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# The discursive reconstruction of sexual consent

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**ABSTRACT.** This paper explores the discursive means by which a defendant in a sexual assault tribunal attempts to represent or construct himself as innocent. The relative success of discursive strategies in deflecting the defendant's accountability for the sexual assault in question, I argue, is directly related to the ideological perspective that 'frames' the proceedings of the tribunal. More specifically, I demonstrate how what Crawford (1995) calls a deficiency model of miscommunication between women and men informs, indeed dominates, this sexual assault tribunal. That is, both the defendant and the tribunal members (representatives of the university who decide on the guilt or innocence of the defendant) communicate that neither the man (the defendant) nor the women (the complainants) have been able to interpret the other's verbal and non-verbal communicative acts accurately, primarily because the complainants have been 'deficient' in their attempts to signal non-consent.

**KEY WORDS:** difference, dominance, feminist, gender, ideological frame, institutional discourse, miscommunication, power, sexual assault, violence

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## INTRODUCTION

Practice theorists such as Bakhtin (1981), Bourdieu (1977), Foucault (1972) and Volosinov (1973) have all conceptualized language as constituting and embodying ideology. In this view (Philips 1992: 378), language is 'itself material' rather than independent and simply symptomatic of material realities. Recent work on the language of institutional settings has given this theoretical view empirical substance: researchers have investigated the role of discursive practices in constructing and constituting power relations among professionals and clients and, in particular, the way that certain ideological or interpretive 'frames' dominate institutional interactions, while others are suppressed. 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 in 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 interaction used open-ended, probing questions which maximized the patient’s own ‘voice’ and interpretation of medical problems. In the context of legal settings, Walker (1987: 79) also comments on the interactional control exerted by questioners. As part of her investigation of linguistic manipulation in legal settings, she interviewed witnesses who reported ‘a feeling of frustration at being denied the right to tell their own stories their own way’. While the stories told in court were the witnesses’ own, lawyers and judges had the socially sanctioned prerogative to ‘present, characterize, limit and otherwise direct the flow of testimony’ such that the ideological frames structuring the stories were often not the witnesses’ own.

This paper explores the discursive means by which a defendant in a sexual assault tribunal attempts to represent or construct himself as innocent. The relative success of discursive strategies in deflecting the defendant’s accountability for the sexual assault in question, I argue, is directly related to the *ideological perspective* that ‘frames’ the proceedings of the tribunal. Following Philips (1992: 380), I use here ideological perspectives to refer to ‘pervasive and implicit interpretive perspectives that have a naturalness, a taken-for-granted-quality, that are the lived reality, and that provide the practical consciousness through which social action is experienced’. While the term *ideology* is traditionally used to characterize the way in which dominant groups ‘naturalize’ the dominant social order, I also use the term to refer to interpretive perspectives that challenge or resist the hegemony of dominant ideologies. In the sexual assault tribunal analysed here, the ideological perspective that dominates or structures the proceedings is not without challenge; however, because of the interactional inequalities that structure this institutional setting, alternative ways of understanding the events (i.e. alternative ideological perspectives) are submerged.

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 was considered not to have occurred.<sup>1</sup> While 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 operative in the adjudication of rape and sexual harassment cases to the extent that the interpretation and characterization of events in such cases is ‘overwhelmingly directed toward interrogating and discrediting the woman’s character on behalf of maintaining a considerable range of sexual prerogatives for men’. In this paper, I expose a new manifestation of the utmost resistance standard—one that relies on a model of miscommunication between women and men. I demonstrate how a ‘deficiency model’ of

miscommunication between women and men (Crawford, 1995) informs, indeed dominates, this sexual assault tribunal. Both the defendant through his testimony and the tribunal members (representatives of the university who decide on the guilt or innocence of the defendant) through their questioning communicate that neither the man (the defendant) nor the women (the complainants) have been able to interpret each other's verbal and non-verbal communicative acts accurately, primarily because the complainants have been 'deficient' in their attempts to signal non-consent. I argue that the general framing of these proceedings in terms of a deficiency model of miscommunication between women and men succeeds in characterizing the complainants' behaviour as 'inaction' or lacking in appropriate or utmost resistance, thereby affirming the 'sexual prerogative' of the defendant.

#### THE UNIVERSITY DISCIPLINARY TRIBUNAL

The data presented here were transcribed from audiotape recordings of a York University (Canada) disciplinary tribunal dealing with sexual harassment. 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.<sup>2</sup> 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 male student (the defendant) by two female 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 who was a 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 Ontario Criminal Code on two counts of *sexual assault*.<sup>3</sup> While the defendant's behaviour fell under the category of sexual assault under the Ontario criminal code, York University's rules and regulations do not include sexual assault as a possible offence. Thus, within the context of York University the defendant was charged with *sexual harassment*.

In colloquial terms, the defendant has been accused of two instances of 'acquaintance' 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 behaviour. 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 behaviour 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, discovered each other's experience with the defendant, and together each lodged a complaint of sexual harassment.

While not technically a criminal court of law, the York University disciplinary tribunal functions like one to the extent that each side, the prosecution and the defence, presents its version of the events at issue to the members of the disciplinary tribunal. As others have noted (for example, Atkinson and Drew, 1979; Conley and O'Barr, 1990; Walker, 1987), 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, 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, 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 defendant, complainants and witnesses.

#### ANALYSIS

##### *(Re)definition of consent*<sup>4</sup>

Examples (1)–(5) demonstrate how the defendant constructs himself as innocent by redefining what constitutes consent on the part of the complainant, Marg.<sup>5</sup> According to the defendant, unless the complainant showed strong resistance after each sexual advance, his sexual aggression was welcome. In other words, if the complainant did not resist each of the defendant's advances as soon as it was initiated and if these signals of resistance did not take particular (strong) forms, the defendant interpreted the complainant's behaviour as conveying consent. Consider the following example (1), in which the defendant (Matt, MA) is questioned by the university counsel (Hilda, HL).<sup>6</sup>

(1)

MA: Uhm she was just reciprocating and we were fooling we were fooling around. This wasn't . . . heh this wasn't something that she didn't want to do.

HL: How did you know?

MA: How did I know?

HL: Yeah.

MA: Because she never said 'no', she never said 'stop' and when I was kissing her she was kissing me back ... and when I touched her breasts she didn't say no.

This example shows the defendant explaining how he knew when the complainant was expressing consent—because she didn't say 'no' and didn't say 'stop' in response to each of his sexual advances ('when I was kissing her', 'when I touched her breasts'). Examples (2)–(5) are further expansions on this theme. Especially noteworthy in examples (2)–(5) is how temporality becomes crucial to the defendant's notion of consent. In each example, there is explicit acknowledgement on the part of the defendant that the complainant has expressed lack of consent at some previous point in the interaction; however, because she did not communicate her protests in the wake of each of his acts of sexual aggression, he understood her to be 'consenting'. In example (2), the university counsel questions the defendant about events that took place after Marg left the dormitory room (to tell Bob, the other man present, that Matt was taking advantage of her). The university lawyer is trying to determine why the defendant continued with his sexual advances after hearing of the complainant's feelings.

(2)

1 MA: I still wanted to clarify this because this was I felt that this was really abnormal.

2 So I asked her I said [ 'do you'  
3 HL: [What was abnormal?]

4 MA: Well that she goes and tells Bob that I'm taking advantage of her and then she  
5 comes =

6 HL: = Did you ever think for a moment that she that she felt you were?

7 MA: Well at that point for her to say to say that I was taking advantage of her when she  
8 let me kiss uh kiss her, when she never said 'no', when she never said 'stop', when she  
9 never got up out of the bed and said 'Bob and Melinda, Matt is taking advantage of me.  
10 Help me'. Uh for her to go for her just to say uh you know 'I couldn't do anything and  
11 I was just lying there' and uh, and then sort of like she can't do anything and then she  
12 escapes and then goes to Bob and says 'Matt took advantage of me' uh, and then and  
13 then after saying that, she gets back into bed with me.

14 HL: But it was her bed.

15 MA: Yeah but if somebody takes advantage, if I was if I was a woman =

16 HL: = Yeah =

17 MA: =Okay? And I was in bed with somebody=

18 HL: = Right =

19 MA: = And this person and two other people were next to me, okay? And this person  
20 started to take advantage of me and was doing things I didn't want to do, okay? I  
21 would get up out of bed, I would ask this person to leave, I would tell the two other  
22 people and I would deal with it then.

23 HL: Right

24 MA: I don't understand the logic of ... no I'm sorry. I do not think that it's appropriate  
25 to get back into a bed with somebody who you claim was taking advantage of you.

26 HL: So you felt when she got back into bed that that was a consent to other activities?

27 MA: At that point when she comes back to bed, at that point I wasn't even looking for  
28 consent. ((defendant's representative interrupts))

29 HL: You at that point you didn't believe that she didn't want you to do this?

30 MA: Of course not.

While Matt acknowledges that Marg felt he was taking advantage of her, he attempts to discredit and undermine this charge by pointing out in lines 7–10 that ‘she never said no’ (‘when she let me kiss her’), ‘she never said stop’, ‘she never said Matt is taking advantage of me’ at previous points in the encounter. We see here how the timing of acts of resistance is an integral part of Matt’s definition of consent: only if Marg were to protest *then*, at the very moment Matt initiated a sexual advance, would he hear her as expressing a lack of consent. The question of timing is also operative in Matt’s response to questions about why he resumed sexual activity after Marg’s comments to Bob. Matt focuses on Marg’s subsequent act, that is, ‘getting back into bed’, in justifying his interpretation of consent. Indeed, Matt’s repeated use of temporal expressions referring to previous points in the interaction (e.g. *then*, *at that point* in lines 4, 7, 12, 13, 22, 27) indicates the importance of temporality to his definition of consent. It seems that every new point in the interaction provides a new opportunity for Matt to ascribe consent or lack of consent to the complainant’s behaviour.<sup>7</sup>

Examples (3) and (4) contain further questioning of the defendant by the university’s counsel. Example (3) shows Matt claiming that, at some point during the night, Marg indicated that under different circumstances she might willingly engage in sexual activity.

(3)

HL: Yeah so she told you under different circumstances [she ]

MA: [Yeah ]

HL: might be willing to engage in sexual activity with you.

MA: Under the circumstances which she explained to me=

HL: = Right with everyone in the room.

MA: Well yeah I mean the=

HL: = So she did tell you at some point that she didn’t want to have sexual activity with you with everyone in the room. Am I right?

MA: At that point she did.

Like example (2), example (3) demonstrates the importance of each of Marg’s responses to Matt’s successive acts of aggression in his determination of consent. When confronted with evidence of Marg’s non-consent, Matt again invokes the issue of timing: from his perspective, Marg’s expressed lack of consent at one point in this encounter does not preclude her consenting to his advances at a subsequent point. Example (4) describes events that occurred after those represented in example (3).

(4)

MA: She was like caressing and like we were fooling around and I was caressing her and everything.

HL: She already told you that under different circumstances she might do it. Right?

MA: She had said earlier in the washroom =

HL: = Yeah. So this is after =

MA: = Yeah but the thing, I knew, I know what you’re saying but the thing is this, whenever I was engaged with sexual activity with Marg, okay? If Marg or anybody for that matter, if if that person at that time when I’m doing some-

thing, say if I'm lying in bed with them and reach over and grab their breast and, I had already done something with this person and they consented with it and, they did not move my hand away or anything and didn't say 'no', didn't say 'stop', didn't say uh uh uh, jump up and say 'No I want you to leave', I am assuming, okay? uhm that if a person does not resist to anything when they, that that that is consent.

HL: Okay.

MA: I never heard and I don't ... I never heard from uh this instance you're referring to. I never uh: heard at that time her refuse to engage in whatever we were engaged in.

In this example, the defendant is quite explicit about his definition of consent: 'If Marg or anybody for that matter, if if that person at that time that I'm doing something [...] didn't say "no", didn't say "stop", didn't [...] jump up and say "No I want you to leave", I am assuming, okay? [...] that is consent'. In short, Matt seems to be saying that since Marg did not express resistance in response to each of his advances, she 'consented' to his sexual aggression.

Whereas examples (1)–(4) have illustrated the temporal aspect of Matt's definition of consent, example (5) shows that his understanding of consent rests also on the *strength* of expressions of resistance.

(5)

((From the tribunal member's questioning of the defendant))

GK: One last question, if Marg was asleep and there's testimony that says that she's asleep and we have testimony that says it's debatable whether she was asleep =

MA: = Mhmm =

GK: = Uh why do you continue caressing her?

MA: Well as I said last week what occurred was that we had gotten back into bed and we started kissing and she said that she was tired, you know, she never said like 'no', 'stop', 'don't', you know, 'don't do this' uhm 'get out of bed'.

Matt acknowledges that Marg has said that she is tired; he does not construe this as resistance—she did not say 'no' 'stop' 'don't', etc. We see almost identical comments by the defendant about the strength of signals of resistance in examples (1) and (2), for example, 'she never said no', 'she never said stop' (in line 8 of example (2)). In sum, examples (2)–(5) all contain Matt's acknowledgments that Marg has expressed lack of consent at some point during the course of their encounter. However, because Matt defines 'consent' as the absence of vehement expressions of resistance in the wake of every sexual advance, he contends that his escalating sexual aggression is justified.

### *'No' means 'No' and hegemonic masculinities*

One way of understanding Matt's (re)definition of consent is in terms of the socially conditioned process by which linguistic forms are endowed with meaning. According to McConnell-Ginet (1989: 50) 'meanings are produced and reproduced within the political structures that condition



discourse' with the result that 'a sexual politics may have helped some men to "steal the power of naming"'. Because linguistic forms depend for their full interpretation or meaning on social context, including mutually accessible cultural knowledge, the question of whose beliefs and values inform this cultural background knowledge is crucial to understanding how linguistic forms come to 'mean'. McConnell-Ginet (1988: 91) argues that the cultural knowledge forming the background for the interpretation of linguistic utterances is not neutral:

The point is ... that men (and dominant groups generally) can be expected to have made disproportionately large contributions to the generally available background beliefs and values on which speakers and writers rely in their attempts to mean.

For example, the utterance 'You think like a woman' functions as an insult in most public contexts in North American culture, not because all listeners adhere to the proposition that women have questionable intellectual abilities, but rather because listeners are aware that such a proposition is prevalent and pervasive within the speech community; i.e. it is part of a set of mutually accessible cultural beliefs. Likewise, a woman will say 'no' with sincerity to a man's sexual advances, but the 'no' gets filtered through a series of cultural beliefs and attitudes that transform the woman's direct negative into an indirect affirmative: 'She is playing hard to get, but of course she really means yes' (McConnell-Ginet, 1989: 47). (Or in Matt's case, 'no' means 'yes' in the absence of aggressive and frequent expressions of resistance.) Because linguistic meanings are, to a large extent, determined by the dominant culture's social values and attitudes, they may lose their intended meanings in the context of a sexist speech community.

A feature of hegemonic masculinity (Connell, 1987) (i.e. culturally dominant form of masculinity) perhaps relevant to Matt's (re)construction of 'consent' (out of the absence of strong and frequent enough expressions of resistance) is what Hyden and McCarthy (1994: 548) have termed the 'male sexual drive' discourse.<sup>8</sup> Hyden McCarthy note that one of the public 'discourses' surrounding victims of rape in the West concerns their naivete about men's socially acceptable 'compelling' and 'uncontrollable' sexual impulses. Indeed, Estrich (1987: 101) refers to American sex manuals that 'laud[ed] male sexual responses as automatic and uncontrollable' (although also comments on newer ones that 'no longer see men as machines and even advocate sensitivity as seductive'). That Matt himself invokes this 'male sexual drive' discourse is shown in example (6): here the university counsel, HL, is asking him why he continued with his sexual advances towards CD, the other complainant, when earlier he had indicated that he was not interested in her sexually.

(6)

HL: Okay ... Then you- she said you said 'I changed my mind about not wanting to sleep with you'.

MA: Okay, there was a point ... and this is the, I believe second time in the evening that she said she did not want to have sex. Uhm we were fooling

around and then I stopped and I said I wanted to discuss something with her, but I was very reserved. Then I told her, well ... cause we were fooling around I had become aroused and that ... uhm: uh: that I was ... yeah that I was sexually aroused and that I had desires to want to have sex. And I had expressed to her earlier that I ... didn't want to and ... it was more because we were involved in such ... heavy sexual activity that I changed my mind.

Given that Matt's sexual advances towards the two complainants seem to depend on whether he is sexually aroused from one moment to the next, it is perhaps not surprising that he claims to interpret Marg's expressions of resistance as also variable from moment to moment. Put another way, Matt's interpretation of 'consent' relies on culturally dominant values and beliefs (or discourses) that form the background for the interpretation of linguistic utterances. Changing one's mind about wanting sex is completely consistent with the 'male sexual drive discourse' which says that once aroused, men's sexual urges are 'compelling' and 'uncontrollable'. And I am suggesting that Matt's interpretation of Marg's expressions of resistance as variable and as not definitive relies on such views of hegemonic masculinity.<sup>9</sup>

#### *Ideological frames: miscommunication and the utmost resistance standard*

Henley and Kramarae (1994) and Crawford (1995) have pointed to the cultural pervasiveness of models of miscommunication between women and men in accounting for 'many sites of gender struggle including sexual violence and aggression' (Crawford, 1995: 108). One version of such a model, the *difference* or *dual-cultures* model (associated most notably with Maltz and Borker (1982) and Tannen (1990)), suggests that women and men learn different communicative styles because of the segregated girls' and boys' peer groups they played in as children, resulting in inadequate or incomplete knowledge of the other group's communicative norms. In this view, miscommunication is the by-product of women and men growing up in different sub-cultures. While critiques of the difference model of miscommunication are numerous in the language and gender literature (see, for example, Freed, 1992; Troemel-Ploetz, 1991; Uchida, 1992), Eckert and McConnell-Ginet (1994: 437) are particularly critical of the passive role it ascribes to women and men in the construction of gendered identities: 'the emphasis on separation and resulting ignorance misses people's *active engagement* in the reproduction of or resistance to gender arrangements in their communities' (emphasis mine). Citing the example of a man interpreting a woman's 'no' to mean 'yes' in the context of potential sexual relations, Eckert and McConnell-Ginet argue that this 'reading' is possible not because of the man's mistaken belief in shared communicative norms (e.g. because he mistakenly believes that the woman's expressions of resistance may change from moment to moment), but rather because he is actively exploiting ideas about gender differences in communication. In a similar way, I am arguing here that the defendant's discursive (re)definition

of consent strategically invokes notions about 'gendered' speech styles and miscommunication in his justification of sexual assault. Moreover, the defendant's characterization of the events in question as consensual sex is legitimized by the general 'framing' of these proceedings in terms of a difference or dual-cultural model of miscommunication.

In examples (2) and (4), we see that Matt makes reference to his interpretation of Marg's behaviour, specifying the particulars necessary for him to understand her as refusing his advances. If he were a woman, he says (in example (2), lines 15–22), his resistance would be vehement and unequivocal, occurring precisely after a sexual advance. Two of the tribunal members were even more explicit than Matt in articulating the idea that miscommunication was operative on the night of the alleged sexual assault. For example, in questioning Marg and her co-complainant at the closing of the tribunal, the male faculty member, BW, raised the possibility that Matt perceived the events differently than the complainants did. This is illustrated in examples (7) and (8).

(7)

BW: If I can ... sort of ... put a question to the women, both of you. Uh ... it's always hard to respond ... without just saying that the other person is lying uh ... but I'm just wondering ... are you able to answer this? Is it possible ... we've heard two different stories, you being here the entire time, we know your story. You've heard Matt's story. Is it possible that he could have perceived events differently than you? Reflecting back on that evening or ... is your explanation that he's simply distorting the events?

(8)

BW: All that we were trying to flush out is for you to comment on ... Are we talking here about a situation in which you basically are saying that Matt is not telling the truth about these things, or is there a possibility that two people could have had different perceptions about what was going on? Sort of a vague question, but what we're trying to understand is whether you're telling the tribunal that in your mind Matt is lying to us, or in your mind you could actually say maybe he could understand this a certain way.

CD: I ... I honestly don't know what's going on in his mind. I don't know if he's making it up. I don't know if he just doesn't understand what happened. I I don't know =

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.

Notice in example (8) that the tribunal member does not accept 'I don't know' as an appropriate response to his questions about the defendant perceiving the events differently than the complainants. Instead, the complainant is enjoined to acknowledge that misperception and miscommunication were possible ways of understanding the unwanted sexual aggression. To some extent, then, the tribunal member's questioning had the effect of restructuring the propositional content of the complainant's

responses (i.e. from ‘I don’t know’ to ‘I suppose it’s [miscommunication] possible’). Even more insistent about this particular characterization of events is the female faculty member, GK, when questioning Marg:

(9)

- 1 MB: I kept saying ‘let’s just go to sleep’. I didn’t honestly know what else in my  
2 mind to do at that time. For me that was all I could do to tell him I didn’t want to do  
3 anything.
- 4 GK: And did it occur to you through the persistent behaviour that maybe your signals  
5 were not coming across loud and clear, that ‘I’m not getting through what I want and  
6 what I don’t want?’ Does it occur to you ‘I need to stand up and say something’, ‘I  
7 need to move him to the floor?’ This is the whole thing about getting signals mixed up.  
8 We all socialize in one way or the other to read signals and to give signals. In that  
9 particular context, were you *at all* concerned your signals were not being read exactly  
10 and did you think since signals were not being read correctly for you, ‘should I do  
11 something different with my signals?’
- 12 MB: I did. He made me feel like I wasn’t saying anything, that I wasn’t saying ‘no’  
13 and that’s *why* I asked to talk to Bob, thinking if I couldn’t tell him maybe Bob could  
14 tell him. Bob came in the room and said everything was okay just to forget about it and  
15 go back to sleep. I tried that. I told Matt, I said if the circumstances would have been  
16 different, maybe. It was a lie but I mean it was another way for me to try to tell him  
17 ‘no’. I mean obviously I just wanted to go to sleep. It wasn’t getting through so I tried  
18 different approaches. And in my mind I hoped that they were getting through, I mean, I  
19 was making it as clear as I could. I’m not sure if that answers your question or not  
20 but ...
- 21 GK: No, it’s because right from there to the end you, you had felt that you hadn’t made  
22 it clear because at the end you said you were willing to lie and give him this phone  
23 number and get rid of him. So all along the way you felt your signals were not read  
24 correctly. But the whole thing is, you know, that concerns all of us is that the signals  
25 of, you know, between men and women are just, are not being read correctly and I’m  
26 not debating who’s lying and who’s telling the truth because it’s not mine to say that.  
27 The substance is why, that signals, do you feel at that time your signals were not being  
28 read correctly?

Note that, on lines 7–8, GK contends that signals are bound to get mixed up because ‘we all [are] socialize[d] in one way or the other to read and give signals’. Furthermore, lines 24–5 show GK invoking gender socialization as an explanation for this differential interpretation of ‘signals’: ‘the signals [...] between men and women [...] are not being read correctly’. This tribunal member seems to subscribe to a ‘different-but-equal’ model of miscommunication on lines 25–6: ‘I’m not debating who’s lying and who’s telling the truth’. In other words, it is not a question of one person lying and the other telling the truth; rather, ‘signals’ are interpreted differently by these individuals. On lines 4–11 and 21–4, however, she seems to subscribe to a ‘deficiency’ model of miscommunication (Crawford, 1995)—one in which the complainant is represented as deficient in her attempts to communicate lack of consent. For example, she first asks on lines 8–9 whether Marg was concerned about the interpretation of her ‘signals’: ‘In that particular context, were you at all concerned your signals were not being read exactly?’ and then assumes (or presupposes) in line 10 (in the clause introduced by *since*) that the ‘signals’ were not being read correctly:

'did you think since signals were not being read correctly for you, "should I do something different with my signals?"' Moreover, on lines 21–4 the tribunal member asserts that Marg must have known her signals were not being read correctly 'all along'; otherwise, she would not have lied to the defendant. Implicit in the tribunal member's questions, then, is the claim that Marg was responsible for 'do[ing] something different with [her] signals', given that she knew Matt wasn't interpreting them correctly.

In examples (10) and (11), GK continues to be preoccupied with the inappropriateness of the complainant's signals.

## (10)

- 29 GK: What I'm trying to say and I realize what I'm saying is not going. ... You never  
 30 make an attempt to put him on the floor or when he leaves the room, to close the door  
 31 behind him or you know you have several occasions to to lock the door. You only have  
 32 to cross the room. Or to move him to the floor, but these things are offensive to you?  
 33 MB: I was afraid. No one can understand that except for the people that were there. I  
 34 was extremely afraid of being hurt. Uhm: as for signals, they were being ignored. I  
 35 tried I mean maybe they weren't being ignored I don't know why he didn't listen to  
 36 them. I shouldn't say they were being ignored but he wasn't listening. And I kept  
 37 telling him, I kept telling him, I was afraid to ask him to sleep on the floor. It crossed  
 38 my mind but I didn't want to get hurt. I didn't want to get into a big fight. I just  
 39 wanted to go to sleep and forget about the whole entire night.

## (11)

- 40 GK: I realize you were under certain stress, but in your story I heard the men left the  
 41 room twice on two different occasions. And you and Melinda ((the other woman in the  
 42 room)) were alone in the room. What might have been your option? I see an option. It  
 43 may not have occurred to you but I simply want to explore that option with you. Uh,  
 44 did it occur to you that you could lock the door so that they may not return to your  
 45 room?  
 46 MB: It did, but it didn't. Now it does. I mean looking back. Everyone was telling me  
 47 that nothing's going on. Don't worry about it. Forget about it. When your friends are  
 48 telling you nothing's going on, you start to question ... maybe nothing is going on. I  
 49 just ... I couldn't think.<sup>10</sup>

In these examples, GK again suggests that Marg has not been clear enough with her 'signals' of resistance. On lines 29–32, GK lists 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 asks whether these were offensive to Marg. Indeed, while GK's comments sometimes take the form of interrogatives, they often have the illocutionary force of assertions, for example, You should have put him on the floor, You should have closed the door, You should have locked the door. In example (11), lines 42–5, GK asserts that Marg had another 'option', namely, locking the door when Matt was in the washroom. By continuing to focus on 'options' not acted upon by Marg, this tribunal member raises the possibility that Marg has not 'chosen' (i.e. 'options' imply 'choices') the best means of resistance or, put another way, that she has not resisted to the utmost.

Though GK asks Marg repeatedly about the inappropriateness of Marg's 'signals' in examples (9)–(11), she does not generally focus on questions of

appropriateness when she asks Matt about his interpretations. In examples (12) and (13), we see GK questioning the defendant, Matt.

(12)

50 GK: You said often that it was important to you that Marg had never said 'no' to you or  
51 that 'she didn't like you', but you read into her actions, but you were always looking at  
52 non-verbal signs from her to understand that it was consensual. The fact that she  
53 invites you into her bed, well maybe that may be verbal, the fact that she stays in  
54 bed with you, the fact that she doesn't leave and so on, uh some of them were not,  
55 most, a lot of them I see as non-verbal signals.

(13)

56 GK: I'm trying to gather from this is that you read more verbal signals than non-verbal  
57 signals [and I'm trying and I'm trying to ]  
58 MA: [that she likes me? ]  
59 GK: Yes so that your paying attention to her, according to your testimony, to her non-  
60 verbal signals. It is really hard you see, the point is when when the idea 'no means no'  
61 when when when people are- tend to give people signals in different ways and I'm just  
62 trying to interpret for [myself these signals.  
63 MA: [Yeah I know there's there's a communication thing.

Here, we see the tribunal member expressing her understanding of the events in terms of a 'difference' model of miscommunication: she asserts, on line 61, that 'people [ . . . ] tend to give people signals in different ways' and wonders, on line 56–7, whether Matt 'read more verbal signals than non-verbal signals'. Not surprisingly, the defendant echoes her characterization of the events: 'Yeah I know there's there's a communication thing'. In contrast to GK's questioning of Marg, however, there is no suggestion in her questioning of Matt that he had other 'options' or ways of interpreting Marg's 'signals': the tribunal member is 'just trying to interpret these signals [for herself]'. Like example (13), example (14) shows GK concerned with Matt's verbal and non-verbal 'signals'.

(14)

64 GK: Uh and you say 'I can't read her mind' at some times. Now I'm concerned that  
65 there's certain verbal signals you pick up and certain non-verbal signals you pick up =  
66 MA: = Mhmm =  
67 GK: = Uh and then there's certain very clear verbal signals and non-verbals signal that  
68 you choose not to pick up or you don't pick up and it's really hard for me to know.

While GK does focus on 'signals' from Marg that Matt did not 'pick up', there are no direct assertions in example (14) about Matt knowing that his interpretations were faulty. (Consider, by contrast, GK's assertion to Marg on lines 23–4 of example (9): 'So all along the way you felt your signals were not read correctly'.) Nor does GK assert what other 'options' Matt could have or should have pursued. (Again, compare example (14) to GK's questioning of Marg in examples (9) and (10)—lines 29–31: 'You never make an attempt to put him on the floor or when he leaves the room, to close the door behind him' and lines 42–3: 'I see an option. It may not have occurred to you but I simply want to explore that option with you'.) Thus, although the complainant was repeatedly criticized for not making her signals clearer and not changing her signals, Matt is not generally criticized

for what might be faulty or inaccurate interpretation of signals. Indeed, when GK questions Matt about ‘mixed signals’ in (12)–(14) it seems to be her assessment of the situation that is at issue. For example, as already noted, on lines 61–2, she is ‘just trying to interpret for [herself] these signals’ and on line 67 ‘it’s very hard for [her] to know’ about the signals that Matt does or does not ‘pick up’ on.<sup>11</sup>

In addition to the types of questions found in examples (12)–(14), GK’s questioning of Matt also focused on *Marg’s* behaviour, specifically, the ‘options’ that she did not ‘choose’. That is, in the following examples (15) and (16), we do not see GK questioning Matt about his behaviour or interpretations; rather, GK is attempting to confirm that Marg did not pursue avenues of resistance that GK seems to regard as appropriate. Beyond GK’s noting ‘the fact that [Marg didn’t] leave’ on line 54 of example (12), consider her comments in examples (15) and (16):

(15)

GK: Uh when you left the room, as you left the room several times, was the lock ever used?

MA: The lock was never used=

GK: =Was the lock ever used when you were inside the room?

MA: The lock was never used.

(16)

GK: Okay. And as you said earlier and I want to make sure that I understand correctly, at no point were you asked to go on the floor?

MA: No.

The idea that women, and not men, are deficient communicators in the context of potential sexual relations has been characterized previously as a *deficiency* model of miscommunication between women and men (Crawford, 1995). Such a model does not assume separate-but-equal communicative styles; rather, women are blamed or held responsible for failing to signal their lack of consent clearly and unambiguously. Crucially, such an interpretive or ideological perspective functions to deflect men’s responsibility for rape; instead the victim is held responsible for being deficient in her attempts to communicate. GK’s continued emphasis on the ‘options’ or ‘signals’ not chosen by the complainant, I would suggest, has the effect of characterizing the complainant’s signals of resistance as weak, infrequent and inappropriate and her behaviour as lacking in resistance. I noted earlier that the criterion of utmost resistance is not currently encoded in criminal definitions of rape; however, it seems to be operating in the way Matt construes ‘consent’ from Marg’s presumed lack of strong enough resistance. The criterion of utmost resistance is given further legitimacy when a tribunal member asks questions (and makes assertions) that presuppose the inadequacy of the complainant’s communication of resistance. In the preceding examples, we have seen that a ‘different-but-equal’ model of miscommunication is quickly replaced by one in which the woman is held responsible for miscommunication. That is, talk about ‘difference’ only thinly conceals the assumptions that truly underlie the tribunal member’s questions—androcentric assumptions that legitimize the defendant’s

defence of weak and equivocal 'signals' on the part of the complainant. In characterizing the complainants' signals as inadequate, the tribunal members affirm the defendant's definition of the situation, and in particular, a ('masculine') code of behaviour in which 'real' resistance is expressed aggressively and directly. If, indeed, GK subscribes to a 'difference' model of miscommunication (as her comments would suggest), then one might expect her to apply different interpretive standards to the defendant's and the complainants' testimony. Repeated reference to 'options' the complainants could have or should have chosen, however, suggests that GK views the complainants' communication of resistance as 'deficient', in line with Matt's assessment of their behaviour as indirect and equivocal. (See, in particular, lines 19–22 in example (2).) These observations are consistent with Henley and Kramarae's (1994: 401–2) comments regarding the '*metastructure* of interpretation' in the context of men's dominance and women's subordination: 'the accepted interpretation of an interaction (e.g., refusal versus teasing, seduction versus rape, difference versus inequality) is generally that of the more powerful person, therefore [the man's interpretation] tends to prevail'.

#### OUTCOME OF THE TRIBUNAL PROCEEDINGS

The tribunal found the defendant's behaviour 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. In spite of the university counsel's recommendation that the defendant be expelled, the tribunal members decided only to bar him from dormitories on campus. They argued that the defendant did *not* pose a threat to the university community and that the university setting was a good place for him to become 'sensitized to the need for respecting the sexual autonomy of women' (*In the Matter of M.A.* p. 37). I would suggest that such a penalty is lenient for two convictions of acquaintance rape but, at the same time, is entirely consistent with the assumptions underlying this adjudication process. Indeed, comments in the tribunal members' written decision were consistent with the defendant's definition of consent and the 'deficiency' model of miscommunication that dominated and structured the proceedings:

At the outset of their interaction with Mr. A., both complainants were very clear as to their intentions. They clearly set the limits at the very beginning but their resolve became somewhat ambiguous as the night progressed. Did their actions leave Mr. A. with the impression that they had changed their minds later in the evening? There is little doubt that both complainants did not expressly object to some of the activity that took place that evening. It is also clear that their actions at times did not unequivocally indicate a lack of willing participation. For example, the



actions of Ms B. [Marg] in constantly returning to bed may have left Mr. A. with the impression that she was interested in continuing the sexual touching. Further, much was made of the fact that Ms D. [the other complainant] voluntarily attended a pub with Mr. A. the very evening after the incident, and that she even slow danced with Mr. A.  
*(In the Matter of M.A: Reasons for Judgement of the University Discipline Tribunal, p. 9)*

The written decision thus underscores the notion that the complainants' protests were too infrequent, unclear, weak and equivocal to send the message to the defendant—who may understand 'signals' differently—that the complainants were consenting to sexual activity. Of particular interest is the tribunal members' characterization of Marg's behaviour: she is described as 'constantly returning to bed' which 'may have left Mr. A. with the impression that she was interested in continuing the sexual touching'. Not only does this statement reiterate the 'deficiency' of Marg's communications of resistance, it also endorses the temporal aspect of Matt's definition of 'consent'. Because every new point in the interaction provides a new opportunity for Matt to ascribe 'consent' or lack of consent to Marg's behaviour, Marg's returning to bed *constantly* would undoubtedly, according to Matt's definition of 'consent', negate other expressions of resistance.

#### ALTERNATIVE IDEOLOGICAL FRAMES

In a recent book on acquaintance rape, Sanday (1996: 237) argues that justice will only prevail in acquaintance rape trials once 'the scrutiny shifts from the complainant ... to the defendant's behavior. Did the defendant obtain consent? Did the defendant know whether the complainant consented? These are the questions to be answered in determining whether a crime was committed'. Up to this point, I have argued that notions of inaccurate 'signalling' and miscommunication between women and men, invoked in the 'talk' of this tribunal, create the ideological space in which the defendant's characterization of events receives some legitimacy: the complainants are described as not expressing resistance strongly enough and frequently enough. Consistent with Sanday's remarks, it was the complainants' behaviour that was generally interrogated as to its appropriateness, not the defendant's. How, then, might an alternative ideological perspective inform acquaintance rape tribunals and trials, so that women's communications would not be regarded as deficient and their behaviour would not be characterized as lacking in resistance? Such an ideological perspective would need to acknowledge the power dynamics that shape the behaviour of women and men in the context of potential sexual relations. Especially relevant, in this regard, are the complainants' own explanations of their actions in the face of sexual violence. Consider Marg's comments in the second part of example (10) and in example (17).

(17)

HL: Do you have anything more that or specific to say to the panel about the evidence that you've heard and uh that Matt has given?

MB: The truth? I mean I don't know what else to reply to. You think, at least I do, that you know you're walking down the street and someone grabs you. I was prepared for that I thought, but you don't expect someone that you know to do that and when it's happening, I mean, you do whatever you have to to survive. ((crying)) I mean I was just thinking how to survive that second. I mean I didn't care if that meant getting back into bed with him. If he didn't hurt me I didn't care at that second. I mean I didn't want to do the things I did and looking back on them I shouldn't have gotten back into bed, I should have yelled, I should have done something, but, I was in a room full of people that weren't helping me and somebody was trying to hurt me. I did whatever I could to get by. I don't know what else to tell you.

In response to many questions throughout the tribunal about their 'deficient' attempts to communicate, Marg and her co-complainant typically pointed to their intense and extreme feelings of fear. Indeed, on lines 37–8 of example (10), Marg explains her failure to pursue an 'option' suggested by GK in terms of her fear: 'I was afraid to ask him to sleep on the floor. It crossed my mind but I didn't want to get hurt.' Similarly, in example (17), Marg cites the need to survive (without getting hurt) as motivation for 'getting back into bed with [Matt]': 'I was just thinking how to survive that second. ... I didn't care if that meant getting back into bed with him. If he didn't hurt me I didn't care at that second'.

These examples show very clearly the complainant's fear, confusion and paralysis when confronted with the threat of unwanted sexual aggression. Although the defendant and complainants in this case, may, indeed, communicate resistance in different ways, what 'difference' models of communication (both deficiency and separate-but-equal) fail to capture are the structural and systemic inequalities (alluded to in Marg's quoted comments) that engender 'difference'. As Henley and Kramarae (1994: 400–1) argue, 'cultural difference does not exist in a political vacuum ... ; [it is] shaped by the context of [men's] supremacy and [women's] subordination'. More specifically, women's submission to men's sexual advances often (if not always) occurs in situations where physical injury is a threat to women and where physical resistance can escalate the possibility of violence. British and American research on violence against women shows that, in general, women who are being assaulted remain physically passive because, they believe, this will prevent a more serious or prolonged attack (Dobash and Dobash, 1992).

Marg's comments on lines 33–9 of example (10) and in example (17) illustrate this phenomenon—Marg contends that she did not pursue certain of GK's 'options' because she feared that they would only increase the severity of an attack. In addition, the circumstances surrounding the events described in this tribunal held their own particular dangers. Escaping to a deserted campus at 4 o'clock in the morning (an option that the tribunal member, GK, suggested as viable for the complainant) could hardly be

considered safe. Seen in this light, Marg acted in ways that (she believed) would minimize her risk of physical violence and injury. Thus, it is not that her behaviour is lacking in resistance; rather she can be seen as considering possibilities for action given the restricted options available to her, and as actively negotiating relations with the defendant in order to prevent further and more extreme instances of violence—from the defendant or from someone else.

Since the early 20th century, courts in Canada and the US have found it useful to invoke the notion of a *reasonable person* in considering whether certain kinds of behaviour should be deemed as 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 (Ellison v. Brady, 1991) justifies introducing the reasonable women 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 primarily 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))

Other feminist scholars have attempted to transform notions of reasonableness such that gender-differentiated responses to sexual harassment are accounted for (e.g. Chamallas, 1995). Drawing on Gricean concepts of conversational cooperativeness and implicature, McConnell-Ginet (1995) demonstrates the value of linguistics to these legal issues. She argues that the contextual information that interlocutors rely on in successfully interpreting utterances often includes knowledge about others' experiences and perspectives, even if these are different from one's own. Thus, McConnell-Ginet proposes defining reasonableness in terms of an interlocutor's 'access to certain socially available knowledge, e.g., on recognizing and taking account of socially structured differences among people that affect whether or not a person is substantially harmed by particular actions' (McConnell-Ginet, 1995: 4). For example, because women, as a group, are more likely than heterosexual men to be victims of men's sexual violence, women *may* be more threatened by sexual banter than men. However, a *reasonable* (as McConnell-Ginet conceives of reasonableness) man would be able to recognize the potential harm of sexual banter for a woman, even if he himself

would not experience the same bad effect. That is, determining whether certain actions are offensive to a reasonable person may require looking beyond a reasonable person's own experiences and perceptions (i.e. beyond questions such as 'what effect would an action like this have on me?') to the socially structured differences among people that may affect perceptions of harm and offensiveness.

#### CONCLUSIONS

In this paper, I have argued that the ideological frame of the tribunal proceedings analysed here failed to acknowledge the particularities of women's responses to the threat of sexual violence. By characterizing the complainants' expressions of resistance as 'deficient' and their behaviour as 'inaction', it seems to me that two of the tribunal members (GK and BW) did not look beyond a reasonable *man's* own experiences and perceptions to the 'socially structured differences' between women and men that may 'affect whether or not a person [woman] is substantially harmed by particular actions.' Despite much talk about 'difference' and miscommunication, the tribunal members' focus on the so-called lack of resistance exhibited by the complainants did not take seriously the complainants' frequent expressions of fear, paralysis, and humiliation in the face of unwanted sexual aggression.

In a provocative discussion of sex discrimination law and policy in the US, MacKinnon (1987) talks about the way that ideas about sex 'difference' often derive from inequality, rather than the other way around. It is not that dominance relations are simply mapped onto a pre-existing difference between the sexes; rather the power asymmetry between women and men 'succeeds in constructing social perception and social reality' such that sex differences are exaggerated 'in perception and in fact'. Indeed, for MacKinnon (1987: 40) 'gender might not even code as difference, might not mean distinction epistemologically, were it not for the consequences of social power'.

While much language and gender research in the 1970s and 1980s took 'difference' between women and men's linguistic behaviour as axiomatic and as the starting point for empirical investigations, more recent scholarly work has questioned these assumptions on political (and empirical) grounds. Cameron (1992: 40), for example, argues that a focus on difference only strengthens the significance of a polarity that ultimately may not serve women's interests: 'every word we say on the subject of difference just underlines the salience and the importance of a difference we are ultimately striving to end.' She continues: 'merely paying attention to sex difference—affirming that women exist and are different from men—is not in and of itself a feminist gesture. It can just as easily fall back into anti-feminism'. Likewise Crawford (1995), in a general critique of psychological research on sex differences, questions the political neutrality and objectivity of scientific inquiry devoted to the 'uncovering' of sex

differences, arguing that the epistemological stances driving questions about 'difference' are inevitably embedded in a system of unequal power relations between men and women. Within the context of these tribunal proceedings, I am arguing that the consistent reference to gender *differences* and miscommunication between the complainants and the defendant had the effect of obscuring and neutralizing the power dynamics between women and men that undoubtedly shaped the complainants' responses to Matt's sexual aggression. In Cameron's (1996: 44) words, this is a case of 'difference arising in a context of unequal gender relations'. We thus see the social and political effects of discourse *about* gender differences in deflecting a defendant's accountability for sexual assault.

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#### NOTES

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1. While Estrich says that the 'utmost resistance' standard was generally replaced by a 'reasonable resistance' standard by the 1950s and 1960s in the US, 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). Within the Canadian context, Clark and Lewis (1977), who investigated the characteristics of Toronto-area rape cases leading to perpetrator arrest and prosecutions in 1970, found that a victim's testimony of lack of consent was deemed credible only when she had resisted her attacker to the utmost of her capabilities.
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, Campus Relations.

3. Criminal charges against the defendant reached some resolution in the spring of 1995, when he was convicted of one of the two charges of sexual assault and sentenced to 6 months in jail. That conviction is currently under appeal.
4. All of the examples in this section come from the alleged instance of acquaintance rape that occurred with another couple in the room.
5. All names used to designate individuals involved in the tribunal are pseudonyms.
6. Transcription conventions (adapted from Jefferson, 1978) are as follows:
 

.	sentence final falling intonation
,	clause-final intonation (more to come)
?	rising intonation followed by a noticeable pause
...	pause of 1/2 second or more
≡	no interval between adjacent utterances (second is latched to the first)
[ a lot ]	overlapping utterances
[ I see ]	
-	a halting, abrupt cutoff
o:	an extension of the sound or syllable it follows
italics	emphatic stress
((sniff))	details of the conversational scene or vocalizations
7. Despite Matt's claims to the contrary, some of his comments suggest that he wasn't sure that Marg welcomed his sexual advances. For instance, on lines 27–8 of example (2), Matt says that 'he wasn't looking for consent', a comment that Matt's representative hurriedly cuts off. On line 12 of this same example, Matt says that Marg 'escapes and then goes to Bob'.
8. According to Connell (1987), hegemonic masculinity is a dominant, cultural ideal of masculinity that does not necessarily correspond closely to the personalities of actual men: 'the public face of hegemonic masculinity is not necessarily what powerful men are, but what sustains their power and what large members of men are motivated to support' (Connell, 1987: 185).
9. I thank an anonymous reviewer for *Discourse & Society* for suggesting to me the connection between Matt's definition of 'consent' and culturally dominant forms of masculinity.
10. For a more detailed discussion of this example, see Ehrlich and King (1996) who focus on the two-part strategy by which the tribunal members' questions construct the events in question as consensual sex.
11. Compare also GK's question to Marg on line 9 of example (9) with her remark to Matt on line 64 of example (14). With Marg, GK asks whether *she* (Marg) was at all concerned that her 'signals' were not being interpreted correctly: 'Were *you* at all *concerned* your signals were not being read exactly?' With Matt, GK says that *she* (GK) is concerned about 'signals' that Matt did and did not pick up on: 'Now, I'm *concerned* there's certain verbal signals you pick up.' Notice that Matt is not interrogated about his interpretation of 'signals' in the way that Marg is about her production of 'signals'.

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