

# 28 Coercing Gender: Language in Sexual Assault Adjudication Processes

---

SUSAN EHRLICH

## 1 Introduction

This chapter investigates the linguistic representation and (re)production of gender ideologies in institutional discourse. More specifically, it examines the language of sexual assault adjudication processes as a way of gaining greater insight into how dominant ideologies of sexual violence against women are reproduced, sustained, and (potentially) contested in these kinds of institutional settings. While concerted lobbying by feminists in the 1970s, 1980s, and 1990s has resulted in sweeping statutory reform to sexual assault legislation in Canada and the United States, the adjudication of sexual assault cases continues to be informed by culturally powerful interpretive frameworks that legitimate male violence and reproduce gendered inequalities. That is, whether or not androcentric definitions and understandings of rape or sexual harassment are actually encoded in law, the interpretation and characterization of events in such cases are “overwhelmingly directed toward interrogating and discrediting the woman’s character on behalf of maintaining a considerable range of sexual prerogatives for men” (Crenshaw 1992: 409). Given the often large discrepancy that exists between “law as legislation” and “law as practice” (Smart 1986), following Conley and O’Barr (1998), this paper locates the law’s failure to live up to its statutory ideals in the details of everyday legal practices. And, because “the details of everyday legal practices consist almost entirely of language” (Conley and O’Barr 1998: 3), linguistic analysis, of the type exemplified here, can be revealing of the cultural mythologies that inhabit such practices (e.g. a trial) and have a determining effect on legal outcomes.

Central to an investigation of language as it is embodied within institutional settings is both an understanding of the relationship between linguistic practices and speakers’ social identities and an exploration of the institutional and cultural backdrop against which speakers adopt such practices. In this chapter I bring together what have traditionally been two separate (but related) strands

of research within feminist language studies: (1) the study of language use: how individuals draw upon linguistic resources to produce themselves as gendered, and (2) the study of linguistic representations: how culturally dominant notions of gender are encoded (and potentially contested) in linguistic representations. While distinguishing between these two kinds of research has served as an organizing principle for much work in the field of language and gender, Cameron (1998: 963) problematizes the distinction, as I do, suggesting that “in many cases it is neither possible nor useful to keep these aspects apart”:

When a researcher studies women and men speaking she is looking, as it were, at the linguistic construction of gender in its first- and second-person forms (the construction of “I” and “you”); when she turns to the representation of gender in, say advertisements or literary texts she is looking at the same thing in the third person (“she” and “he”).

Put in Cameron’s terms, this chapter explores the way that the linguistic representation of gender “in the third person” shapes the enactment of gender “in the first person.” Encoded in third-person forms, talk by lawyers and adjudicators *about* the accused, the complainants, and violence against women more generally represents male sexual aggression in particular ways: specifically, “his” sexual prerogatives are privileged and protected at the expense of “her” sexual autonomy. Such representations transmit androcentric values and attitudes; yet, they also have a strongly constitutive function: they shape and structure witnesses’ *own* accounts of the events and concomitantly the way that gender is enacted in the first person. Put another way, my approach elucidates how the “talk” of participants, specifically witnesses, is filtered through cultural and institutional ideologies which themselves are manifest in talk.

## 2 Institutional Coerciveness

Debates over the nature of gender identity and its social construction, originating in feminist work of the 1990s, have in recent years informed research in sociolinguistics generally and feminist linguistics more specifically. In particular, conceptions of gender as categorical, fixed, and static have increasingly been abandoned in favor of more constructivist and dynamic ones. Cameron (1990: 86), for example, makes the point (paraphrasing Harold Garfinkel) that “social actors are not sociolinguistic ‘dopes’,” mindlessly and passively producing linguistic forms that are definitively determined by social class membership, ethnicity, or gender. Rather, more recent formulations of the relationship between language and gender, following Butler (1990), emphasize the performative aspect of gender: linguistic practices, among other kinds of practices, continually bring into being individuals’ social identities. Under this account, language is one important means by which gender – an ongoing social process

– is enacted or constituted; gender is something individuals *do* – in part through linguistic choices – as opposed to something individuals *are* or *have* (West and Zimmerman 1987). Cameron’s (1995: 15–16) comments are illustrative:

Whereas sociolinguistics would say that the way I use language reflects or marks my identity as a particular kind of social subject – I talk like a white middle-class woman because I am (already) a white middle-class woman – the critical account suggests language is one of the things that *constitutes* my identity as a particular kind of subject. Sociolinguistics says that how you act depends on who you are; critical theory says that who you are (and are taken to be) depends on how you act. [emphasis in original]

Here Cameron argues for an understanding of gender that reverses the relationship between linguistic practices and social identities traditionally posited within the quantitative sociolinguistics or variationist paradigm.

While the theorizing of gender as “performative” has succeeded in problematizing mechanistic and essentialist notions of gender that underlie much variationist work in sociolinguistics, for some feminist linguists (e.g. Wodak 1997) Butler’s formulation ignores the power relations that impregnate most situations in which gender is “performed” and in so doing affords subjects unbounded agency. For Cameron (1997), Butler’s (1990) discussion of performativity does, arguably, acknowledge these power relations, that is, by alluding to the “rigid regulatory frame” within which gendered identities are produced. Yet, as Cameron (1997: 31) also points out, often philosophical treatments of this “frame” remain very abstract: “for social researchers interested in applying the performativity thesis to concrete instances of behavior, the specifics of this ‘frame’ and its operation in a particular context will be far more significant considerations than they seem to be in many philosophical discussions.” The routine enactment of gender is often, perhaps always, subject to what Cameron calls the “institutional coerciveness” of social situations; in other words, dominant gender ideologies often mold and/or inhibit the kinds of gendered identities that women (and men) produce.

Addressing the tensions between local and more universal accounts of language and gender, Bergvall (1999) emphasizes the need to analyze dominant gender ideologies that pre-exist and structure local (linguistic) enactments of gender. That is, while more local and contextual accounts of language and gender (e.g. Eckert and McConnell-Ginet 1992a, 1992b, 1999) move us away from overarching and excessive generalizations about women, men, and “gendered” talk, Bergvall (1999: 282) suggests that we also consider the force of socially ascribed gender norms – “the assumptions and expectations of (often binary) ascribed social roles against which any performance of gender is constructed, accommodated to, or resisted.” Likewise, Woolard and Schieffelin (1994: 72) argue that we must connect the “microculture of communicative action” to what they call “macrosocial constraints on language and behavior.” Certainly, the examination of language and gender within institutions elucidates

some of the macro-constraints that pre-exist local performances of gender. Indeed, Gal (1991) suggests that because women and men interact primarily in institutions such as workplaces, families, schools, and political forums, the investigation of language and gender in informal conversations, outside of these institutions, has severe limitations. It "creates the illusion that gendered talk is mainly a personal characteristic" (p. 185), whereas, as much feminist research has revealed, gender is also a structuring principle of institutions.

Sexual assault adjudication processes are a rich and fertile site for the investigation of gendered ideologies that pre-exist and "coerce" many performances of gender. Embedded within legal structures, as feminist legal theorists (e.g. MacKinnon 1987, 1989; Bartlett and Kennedy 1991; Lacey 1998) have argued, are androcentric and sexist assumptions that typically masquerade as "objective" truths. The crime of rape, in particular, has received attention from feminists critical of the law, because in Smart's (1989: 50) words, "the legal treatment of rape epitomizes the core of the problem of law for feminism." Not only are dominant notions about male and female sexuality and violence against women implicated in legal statutes and judicial decisions surrounding sexual assault, I argue they also penetrate the discursive arena of the trial. Moreover, the material force with which the law legitimates a certain vision of the social order, through, for example, fines, imprisonment, or execution, means that the discursive imposition of ideologies in legal settings will have a particular potency. Hence, by locating my analysis of gendered linguistic practices in the context of sexual assault adjudication processes, I propose to explore the "institutional coerciveness" of these particular institutional settings or, put differently, the way that these settings shape and constrain performances of gender.

While acknowledging the dynamic and performative nature of gendered identities, I demonstrate in what follows how particular institutions make available or thwart certain definitions of femininity and masculinity, thereby homogenizing what in other contexts might be realized as variable and heterogeneous performances of femininity or masculinity. That is, outside of these institutional settings, when unaffected by the discursive and ideological constraints that permeate these contexts (e.g. when participating in other kinds of communities of practice), the male defendant and female complainants might recount their narratives quite differently. Concomitantly, the nature of their gendered (linguistic) identities, because they are mediated by the particular social practices and activities within which participants are engaged, might also be quite different outside of these institutions. While, as Eckert and McConnell-Ginet (1992a, 1992b, 1999) suggest, gendered identities, and social identities more generally, arise out of individuals' participation in a diverse set of communities of practice, institutional forces may constrain such identities, belying the complexity of their formation. And, to the extent that certain gendered identities are inhibited or facilitated by the sexual assault hearings analyzed here, this kind of institutional discourse provides a window onto the "rigid regulatory frame" (Butler 1990) within which gender is often enacted.

Previous scholarship on the language of institutional settings has investigated the *interactional* (i.e. inter-sentential) mechanisms by which certain ideological or interpretive “frames” dominate institutional interactions, while others are suppressed (Philips 1992). Todd (1989) and Fisher (1991), for example, document how doctors’ medical and technical concerns prevail in interactions with patients, even when patients articulate their problems in social and/or biographical terms. In her comparison of a doctor–patient interaction and a nurse–practitioner–patient interaction, Fisher (1991: 162) isolates aspects of interactional structure related to such discursive control. The doctor, much more than the nurse–practitioner, asked questions that “both allow a very limited exchange of information and leave the way open for his [the doctor’s] own assumptions to structure subsequent exchanges.” By contrast, the nurse–practitioner used open-ended, probing questions which maximized the patient’s own “voice” and interpretation of medical problems. In Fisher’s (1991: 162) terms, in these kinds of interactions “both the questions and the silences – the questions not asked – do ideological work.” Not only was Fisher’s doctor–patient interaction structured by the doctor’s assumptions (due to questions that allowed a limited exchange of information), but implicit in these assumptions were views about the centrality of the nuclear family to this mother’s sense of well-being or ill-health. According to Fisher, the doctor’s questions functioned to reinscribe the hegemonic discourse that “justif[ies] the traditional nuclear family which has at its center a *mother*” (Fisher 1991: 162, emphasis in original).

In this chapter I too consider the “ideological work” performed by questions in institutional settings. While others have documented the way that judges’ decisions in sexual assault cases can be informed by rape mythologies (Coates 1997; Coates et al. 1994), this chapter focuses on discriminatory views of violence against women as they (re)circulate within adjudication processes themselves. Indeed, embedded within the questions asked of complainants, rape mythologies become much more insidious, I argue, because of the structuring potential of language. Not only do questions, with their implicit and explicit propositions, frame and structure the complainants’ “talk” about their experiences of sexual assault, they also produce the complainants as particular kinds of subjects – as subjects who are “passive” in their responses to sexual aggression, as opposed to strategic and active. Fairclough’s (1995: 39) comments on his use of the term “subject” within institutional contexts are relevant here: “the term ‘subject’ is used . . . because it has the double sense of agent (‘the subjects of history’) and affected (‘the Queen’s subjects’); this captures the concept of *subject as qualified to act through being constrained – ‘subjected’ – to an institutional frame*” (emphasis mine). In the terms of this investigation, one manifestation of Fairclough’s “institutional frame” are the questions asked of complainants; that is, the questions’ presuppositions embody ideological perspectives which have consequences for the way in which the complainants are “qualified to act” linguistically.

### 3 Data

The data analyzed here come from two sources. They were transcribed from audiotaped recordings of a York University (Toronto, Canada) disciplinary tribunal dealing with sexual harassment; in addition they come from transcripts of a Canadian criminal trial in which the same defendant was charged with two counts of sexual assault. Both adjudication processes dealt with the same events – two alleged instances of acquaintance rape with two different women. The complainants were casual acquaintances prior to the alleged instances of sexual assault. They met coincidentally a short time after the incidents, discovered each other's experience with the accused, and together launched complaints against him in the context of York University and later in the context of the Canadian criminal justice system. Within the context of York University, the accused was alleged to have violated York University's Standards of Student Conduct, specifically the provisions of its sexual harassment policy. Within the context of the criminal justice system, the accused was charged on two separate counts of sexual assault on two separate complainants.

The accused and the complainants were all White, undergraduate students at York University. (Pseudonyms are used throughout this chapter to refer to the accused and the two complainants.) Each of the women, on two separate nights three days apart, had been socializing with the defendant and had invited him to her dormitory room on the university campus. The first complainant, Connie, was a casual acquaintance of the accused. On the night of the alleged assault, Connie met the accused, Matt, for dinner at approximately 10:30 in the evening. After an enjoyable dinner, according to the complainant's testimony, Connie invited Matt back to her room in university residence. At that point, he briefly massaged her and they then engaged in some consensual kissing. From that point on, Connie reported in her testimony that she objected to his further sexual advances; in spite of her objections, Matt allegedly persisted in unwanted sexual aggression. His acts of unwanted sexual aggression, according to Connie's testimony, included: removing her clothes, putting his fingers inside her vagina, putting his penis between her legs and rubbing it against her, and pushing her face onto his lap so that she was forced to perform fellatio on him until orgasm. In both the university tribunal and the criminal trial, these facts were not at issue. What was at issue was whether or not the sexual acts were consensual.

The second case involved the complainant Marg. Matt and Marg had met for the first time the night before the alleged sexual assault. On the night of the assault, Marg was socializing with her friend, Melinda, at a downtown Toronto club. Marg's car was towed away during the time Marg and Melinda were at the club and, as a result, they sought help from Matt and his friend, Bob (also Melinda's boyfriend). Given the lateness of the hour (3:00 or 4:00 in the morning), it was decided that the four would spend the night in Marg's university

residence room and that Matt would help Marg retrieve her car the next morning. After deciding that the men would massage the women, and vice versa, Marg agreed that Matt could sleep in her bed, but warned him on a number of occasions that if he crossed the line “he was dead.” That is, in this case, the complainant did not admit to any consensual sexual activity as the first complainant did. Once in bed, according to the complainant’s testimony, Matt initiated a number of unwanted sexual advances: he began to go under her clothes and touched her breasts and vagina. On a number of occasions, as a result of the unwanted sexual aggression, Marg asked Melinda, who was in the other bed with Bob, to join her in the washroom. In spite of Marg’s attempts to solicit help from Melinda, and by association, Bob, Matt continued to initiate unwanted acts of aggression, according to Marg’s testimony. These included: putting his foot between her legs and inserting his toe in her vagina, unbuttoning her shirt, sucking on her breasts and putting his fingers in her vagina. As in the first case, in both the tribunal and the criminal trial, the occurrence of these particular sexual acts was not at issue; what was at issue was whether or not they were consensual.

### ***3.1 The York University disciplinary tribunal***

York University disciplinary tribunals are university trials that operate outside of 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. The tribunal members decide upon the guilt or innocence of defendants and on penalties. Penalties range from public admonition to expulsion from the university. Normally, these tribunals are open to the public and are audiotaped. The tribunal members hearing this particular 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 accused was presented by the university’s legal counsel. The accused was at times represented by a family friend, at times by his mother, and at times represented himself.

While not technically a criminal court of law, the York University disciplinary tribunals function like one to the extent that each side, the prosecution and the defense, presents its version of the events at issue to the members of the disciplinary tribunal. In the case described here, the complainants, the accused, and their witnesses testified under questioning by their own representatives and by the tribunal members. All participants were also cross-examined by representatives from the other side. Thus, unlike jury trials, the “talk” of this

disciplinary tribunal was not designed for an overhearing, *non-speaking* audience – the jury (Atkinson and Drew 1979), but rather for members of the disciplinary tribunal who themselves had the right to ask questions of the accused, complainants, and witnesses. The testimonies of witnesses seemed to follow no strict order in this particular tribunal. For example, both complainants testified under questioning from the university lawyer, the tribunal members, and the accused's representative(s) at the beginning of the hearing and then again at the end of the hearing.

As stated previously, within the context of the university tribunal the accused was alleged to have violated York University's Standards of Student Conduct, specifically the provisions of its sexual harassment policy. 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." In determining whether the accused had violated the standards of student conduct deemed appropriate by the university, I am assuming that the university tribunal members were employing the standard of proof that other administrative tribunals in Canada (i.e. the normal standard in civil law) employ – that of "balance of probabilities." That is, according to a "balance of probabilities," the tribunal members were to decide which of the parties was to be believed more.

### 3.2 *The criminal trial*

The accused was charged by the same plaintiffs under the Criminal Code of Canada on two counts of sexual assault. In this particular criminal trial, a judge determined the guilt or innocence of the accused and the accused's sentence. The complainants were witnesses for the province (i.e. the state), which is represented by a Crown attorney; the accused was represented by a defense lawyer. In the criminal trial, then, it was the prosecuting and defense lawyers who asked questions of the defendant, the complainants, and witnesses in direct and cross-examination. Unlike the university tribunal, testimony and question-asking in criminal trials follow a prescribed order: the Crown first presents its case whereby its witnesses provide testimony under questioning (from the Crown) in direct examination and (from the defense lawyer) in cross-examination; the defense then presents its case whereby its witnesses provide testimony under questioning (from the defense lawyer) in direct examination and (from the Crown) in cross-examination. All criminal trials are conducted according to three foundational principles: (1) the accused is presumed innocent until proven guilty; (2) the Crown must prove "beyond a reasonable doubt" that the accused committed the offense; and (3) the accused has the right to silence. In this particular case, the accused testified. Moreover, both the Crown and the defense agreed that the sexual acts in question had occurred. Thus, the onus was on the Crown to prove "beyond a reasonable doubt" that the complainants had not consented to the sexual acts in question.

## 4 Ideological Frame: The Utmost Resistance Standard

Until the 1950s and 1960s in the United States, the statutory 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. Estrich (1986: 1122) comments: "in effect, the 'utmost resistance' rule required both that the woman resist to the 'utmost' and that such resistance must not have abated during the struggle." Because women were thought to fabricate accusations of rape, strict – and unique – rules of proof, of which resistance requirements were a part, were imposed upon rape cases in the nineteenth century (Schulhofer 1998). About resistance requirements in particular, Schulhofer (1998: 19) says the following: "to make sure that women complaining of rape had really been unwilling, courts required them to show physical resistance, usually expressed as 'earnest resistance' or even resistance 'to the utmost'." Within the Canadian context, Busby (1999: 275) argues, like Schulhofer (1998), that "special evidence rules" have been applied to sexual violence cases, focusing far more attention on the complainant's behavior than is possible in other kinds of criminal cases. While resistance requirements, in particular, have not been encoded in statutes in Canada, they have often been operative in the adjudication of sexual violence cases. Backhouse (1991: 103) argues that a very high standard of resistance was set in the Ontario case of *R. v. Fick* in 1866 when the trial judge in this case stipulated that in order for rape to occur "the woman [must have] been quite overcome by force or terror, she resisting as much as she could, and resisting so as to make the prisoner see and know that she really was resisting to the utmost" (cited in Backhouse 1991: 103). In the 1970s, Clark and Lewis (1977) investigated the characteristics of Toronto-area rape cases leading to perpetrator arrest and prosecution in 1970, and determined that a victim's testimony of lack of consent was deemed credible only when she resisted her attacker to the utmost of her capabilities. Thus, whether or not strict rules of proof or "special evidence rules" are actually encoded in law, the adjudication of sexual assault cases can still require such strict rules of proof in order to convict the accused. Indeed, in the remainder of this chapter I argue that the "utmost resistance standard" is the primary ideological frame through which the events in question and, in particular, the complainants' actions are understood and evaluated. This (re)framing functions to characterize the women as not "resisting to the utmost" and ultimately (re)constructs the events as consensual sex.

## 5 Analysis

What follows is an analysis of various propositions that emerged in question-answer sequences between cross-examining questioners, including the so-called

neutral tribunal members, and complainants. Taken together, I argue that these propositions “frame” the way the events come to be understood: they function as an ideological filter through which the complainants’ acts of resistance are characterized as “inaction” and the events generally are (re)constructed as consensual sex. (These examples and analyses are taken from a much larger study investigating the language of sexual assault adjudication processes. See Ehrlich (2001) for a fuller treatment of this topic.)

### 5.1 *The complainants as “autonomous individuals”*

The so-called options and choices available to the complainants in the context of escalating sexual violence was a theme evident in many of the questions asked of them. Consider example (1) where Matt’s cross-examining representative, TM, in the university tribunal questions Connie.

(1) *Tribunal*

TM: So I guess my my question to you is uh you had a choice at this point even though you say in your your oral testimony that you *didn’t* have a choice. Everybody has a choice . . . and your choice was that you could have asked him to leave. So I’m wondering why you didn’t ask him to leave? We all have free will. Let me rephrase the question or put another question to you then in the absence of an answer of that one. Why did you let uh what you say happened happen?

CD: ((*crying*)) I didn’t let it happen.

TM: But you had certain options. You could have left the room. By your admission there was a time when he was asleep. You could have called through a very thin wall. Uh:: you actually left the room to go to the washroom. Uh you had a number of options here and you chose not to take any of them.

More often in the form of declaratives than interrogatives, as the underlined excerpts in (1) show, TM focuses on the *options* and *choices* Connie ostensibly had. Moreover, he makes assertions about the free will and choices that we all enjoy. One is reminded here of the classic liberal subject – the rational, autonomous, and freely choosing individual. Yet, as socialist feminists, among others, have argued, such a view denies the socially structured inequalities among individuals that shape and restrict so-called options. In an analogous way, TM’s talk about options, choice, and freedom fails to acknowledge the power dynamics that can shape and restrict women’s behavior in the context of potential sexual violence.

In keeping with this view of the complainants as unconstrained by socially structured inequalities, many of the question–answer sequences involving complainants (and cross-examiners or tribunal members) identified the seemingly numerous and unlimited options that they did not pursue. Example (2), from a tribunal member’s questioning of Marg, displays a delineation of options not pursued by the complainant: GK lists (i.e. asserts) a series of actions that Marg did not perform – *You never make an attempt to put him on the floor . . . to close the*

door behind him or . . . to lock the door – and then asks whether they were offensive to her. GK's use of *only* in *You only have to cross the room* is indicative of her own view of such actions: Marg could have *easily* performed them.

(2) *Tribunal*

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 to lock the door. You only have to cross the room. Or to 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.

Examples (3) and (4), from the criminal trial, show the cross-examiner suggesting that "seeking help" was a reasonable option for Connie.

(3) *Trial*

Q: And I take it part of your involvement then on the evening of January 27th and having Mr. A. come back to your residence that you felt that you were in this comfort zone because you were going to a place that you were, very familiar; correct?

CD: It was my home, yes.

Q: And you knew you had a way out if there was any difficulty?

CD: I didn't really take into account any difficulty. I never expected there to be any.

Q: I appreciate that. Nonetheless, you knew that there were other people around who knew you and obviously would come to your assistance, I take it, if you had some problems, or do you know? Maybe you can't answer that.

CD: No, I can't answer that. I can't answer that. I was inviting him to my home, not my home that I share with other people, not, you know, a communal area. I was taking him to my home and I really didn't take into account anybody else around, anybody that I lived near. It was like inviting somebody to your home.

Q: Fair enough. And I take it from what you told us in your evidence this morning that it never ever crossed your mind when this whole situation reached the point where you couldn't handle it, or were no longer in control, to merely go outside your door to summons someone?

CD: No.

(4) *Trial*

Q: What I am suggesting to you, ma'am, is that as a result of that situation with someone other than Mr. A., you knew what to do in the sense that if you were in a compromising position or you were being, I won't use the word harass, but being pressured by someone you knew what to do, didn't you?

- CD: No, I didn't. Somebody had suggested that, I mean, I could get this man who wasn't a student not be permitted on campus and that's what I did.
- Q: What – but I am suggesting that you knew that there was someone or a source or a facility within the university that might be able to assist you if you were involved in a difficult situation, isn't that correct, because you went to the student security already about this other person?
- CD: Yeah, okay. If you are asking if I knew about the existence of student security, yes, I did.

The underlined sentences in examples (3) and (4) are “controlling” questions in Woodbury’s (1984) sense. That is, in producing such questions the defense attorney is signaling his (ostensible) belief in the truth of their propositions and his expectation that the propositions will be confirmed by the addressee. Moreover, these questions all contain the factive predicate *know*, a predicate that presupposes the truth of its complement. More specifically, what is taken for granted and assumed in the cross-examiner’s remarks is the “fact” that help was readily available on the university campus for those in trouble; what is “declared” – in the form of controlling questions – is Connie’s awareness of these sources of help. The juxtaposition of these propositions has the effect of implicitly undermining Connie’s claim that she was sexually assaulted. That is, if it is established in the discourse that help was available and that Connie was aware of its availability, then her “failure” to seek assistance casts doubt on her credibility. The final question of example (3) further undermines the charges of sexual assault – *It never ever crossed your mind . . . to merely go outside your door to summons someone?* – insofar as the word *merely* characterizes the seeking of help as unproblematic and effortless. Examples (5) and (6), both from the criminal trial, show the judge and the cross-examining lawyer asking Connie and Marg, respectively, why they didn’t utter other words in their various attempts to resist Matt’s sexual aggression. Connie reports saying “Look, I don’t want to sleep with you” at a certain point that night and Marg recounts one of several incidents when she attempts to elicit Bob’s help, saying “Bob where do you get these persistent friends,” yet these expressions of resistance are problematized by the questioners. Both of the underlined questions in (5) and (6) are negative *wh*-questions. First, then, they presuppose the fact that the complainant has not uttered the words suggested by the questioner: “Don’t undue [*sic*] my bra” and “Why don’t you knock it off” in (5) and “Bob, he was doing it again, please help me” in (6). More significantly, however, negative questions signal a speaker’s surprise at or conflict with the presupposed proposition contained therein (Lyons 1977; Woodbury 1984). Hence, when the judge and the cross-examining lawyer produce utterances of the form “Why didn’t you say X?” they are subtly communicating their surprise at/opposition to the complainants’ failure to produce the suggested utterances. Indeed, Lyons (1977: 766) argues that negative questions are “commonly . . . associated, in utterance, with a prosodic or paralinguistic modulation indicative of *impatience* or *annoyance*” (emphasis mine). Of added import is the fact that in example (5), it

is the judge – the ostensibly neutral adjudicator – who is expressing his impatience or annoyance with the complainant's "inaction."

(5) *Trial*

Q: And in fact just raising another issue that I would like you to help us with if you can, this business of you realizing when the line was getting blurred when you said "Look, I don't want to sleep with you," or words to that effect, yes, you remember that?

CD: Yes.

Q: Well, when you said that, what did that mean or what did you want that to mean, not to have intercourse with him?

CD: Yeah, I mean, ultimately, that's what it meant. It also, I mean –

The Court: You didn't want to sleep with him but why not, "Don't undue [sic] my bra" and "Why don't you knock it off"?

CD: Actually, "I don't want" – "I don't want to sleep with you" is very cryptic, and certainly as he got his hands under my shirt, as he took off my shirt, as he undid my bra, as he opened my belt and my pants and pulled them down and I said, "Please don't, please stop. Don't do that. I don't want you to do that, please don't," that's pretty direct as well.

(6) *Trial*

MB: . . . And then we got back into bed and Matt immediately started again and then I said to Bob, "Bob where do you get these persistent friends?"

Q: Why did you even say that? You wanted to get Bob's attention?

MB: I assumed that Bob talked to Matt in the hallway and told him to knock it off.

Q: You assumed?

MB: He was talking to him and came back in and said everything was all right.

Q: Bob said that?

MB: Yes.

Q: But when you made that comment, you wanted someone to know, you wanted Bob to know that this was a signal that Matt was doing it again?

MB: Yes.

Q: A mixed signal, ma'am, I suggest?

MB: To whom?

Q: What would you have meant by, "Where do you get these persistent friends?"

MB: Meaning Bob he's doing it again, please help me.

Q: Why didn't you say, "Bob, he was doing it again, please help me?"

MB: Because I was afraid Matt would get mad.

Q: You weren't so afraid because you told Bob, "Where do you get these persistent friends?" Did you think Matt would be pleased with that comment because it was so general?

MB: I didn't think about it but I thought that was my way of letting Bob know what was going on.

In examples (7) and (8) the option of "asking Matt to leave" is explored by the questioners. The underlined sentence in (7) contains the matrix clause *it's*

*quite obvious that*, which presupposes the truth of its embedded clause. Thus, what is taken for granted by the defense lawyer is that it never occurred to Connie that she might tell Matt to leave. The underlined sentence in (8) displays the same presuppositions as the underlined sentence in (7) in addition to possessing other pragmatic properties. As a negative *wh*-question, not only does it presuppose the truth of its proposition – “You did not ask him to leave,” it also expresses the speaker’s surprise at or conflict with this proposition. The preceding negative question in (8), *did you not have a choice?*, has a similar effect: the cross-examining questioner expresses his surprise at Connie’s failure to pursue options that would seem to be “freely chosen.”

(7) *Trial*

Q: I am not trying to be critical here. We weren’t there, you were, but when you talk about I think instinct, ma’am, the muscle memory was there when Matt had already offered to leave once, and I take it it’s quite obvious that it never crossed your mind at that point to tell him to leave and in fact he never did?

CD: No, the context was certainly different. Before I could even think of him leaving I wanted him to stop. I mean, that came first.

(8) *Tribunal*

TM: My question to you is although you say you have no choice . . . uh did you not have a choice? You could have asked him to leave at this point. Why did you not ask him to leave?

CD: Because . . . I wanted to explain to him why I wanted him to stop. I wanted him to understand I didn’t want him to be angry. I didn’t want him to be offended, I wanted him to understand.

In response to many questions about options not pursued, both complainants would sometimes make reference to the fact that they were physically incapable of carrying out the suggested actions. In (9) below, for example, Connie explains that she was *underneath* Matt at a certain point in time and cites her immobility as the reason she did not leave, did not pick up a phone, etc.: *I mean, before I could be in a position to pick up a phone to, to leave, I had to be in a position to move and I wasn’t.* In spite of her assertions throughout example (9) (this example continues immediately after example (7)) that she was underneath Matt, that she couldn’t move, that she couldn’t get her arms free, the cross-examiner continues to ask Connie about her acts (or lack thereof) of physical resistance: whether she tried to push him off (*Did you try to push him off?*) and whether she sat up to express her resistance verbally (*Did you ever sit up at the point that he was trying to remove your pants and say, “What’s going on here? Look at the two of us, how far we have gone here”?*). Such questions are reminiscent of Schulhofer’s (1998: 20) description of a 1947 Nebraska Supreme Court decision, which applied the utmost resistance standard to a woman’s charge of rape: “only if a woman resisted physically and ‘to the utmost’ could a man be expected to realize that his actions were against her will.”

(9) *Trial*

Q: And all of this happened fairly quickly. Again, I realise it's ridiculous to suggest that you are looking at a watch, but I take it that we've got this ongoing behaviour, that it's so physical that you are in no position to leave or do anything?

CD: That's right. I mean, before I could be in a position to pick up a phone to, to leave, I had to be in a position to move and I wasn't. So before thinking of I have to pick up the phone and I have to walk out the door, I had to think of how am I going to get out from underneath this man.

Q: Right. Did you try to push him off?

CD: Yes, I did.

Q: You weren't able to?

CD: No, I wasn't.

Q: Is that because you weren't able to get your arms free or because he was on top of you?

CD: I couldn't get my arms free and I couldn't push him off.

Q: At one point you were naked?

CD: Yes.

Q: At what point was that?

CD: I can't even pinpoint a specific time.

Q: Well, your shirt came off first as a result of the fondling of the breasts, right?

CD: Yes.

Q: And Mr. A. started to undue [*sic*] your belt and try to take your pants and try to take them down to which you responded "don't" and all of that other stuff?

CD: Yes.

Q: And yet he was still able to do that with your other pants?

CD: Yes.

Q: And were your arms still in the same position above your head and crossed over and being held by one hand?

CD: Yes. I am not sure at what point exactly he let go of them.

Q: But I take it, whatever he did, if he let go of your hands they went to another part of your body that rendered you incapable of getting out from under?

CD: Yes.

Q: Ma'am, did you ever sit up at the point that he was trying to remove your pants and say, "What's going on here? Look at the two of us, how far we have gone here", nothing like that.

CD: Everytime I tried to sit up, I got pushed back down.

Example (10), from the tribunal, also shows the cross-examining questioner posing questions to the complainant, Marg, about physical acts of resistance. (This question-answer sequence concerns Marg's responses to Matt's attempts to put his toe in her vagina.) A negative *wh*-question, the first underlined sentence, presupposes the proposition "Marg didn't get up" and, in addition, signals the speaker's surprise at/conflict with such a proposition. Moreover, the word *just* in *Why didn't you just get up?* expresses the speaker's belief that such an action could have been performed easily and unproblematically by Marg. Further on in the example, we see that the questioner asks two more questions about Marg "getting up": a negative tag question – *you did not get up. Is that correct?* – and a negative prosodic yes-no question – *And you still did*

*not get up?* Both continue to express the cross-examiner's (ostensible) surprise at her "lack of action"; furthermore, the word *still* suggests that the act of getting up was long overdue. Despite the fact that several of Marg's responses point to a physical act of resistance she did perform – pushing Matt's toe away – this act was clearly not "vehement" enough to satisfy the cross-examiner's standard of resistance. (Equals signs represent "latched" or immediately continuing speech; square brackets signal overlapping speech.)

(10) *Tribunal*

TM: It's after that point that you're sitting on a windowsill and now comes a rather bizarre incident according to you.

MB: Yeah.

TM: Uh:: he attempts to stick his toe =

MB: = Right =

TM: = in your vagina?

MB: Yes.

TM: Uh:: . . . now you were very upset the previous night when a total stranger whom you picked up in a bar took your hand and put it on his . . . uh crotch. Uh::m . . . yet you don't deny that you continue to sit there at the windowsill while this is going on.

MB: I didn't sit there and let him do that. I was sitting in the fetal position, he kept trying to put his toe there and I kept pushing it away.

TM: Why didn't you just get up?

MB: *I didn't know what to do. You don't understand. The whole entire time. I didn't know what to do. I was not thinking clearly. Where would I have gone?*

TM: You've now had a whole night's experience with this young man according to you =

MB: = And I [still didn't know what to do.]

TM: [And you're still prepared] to uh to to tell this panel that you are sitting there allowing this kind of bizarre [behaviour to go on?]

MB: [No I wasn't allowing it.] I kept pushing his foot away and telling him that I did not want to go to his house.

TM: But I come back to the fact you did not get up. Is that correct? When he first began to do this?

MB: No I pushed his foot away.

TM: And then he continued to do it?

MB: Right.

TM: And you still did not get up?

MB: I:: don't think so.

Repeatedly posing questions that presupposed and (pseudo)asserted the complainants' access to unlimited, freely chosen options, I am suggesting that the defense and the supposedly neutral tribunal members transformed the complainants' strategic responses to sexual aggression into ineffective acts of resistance. Consider example (6) above. This example displays one kind of strategic response adopted by the complainants to Matt's sexual aggression. When Matt begins his sexual aggression once again, Marg attempts to attract

Bob's attention. Rather than saying "Bob, he is doing it again, please help me," as the defense lawyer suggests, however, Marg employs a somewhat more indirect formulation: "Bob where do you get these persistent friends?" Asked by the defense lawyer why she uses what he characterizes as a mixed signal, Marg responds that she was afraid Matt would get mad. That is, what drives the complainants' actions in a situation of escalating sexual violence is not the free will of an autonomous individual, but rather the strong emotions of fear, shock, and confusion engendered by Matt's sexual aggression. Viewed within an alternative contextualizing framework, where the structural and systemic inequalities of male/female sexual relations are acknowledged and foregrounded, Marg's utterance could be construed as a strategic response to her fear of Matt's escalating violence. Yet, within the context of example (6), where Marg's options are represented as unlimited and her fear of Matt discounted, the utterance "Bob where do you get these persistent friends?" is (re)constructed as "passive" and "lacking in appropriate resistance."

## 5.2 *The transformative work of questions*

In keeping with Fisher's (1991) claim that questions perform ideological work, I have attempted to demonstrate the way that propositions presupposed and (pseudo)asserted in questions formed a powerful ideological frame through which the events under investigation in this trial and tribunal were understood. Specifically, the ideological frame of utmost resistance functioned as a discursive constraint, restricting the complainants' "talk" about their experiences and transforming their strategic agency into ineffectual agency. Example (11), from the testimony of the complainants' witness Melinda in cross-examination, is illustrative of the women's self-characterizations as they respond to (i.e. are subjected to) the barrage of questions delineating the numerous and unlimited options available to them.

(11) *Trial*

Q: Guess I am just asking you did you have it in your mind that your room at some point might be a place that you can go, particularly when you started to get into trouble with Mr. A.?

MK: That didn't even enter my mind.

Q: Why didn't it enter your mind?

MK: Because as things were happening they were happening so fast and I didn't have a lot of time to think about what to do, what to do. Everything clouded over on me.

Q: Right. I know it did, but what about from 4:30 in the morning until ten or 11 in the morning, it still didn't cross your mind?

MK: No.

Q: You know your roommate was there because you said "I am home", or words to that effect?

MK: Yes.

((a few intervening questions))

Q: It never crossed your mind to go back and speak to Wayne again since that was his job?

MK: No.

Q: Did it ever cross your mind?

((a few intervening questions))

Q: You didn't think that he might be a safe person to help you out of your dilemma?

MK: I wasn't thinking. I wasn't thinking clearly and I didn't know what to do.

Q: Is it because of your exhaustion you don't know what to do now? You sure seemed to know what to do when the car was towed and the fact that you wanted to get back up to see Bob and that suggests a presence of mind you have?

MK: I have never been put in a situation like that and, as I said, things were happening quickly and I was at a loss of what to do. I have never been put in that position. I am not experienced with that. I just didn't even think about it.

Implicitly claiming that Melinda has "failed" to seek help for Marg, the defense attorney asks a number of questions about possible sources of help. Melinda is questioned about whether she thought of her residence room as a safe refuge and whether she enlisted the help of her roommate or the residence adviser, Wayne. Faced with repeated questions about her "failure" to pursue such options, Melinda responds by referring to her inability to think clearly under the circumstances. Indeed, this is one "stroke" in the portrayal of what I'm calling ineffectual agency – a portrayal produced in the "talk" of the complainants and their witness in the process of being "subjected . . . to an institutional frame" (Fairclough 1995: 39). Contributing to the realization of this depiction are a variety of grammatical forms (illustrated in example (11)), used by the complainants and their witness, that emphasize their inability to *act* in ways that effectively express their resistance to Matt's sexual aggression. That is, when questioned about the "numerous" and unlimited "options" that they were "free" to pursue, the complainants and their witness did not generally respond by casting themselves in the roles of agents and actors, that is, as individuals who "purposefully initiate[d] or cause[d] actions" (Capps and Ochs 1995: 67). Rather, when they did represent themselves as initiators or causers of actions (i.e. as agents or actors) their causal role was severely diminished; otherwise, they represented themselves as experiencers of cognitive or emotional states or as patients – entities that were acted upon. Specifically, the complainants and their witness (1) referred to themselves as agents or actors of negated actions, that is, actions that were *not* performed; (2) referred to themselves as agents or actors of unsuccessful actions; (3) referred to themselves as agents or actors of actions, the force of which was diminished by adverbial or adjectival phrases; (4) referred to themselves as experiencers of negated cognitive states; (5) referred to themselves as experiencers of fear; and (6) referred to themselves as patients, that is, entities that were *acted upon*. Specific examples follow.

### 5.2.1 *Negated actions*

In examples (12)–(14), the underlined sentences display the complainants and/or the witness as the agents or actors of grammatically negated acts. Generally, then, all of the underlined predicates designate actions that were not caused or initiated by the referents of their subjects.

- (12) I just sat there, and I didn't – I didn't do anything. I didn't say anything. (CD, Trial)
- (13) I didn't fight and I didn't scream. I didn't say anything. (MB, Trial)
- (14) And everything was happening so fast, I didn't even think about knocking on the neighbour's door or anything. (MK, Tribunal)

### 5.2.2 *Unsuccessful actions*

In a similar way, the underlined sentences in examples (15)–(17) all represent the complainants as agents or actors of actions that were *not* performed. In these examples, however, the acts are represented as “attempted” but “unsuccessful,” given the presence of the main verb *try*.

- (15) Well, I tried to [talk to Bob about Matt's aggression]. The incident in the bathroom when I asked Bob to go talk to Marg . . . was the only thing I could think of . . . to get someone to tell Matt to stop it. (MK, Tribunal)
- (16) 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 [to give signals of non-consent] I mean maybe they weren't being ignored I don't know why he didn't listen to them. (MB, Tribunal)
- (17) I kept trying to move away and push my head back up but he had my hair and every time – every time I tried to, he just pushed me back down. (CD, Trial)

### 5.2.3 *Actions with limited force*

Whereas examples (12)–(17) represent actions *not* caused or achieved by the complainants and/or their witness, examples (18)–(20) do depict the women as agents or actors of actions. The underlined sentences in (18)–(20), however, contain adverbial or adjectival phrases that diminish the force or effectiveness of these actions. The adverbial *just* modifies the events represented in (18)–(19), signifying that the actions were minimal or limited in some way. Likewise, in (20) CD's use of the phrase *the best I could come up with* suggests that there were *better* ways of resisting Matt.

- (18) Q: Right. So what, so you did what?  
 MB: So I just sat there and desperately hoped he would leave. (MB, Trial)
- (19) Q: And you didn't encourage that and said, [sic] "Thanks for coming fellows, see you around," anything to jolly him out?  
 MB: I was afraid and I just sat there staring I was so afraid. (MB, Trial)
- (20) Q: So you didn't sort of then say, okay try plan "B." You didn't say, "Matt, I want you to leave." That would have been clear as a bell.  
 CD: I didn't really have a well thought out plan "A" and plan "B." I was running on I think instinct and is the best I could come up with was "Don't, stop, no, please don't." (CD, Trial)

#### 5.2.4 *Experiencers of negated cognitive states*

As with many of Melinda's utterances in example (11), examples (21)–(24) show the complainants as experiencers of negated cognitive states. First, then, the women are not representing themselves as purposefully or willfully initiating actions. Second, they are not representing themselves as experiencers of *positive* cognitive states, that is, as having ideas and/or knowledge about possible actions. On the contrary, the underlined sentences in (21)–(24) depict the complainants as unable to act purposefully or willfully because they lack knowledge or are unable to think clearly.

- (21) Because I was in shock and everything started coming in on me and I didn't know what to do. I was tired and I wasn't sure what to do. (MB, Trial)
- (22) All I wanted was to take – someone to take control of the situation and help me because I wasn't thinking of what to do for myself. (MB, Trial)
- (23) He seemed very angry and I realized I had lost control of the situation and didn't really know what to do about it and couldn't really think straight at this point other than wanting him to stop. (CD, Trial)
- (24) I didn't know what to do. I just felt overwhelmed, I was so tired. I felt so helpless. I didn't know what to do. (CD, Trial)

#### 5.2.5 *Experiencers of fear*

By far, the most frequent response to questions concerning the complainants' and their witness's "failure" to pursue the numerous options presented to them was that they had been motivated by fear. I provide the following question–answer sequence as a representative example:

(25) *Trial*

Q: And you didn't encourage that and said, [*sic*] "Thanks for coming fellows, see you around," anything to jolly him out?

MB: I was afraid and I just sat there staring I was so afraid.

Q: You were afraid that Mr. A. was saying to Bob, "Let's go out of here, let's leave"?

MB: No. I was afraid because he was mad because I didn't want to do anything with him so he was mad with me, so I was afraid that he was going to physically hurt me because I didn't want to do anything with him.

### 5.2.6 *Patients or entities acted upon*

Using grammatical constructions that even further diminish their agency, the complainants and their witness at times represented themselves as entities that were *acted upon*. That is, not only did they not portray themselves as initiators of events, they represented events or psychological states as controlling *them*. Connie's utterance in (26) is an explicit statement about her increasing sense that she was not in control:

(26) From that point that I realized that it had gotten out of control. (CD, Trial)

Examples (27) and (28) represent this same complainant as an experiencer of unrealized cognitive states (e.g. knowing how to react, being logical and coherent). Indeed, Connie is both patient and experiencer in these two examples; the events are represented as happening *to her* too quickly to allow for careful reflection.

(27) I mean actions were happening too fast for me to know how to react to them, for me to know what to do, and be logic and coherent about what the next move would be. (CD, Trial)

(28) Everything was happening too quickly for me to react to it. (CD, Trial)

The idea that the women's thoughts were not within their control has a more explicit grammatical realization in examples (29)–(31). Their minds are depicted in the grammatical role of *patient* – as entities that were subjected to certain thoughts and not others.

(29) Q: Guess I am just asking you did you have it in your mind that your room at some point might be a place that you can go, particularly when you started to get into trouble with Mr. A.?

MK: That didn't even enter my mind. (MK, Trial)

(30) Q: Why didn't you say "Look, you can't do this to me," whatever. "I've got a class in the morning," why did that come to your mind? . . . Were you still worried about his feelings?

CD: No. I don't know why that's the first thing that came to my mind. (CD, Trial)

- (31) It never even crossed my mind of anything sexual happening. (MB, Tribunal)

Examples (32)–(34) also show the women as acted upon, either by the force of emotions or by the overwhelming strength of the events. That the underlined portions of examples (32)–(34) all have verbs of motion further reinforces this representation: the women are controlled by potent and *active* forces.

- (32) I was like . . . I was so confused and so so many emotions running through me that I didn't know what to do that I just rolled over. (MB, Tribunal)
- (33) Because I was in shock and everything started coming in on me and I didn't know what to do. I was tired and I wasn't sure what to do. (MB, Trial)
- (34) Because as things were happening they were happening so fast and I didn't have a lot of time to think about what to do, what to do. Everything clouded over on me. (MK, Trial)

Overwhelmed by uncontrollable forces, Marg, in examples (35) and (36), expresses a desire for help, again casting herself in the semantic role of patient. As she so eloquently articulates her plight, someone has to act upon her (i.e. help her) because she no longer can think (or act) for herself.

- (35) I was waiting for or hoping somebody would help me and say, "Let's leave." (MB, Trial)
- (36) All I wanted was to take – someone to take control of the situation and help me because I wasn't thinking of what to do for myself. (MB, Trial)

The cumulative effect of the grammatical forms delineated in this section can be seen in the question–answer sequence of example (11). Responding repeatedly to questions about help she did *not* seek, Melinda is produced, not as a purposeful initiator of actions that would solicit help, but as an entity acted upon by paralyzing emotions (e.g. *Everything clouded over on me*) or as an experiencer of cognitive states that yielded no action (e.g. *I wasn't thinking clearly; I just didn't even think about it*). Set against a landscape peopled by autonomous subjects whose "choices" are unencumbered by socially structured inequities, this portrait of Melinda renders her purposeful acts (i.e. her agency) as weak, unsuccessful, or non-existent. Returning to Fairclough's notion of the "institutional subject," we can view the complainants and their witness as subjects "acting through" discursive (and material) constraints, producing themselves as ineffectual agents. They are "entered" involuntarily into this subject position (Hirsch and Lazarus-Black 1994) by questions that accomplish ideological work – questions that not only represent their actions as passive and ineffectual but also "produce" them as such.

## 6 Conclusion

In a discussion of representations of violence against women in the mainstream media, Chancer (1997: 227) cites Stuart Hall (Hall et al. 1978) on the difficulty of alternative “voices” emerging within such contexts: “what debate there is tends to take place almost exclusively *within the terms of reference* of the controllers . . . and this tends to repress any play between dominant and alternative definitions” (emphasis in original). I have argued similarly that the “debate” evident within these adjudication processes tended to be “framed” almost exclusively by a culturally dominant ideological perspective that presupposed the complainants’ behavior to be lacking in appropriate resistance – this lack of resistance being equivalent to consent. Yet, the *interactional* (i.e. question–answer) quality of these adjudication processes (i.e. they are literally dialogic) had consequences for the particular potency with which alternative perspectives were submerged in these contexts. While Chancer (1997: 227), following Hall et al. (1978), argues that “viewpoints which challenge dominant perspectives seldom shine in the spotlight of contemporary mass culture,”<sup>1</sup> my data show that linguistically encoded dominant ideologies acted as a constraint on the complainants’ *own* linguistic practices. That is, not only did the dominant perspectives obscure and/or render invisible the complainants’ acts of strategic agency (i.e. did not allow them to “shine”), they also *produced* them as subjects who had not acted strategically. Questions, as we have seen, can mold or exert control over the forms of answers. And, in response to innumerable questions whose presuppositions and (pseudo)assertions embodied the utmost resistance standard, the complainants cast themselves as agents who were ineffectual: their performances of strategic acts within “the external reality” were transformed into performances of ineffectual acts of resistance within the linguistic representations of “the courtroom reality.” (This distinction is made by Hale and Gibbons 1999.) And, without effectual and appropriate resistance, the dominant discourse (re)framed the sexual activity as consensual.

The kinds of “coerced” identities that I have claimed the complainants and their witness produced in these institutional settings, in large part due to the institutionally sanctioned strict role integrity of questioner and respondent, are subject to interpretation and reception along gendered dimensions. The complainants’ representation and production of themselves as “ineffectual agents” is intelligible insofar as it reinforces and perpetuates stereotypical images of women as weak and passive. Particularly pervasive in the area of male/female sexual relations are stereotypes of “active and aggressive masculinity and passive and victimised femininity” (Lacey 1998: 100), images confirmed by the representations (self- and other-generated) of the complainants. Significant about the identities constituted in these contexts is the degree of institutional *coerciveness* involved: the complainants and their witness were “called into” their subject positions involuntarily by a dominant discourse that constrained their possibilities for representing their strategic agency. Indeed,

the discursive constraints imposed upon the complainants within the adjudication processes mirrored the highly restrictive circumstances surrounding the sexual assaults. Just as the complainants and their witness had few opportunities to challenge the prevailing narrative of the court, so they had few possibilities for action within the context of Matt's intimidating and frightening demeanor and his escalating sexual and physical violence.

## NOTE

- 1 I thank Sue Levesque for directing my attention to this particular formulation of Chancer's.

## REFERENCES

- Atkinson, J. Maxwell and Drew, Paul  
1979: *Order in Court*. Atlantic  
Highlands: Humanities Press.
- Backhouse, Constance 1991: *Petticoats  
and Prejudice: Women and Law in  
Nineteenth-Century Canada*. Toronto:  
Osgoode Hall Society of Law.
- Bartlett, Katharine and Kennedy,  
Rosanne 1991: Introduction. In  
Katharine Bartlett and Rosanne  
Kennedy (eds) *Feminist Legal Theory:  
Readings in Law and Gender*. Boulder,  
CO: Westview Press, pp. 1–11.
- Bergvall, Victoria 1999: Toward a  
comprehensive theory of language  
and gender. *Language in Society* 28:  
273–93.
- Busby, Karen 1999: "Not a victim until  
a conviction is entered": Sexual  
violence prosecutions and legal  
"truth". In Elizabeth Comack (ed.)  
*Locating Law: Race/Class/Gender  
Connections*. Halifax, Nova  
Scotia: Fernwood Publishing,  
pp. 260–88.
- Butler, Judith 1990: *Gender Trouble:  
Feminism and the Subversion of  
Identity*. London: Routledge.
- Cameron, Deborah 1990:  
Demythologizing sociolinguistics.  
In J. Joseph and T. Taylor (eds)  
*Ideologies of Language*. London:  
Routledge, pp. 79–93.
- Cameron, Deborah 1995: *Verbal  
Hygiene*. London: Routledge.
- Cameron, Deborah 1997: Theoretical  
debates in feminist linguistics:  
Questions of sex and gender.  
In Ruth Wodak (ed.) *Gender  
and Discourse*. London: Sage,  
pp. 21–36.
- Cameron, Deborah 1998: Gender,  
language, and discourse: A review  
essay. *Signs: Journal of Women in  
Culture and Society* 23: 945–73.
- Capps, Lisa and Ochs, Elinor 1995:  
*Constructing Panic: The Discourse  
of Agoraphobia*. Cambridge, MA:  
Harvard University Press.
- Chancer, Lisa 1997: The seens and  
unseens of popular cultural  
representations. In Martha  
Fineman and Martha McCluskey  
(eds) *Feminism, Media and the Law*.  
Oxford: Oxford University Press,  
pp. 227–34.

- Clark, Lorene and Lewis, Debra 1977: *Rape: The Price of Coercive Sexuality*. Toronto: Women's Press.
- Coates, Linda 1997: Causal attributions in sexual assault trial judgments. *Journal of Language and Social Psychology* 16: 278–96.
- Coates, Linda, Bavelas, Janet, and Gibson, J. 1994: Anomalous language in sexual assault trial judgements. *Discourse & Society* 5: 189–206.
- Conley, John M. and O'Barr, William M. 1998: *Just Words: Law, Language and Power*. Chicago: University of Chicago Press.
- Crenshaw, Kimberle 1992: Whose story is it anyway? Feminist and antiracist appropriations of Anita Hill. In T. Morrison (ed.) *Race-ing Justice, En-gendering Power*. New York: Pantheon Books, pp. 402–40.
- Eckert, Penelope and McConnell-Ginet, Sally 1992a: Think practically and look locally: Language and gender as community-based practice. *Annual Review of Anthropology* 21: 461–90.
- Eckert, Penelope and McConnell-Ginet, Sally 1992b: Communities of practice: Where language, gender, and power all live. In Kira Hall, Mary Bucholtz, and Birch Moonwomon (eds) *Locating Power: Proceedings of the Second Berkeley Women and Language Conference*. Berkeley, CA: Women and Language Group, University of California, pp. 88–99.
- Eckert, Penelope and McConnell-Ginet, Sally 1999: New generalizations and explanations in language and gender research. *Language in Society* 28: 185–201.
- Ehrlich, Susan 2001: *Representing Rape: Language and Sexual Consent*. London: Routledge.
- Estrich, Susan 1986: Real rape. *Yale Law Journal* 1087, 1122.
- Estrich, Susan 1987: *Real Rape*. Cambridge, MA: Harvard University Press.
- Fairclough, Norman 1995: *Critical Discourse Analysis: The Critical Study of Language*. London: Longman.
- Fisher, Sue 1991: A discourse of the social: Medical talk/power talk/oppositional talk. *Discourse and Society* 2: 157–82.
- 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*. Berkeley, CA: University of California Press, pp. 175–203.
- Hale, Sandra and Gibbons, John 1999: Varying realities: Patterned changes in the interpreter's representation of courtroom and external realities. *Applied Linguistics* 20: 203–20.
- Hall, Stuart, Critcher, C., Jefferson, T., Clarke, J., and Roberts, B. 1978: *Policing the Crisis: Mugging, the State, and Law and Order*. New York: Holmes and Meier.
- Hirsch, Susan and Lazarus-Black, Minnie 1994: Performance and paradox: Exploring law's role in hegemony and resistance. In Minnie Lazarus-Black and Susan Hirsch (eds) *Contested States: Law, Hegemony and Resistance*. London: Routledge, pp. 1–31.
- Lacey, Nicola 1998: *Unspeakable Subjects: Feminist Essays in Legal and Social Theory*. Oxford: Hart Publishing.
- Lyons, John 1977: *Semantics*. Cambridge: Cambridge University Press.
- MacKinnon, Catharine 1987: *Feminism Unmodified*. Cambridge, MA: Harvard University Press.
- MacKinnon, Catharine 1989: *Toward a Feminist Theory of the State*. Cambridge, MA: Harvard University Press.
- Philips, Susan 1992: A Marx-influenced approach to ideology and language: Comments. *Pragmatics* 2: 377–85.

- Schulhofer, Steven 1998: *Unwanted Sex: The Culture of Intimidation and the Failure of Law*. Cambridge, MA: Harvard University Press.
- Smart, Carol 1986: Feminism and the law: Some problems of analysis and strategy. *International Journal of the Sociology of Law* 14: 109–23.
- Smart, Carol 1989: *Feminism and the Power of Law*. London: Routledge.
- Todd, Alexandra 1989: *Intimate Adversaries: Cultural Conflicts between Doctors and Women Patients*. Philadelphia: University of Pennsylvania Press.
- West, Candace and Zimmerman, Don 1987: Doing gender. *Gender and Society* 1: 25–51.
- Wodak, Ruth 1997: Introduction: Some important issues in the research of gender and discourse. In Ruth Wodak (ed.) *Gender and Discourse*. London: Sage, pp. 1–20.
- Woodbury, Hannah 1984: The strategic use of questions in court. *Semiotica* 48: 197–228.
- Woolard, Kathryn A. and Schieffelin, Bambi 1994: Language ideology. *Annual Review of Anthropology* 23: 55–82.