vs. complainants) – or, put another way, the way in which gender interacts with other aspects of social identity – we can perhaps understand the different discursive frames that emerged in the talk of this sexual assault tribunal.

Until now I have argued that the women involved in this sexual harassment tribunal have different ways of discursively constructing the events in question. A complicating factor, however, is the way in which gender/sex difference is strategically invoked within this context.⁶ In spite of the fact that the female faculty member implicitly applies the "utmost resistance" standard through her questioning of the female complainants, she is perceived as "biased" in favor of the complainants by the accused and his representatives. Indeed, all the women involved in this tribunal are perceived as biased in favor of the complainants by the defendant and his representatives. The following comments from the defendant's representative are illustrative:

- (8) TM: Clearly bias has been directed against Matt from the beginning. I am suggesting that he has perceived and the family has perceived, that the university has been biased against him. Uh I'd like to just make part of the record that during testimony prior to today's, uh Ms. Levine [the student tribunal member] uh openly exhibited bias against Matt by shaking her head, and making verbal sounds, that showed her displeasure at Matt's alleged behavior. Uh, this bias so unnerved Matt, that he was unable adequately to continue to represent himself on March the twenty-sixth nineteen ninety three, and I would suggest that this probably is the strategy of that panel member. In seeking a source of understanding and counsel for his predicament, Matt went to the sexual harassment [center] of the university only to be told that that was for women only. Of equal significance is the fact that women are aligned against him at every part of the administrative and judicial stage. The resident tutor is a woman, the director of student affairs is a woman, the university counsel is a woman, the majority on the tribunal is a woman, although I don't have a pro- with women, I don't have a problem with that,

but, the final court of appeal, the president is also uh a woman. In short, all the university's actions suggest partiality towards the complainants up to the point of this panel. I'm not suggesting that uh you ladies and gentleman are, but I'm suggesting that prior to this panel beginning, the university's actions certainly suggest partiality.

Not only does the defendant's representative invoke sex/gender in a strategic way, but in exx. 9–10 we see the female tribunal member also appealing to her sex/gender as a way of warding off charges that her line of questioning has been harassing of the complainants.

- (9) GK: Connie, before I ask you any questions that, I would really like you to know that I know how you must feel, and I really need some information, and that these questions are to be taken as completely neutral information-seeking questions, and if in the process I upset you I apologize at the outset. But we need the information simply to understand the situation.
- (10) GK: A serious charge has been brought, and in my opinion I need further information. So I took the liberty to— of asking many questions to Marg yesterday, and I'm asking questions to Connie today. I questioned your witness and I plan to question everyone who makes a statement. I need the gaps in my knowledge filled. And I've reiterated when I've asked the questions that this is for information purposes. And I'd like Marg to let me know if my questions were harassing yesterday. I'd like Connie to let me know if did my questions harass you today, and if you just raise your finger, I'll take that as a signal if you can't answer the question. But I need the information very neutrally. I will ask Mr. A the same kinds of questions. I want him to know that if I'm harassing him at any point with my questions and my need, I happen to be a very analytical type of person. I need time frames, I need room sizes, I need that to place my your information. There is no way I am putting any feelings on that information, I just need that information. I want to be stopped if I'm harassing.
- CD: Mm hmm.
- GK: Cause I've never dealt with sexual harassment, I'll say it out front. In asking questions I'm a woman, I'm quite sensitive to what's happening so let me know if my questions are harassing.

It is clear, as argued by Eckert & McConnell-Ginet (1992a:472), that “gender is constructed in a complex array of social practices within communities,” and that this construction “intertwines with that of other components of identity and difference”; but the remarks in exx. 8–10 demonstrate that, in spite of heterogeneity among the women involved in this tribunal, gender can be simplistically and unproblematically imposed or taken up by individuals for strategic purposes. Thus the defendant's representative points to the number of women involved in the university disciplinary process as a way of arguing that the process is biased in favor of the complainants. This strategy is of particular interest, given that the female faculty tribunal member adopts a discursive perspective which, I have argued, is androcentric – and thus unsympathetic to the complainants' characterization of the events as sexual assault. Indeed, the faculty member herself invokes her femaleness as a way of protecting herself against charges that her questions have offended and harassed the complainants: “I'm a woman, I'm quite sensitive to what's happening.” Thus, in spite of social identities arising out of individuals' participation in a diverse set of communities of practice, salient aspects of social identity (i.e. gender) can assume a cultural importance that belies the complexity

of its formation. Bem (1993:193) talks about this phenomenon as “gender polarization,” i.e. “the organizing of social life around the male-female distinction, the forging of a cultural connection between sex and virtually every other aspect of human experience.” As we have seen, the “lenses” of gender (Bem 1993) – what Wodak characterizes (1997:12) as a “a powerful categorization device” – can have the effect of homogenizing women and men, EMPHASIZING SIMILARITIES AMONG WOMEN OR AMONG MEN WHERE DIFFERENCES ACTUALLY EXIST.⁷

The precise political effects of “gender polarization,” as manifest in the proceedings described here, are difficult to determine. In imputing a unified perspective to all the women involved in the tribunal proceedings, the defendant’s representative and the female faculty member may be neutralizing this tribunal member’s androcentric (re)construction of the events. As she herself says, “In asking questions I’m a woman, I’m quite sensitive to what’s happening.” Whatever the effects, however, it is clear that the invocation of gender essentialism is a powerful and pervasive social practice, with varying political and strategic effects. As I have demonstrated here, the community of practice notion allows us to focus on how gender is constructed in “its full complexity,” moving us away from overly general claims about “gendered” speech styles. Yet in spite of the complex nature of social identities, certain aspects of social identity (including gender) can be taken up and imposed on individuals for strategic and political purposes.

NOTES

* Much of the data and analysis in this paper come from Ehrlich & King 1996 and Ehrlich 1998. I thank participants in the “Communities of Practice” symposium at the 1997 Language and Social Psychology Conference, Ottawa, for help and insightful comments on a previous version of this article. The research reported on here was supported in part by a Regular Research Grant from the Social Sciences and Humanities Research Council of Canada, #410-94-1056.

¹ At least two types of explanations are offered for the linguistic differences between women and men documented in research of the 1970s and 1980s (cf. Cameron 1990). The first type of explanation, characterized as the dominance approach, sees male dominance as operative in the everyday verbal interactions of women and men, giving rise to linguistic reflexes of subordination and dominance. The second type of explanation, characterized as the difference approach, suggests that women and men learn different communicative styles based on the segregated same-sex peer groups they play in as children.

² The pool of tribunal members consists of three faculty members and three students nominated by the dean of the university’s law school; three faculty members nominated by the governing council of the university’s residential colleges; three students nominated by the undergraduate student union; and three faculty members and three students nominated by the vice-president for campus relations.

³ Criminal charges against the defendant reached some resolution in spring 1995, when he was convicted of one of the two charges of sexual assault, and was sentenced to six months in jail. That conviction was appealed.

⁴ All names used to designate individuals involved in the tribunal are pseudonyms. Transcription conventions (adapted from Jefferson 1978) are as follows:

- . indicates sentence final falling intonation
- ,
- ? indicates rising intonation followed by a noticeable pause
- ... indicates pause of 1/2 second or more

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=	indicates no interval between adjacent utterances (second is latched to the first)
[a lot]	
[I see]	brackets indicate overlapping utterances
–	indicates a halting, abrupt cutoff
o:	colon indicates an extension of the sound or syllable it follows
italics	indicates emphatic stress
((sniff))	double parentheses indicate details of the conversational scene or vocalizations

⁵ Estrich says that the “utmost resistance” standard was generally replaced by a “reasonable resistance” standard by the 1950s and 1960s in the United States; but she also cites decisions as late as 1973 which contend that “rape is not committed unless the woman opposes the man to the utmost limit of her power” (Estrich 1987:129).

⁶ The distinction between sex and gender was originally an attempt by feminist researchers in the 1970s and 1980s to separate biological categories (sex) from social ones (gender). In more recent years, some feminist theorists (e.g. Bem 1993, 1996, Butler 1990) have argued that both sex and gender are socially constructed. Bem 1996 cites the work of a developmental geneticist, Anne Fausto-Sterling, who argues that sex is a continuum that ought to be divided not into just two sexes, but into at least five. The fact that intersexed individuals are regularly assigned to the categories of male or female provides some evidence for the claim that sex, like gender, is socially constructed. In Butler’s words (1990:8), “to what extent does the body COME INTO BEING in and through the mark(s) of gender?”

⁷ McElhinny (1996:476) has labeled this practice “strategic essentialism” and has pointed to the potential political efficacy of the practice for aspects of feminism:

Patricia Hill Collins has acknowledged that a standpoint approach does underestimate differences among Black women, and thus unravels under closer scrutiny. But she argued that at this political moment, a strategic essentialism is necessary, in order to get Black feminist thought taken seriously as an area of intellectual inquiry.

More generally, the mobilizing of political action around seemingly “stable” and “unified” social identities (“identity politics”) can, arguably, be viewed as a positive outcome of strategic essentialism.

REFERENCES

- Abrams, Kathy (1989). Gender discrimination and the transformation of workplace norms. *Vanderbilt Law Review* 1183:1203.
- Atkinson, John, & Drew, Paul (1979). *Order in court*. Atlantic Highlands, NJ: Humanities Press.
- Bem, Sandra (1993). *The lenses of gender*. New Haven: Yale University Press.
- _____. (1996). Dismantling gender polarization and compulsory heterosexuality: Should we turn the volume down or up? *Journal of Sex Research* 32:329–34.
- Bergvall, Victoria, et al. (1996), eds. *Rethinking language and gender research: Theory and practice*. London: Longman.
- Butler, Judith (1990). *Gender trouble: Feminism and the subversion of identity*. London: Routledge.
- Cameron, Deborah (1990). Introduction: Why is language a feminist issue? In Deborah Cameron (ed.), *The feminist critique of language: A reader*, 1–28. London: Routledge.
- _____. (1996). The language–gender interface: Challenging co-optation. In Bergvall et al. (eds.), 1996:31–53.
- _____. (1997). Theoretical debates in feminist linguistics: Questions of sex and gender. In Ruth Wodak (ed.), *Gender and discourse*, 21–36. London: Sage.
- Conley, John M., & O’Barr, William (1990). *Rules versus relationships: The ethnography of legal discourse*. Chicago: University of Chicago Press.
- Crenshaw, Kimberle (1992). Whose story is it anyway? Feminist and antiracist appropriations of Anita Hill. In Toni Morrison (ed.), *Race-ing justice, En-gendering power*, 402–40. New York: Pantheon.
- Eckert, Penelope, & McConnell-Ginet, Sally (1992a). Think practically and look locally: Language and gender as community-based practice. *Annual Review of Anthropology* 21:461–90.

- _____, _____ (1992b). Communities of practice: Where language, gender, and power all live. In Kira Hall et al. (eds.), *Locating power: Proceedings of the Second Berkeley Women and Language Conference*, 89–99. Berkeley, CA: Women and Language Group.
- Ehrlich, Susan (1998). The discursive reconstruction of sexual consent. *Discourse & Society* 9:149–71.
- _____, & King, Ruth (1996). Consensual sex or sexual harassment: Negotiating meaning. In Bergvall et al. (eds.), 1996:153–72.
- Estrich, Susan (1987). *Real rape*. Cambridge, MA: Harvard University Press.
- Fisher, Sue (1991). A discourse of the social: Medical talk/power talk/oppositional talk. *Discourse & Society* 2:157–82.
- Freed, Alice (1996). Language and gender research in an experimental setting. In Bergvall et al. (eds.), 1996:54–76.
- _____, & Greenwood, Alice (1996). Women, men, and type of talk: What makes the difference? *Language in Society* 25:1–26.
- Gal, Susan (1991). Between speech and silence: The problematics of research on language and gender. In Micaela di Leonardo (ed.), *Gender at the crossroads of knowledge*, 175–203. Berkeley: University of California Press.
- Goodwin, Marjorie H. (1990). *He-said-she-said: Talk as social organization among Black children*. Bloomington: Indiana University Press.
- Jefferson, Gail (1978). Sequential aspects of storytelling in conversation. In Jim Schenkein (ed.), *Studies in the organization of conversational interaction*, 219–48. New York: Free Press.
- Lave, Jean, & Wenger, Etienne (1991). *Situated learning: Legitimate peripheral participation*. Cambridge & New York: Cambridge University Press.
- McElhinny, Bonnie (1996). Strategic essentialism in sociolinguistic studies of gender. In Natasha Warner (ed.), *Gender and belief systems: Proceedings of the Fourth Berkeley Women and Language Conference*, 469–80. Berkeley, CA: Berkeley Women and Language Group.
- Ochs, Elinor (1992). Indexing gender. In Alessandro Duranti & Charles Goodwin (eds.), *Rethinking context: Language as an interactive phenomenon*, 335–58. Cambridge & New York: Cambridge University Press.
- Walker, Anne Graffam (1987). Linguistic manipulation, power and the legal setting. In Leah Kedar (ed.), *Power through discourse*, 57–80. Norwood, NJ: Ablex.
- Wodak, Ruth (1997). Introduction: Some important issues in the research of gender and discourse. In Ruth Wodak (ed.), *Gender and discourse*, 1–20. London: Sage.
- York (1994). In the matter of M.A.: Reasons and judgement of the University Discipline Tribunal, York University.