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# **“He’s Calling her Da Da!”**

## ***A Sociolinguistic Analysis of the “Lesbianism as Disease” Metaphor in Child Custody Cases***

In 1993 Sharon Bottoms, a lesbian, lost custody of her two-year-old son to her mother. In 1995 Mary Ward, also a lesbian, lost custody of her 11-year-old daughter to her ex-husband—a man who had been convicted of killing his first wife over a custody issue in their divorce. In the judicial ruling in each case, the mother’s homosexuality was given as the main reason for the decision. These women are not alone. Only eight states in the U.S. protect gay men and lesbian women against losing their parental rights on the grounds that their homosexuality renders them “unfit parents” (“In Custody Battle: Lesbian v. Killer,” 1996).

In this paper, we present one of the discursive mechanisms that the plaintiffs<sup>1</sup> (the parties seeking custody) use in *Bottoms v. Bottoms* and *Ward v. Ward*<sup>2</sup> to build their cases against the lesbian mothers.<sup>3</sup> We demonstrate, first, that the plaintiffs discursively construct lesbianism as a contagious disease that is harmful to children; and, second, that the judges are able to use the coherent structure the disease model provides to justify their rulings in favor of the plaintiffs. Furthermore, we demonstrate that the disease model is generated by a hegemonic ideology (Gramsci, 1971) of gender in which gender is assumed to be essential and polarized.<sup>4</sup>

The defense (or party fighting to retain custody) counters the hegemonic ideologies of gender put forward by the plaintiff, but the expression of these non-dominant beliefs are highly controlled by institutional agents (e.g. judges and attorneys) in these custody cases. In legal proceedings, legal professionals possess the authority to determine who can speak and when, what types of contributions are allowable, and which are ratified (Atkinson and Drew, 1979; Drew, 1992; Magenau, 1997; Matoesian, 1993; Philips, 1984). Thus, the discourse used in these cases maintains hegemonic ideologies of gender

operating within the law, and reproduces the social inequality of lesbian women and gay men in the U.S.

In the next section, we describe the metaphorical process through which the “lesbianism as (contagious) disease” model is built, and the relation of this process to the critical approach we take in the analysis of the discourse in the hearings. We then describe the ideology of gender that generates the disease model, and the component beliefs that constitute the model. Finally, we demonstrate how the plaintiffs discursively construct lesbianism as a disease, and how the judges’ rulings stem from this construct.

### **Metaphor in a critical approach to discourse**

A critical analysis of discourse illuminates the relationships among ideology, power, and language. Fairclough explains that a critical analysis “make[s] visible... connections between properties of texts and social processes and relations (ideologies, power relations) which are generally not obvious to people who produce and interpret those texts, and whose effectiveness depends upon this opacity” (1995: 97). This paper takes a critical approach to discourse by identifying links between a contagious disease metaphor, hegemonic ideologies of gender, and the social inequality of lesbian women.

“Lesbianism as disease” is a metaphor in which “one highly structured and clearly delineated concept” (disease) is used to structure—and, therefore, to understand—another (lesbianism) (Lakoff and Johnson, 1980: 61). People understand the more familiar concept, disease, as a structured whole, comprised of dimensions that emerge from their experiences. The more familiar “source” domain (disease) defines a less familiar “target” domain (lesbianism) by imposing its “internal structure” on it—its components and the relations between them—through metaphorical entailment (Lakoff, 1991; Lakoff and Johnson, 1980: 91). For example, a fact or belief about contagious disease (i.e. what we are referring to as a component of “disease”), such as “people who are exposed to a contagious disease may contract the disease,” produces the metaphorical entailment, “people who are exposed to lesbianism may ‘contract’ lesbianism, i.e. become lesbians.” (We refer to the component illustrated by this example as “exposure.”)

In the hearings, metaphorical entailments of the “lesbianism as disease” model are powerful discursive tools in the plaintiffs’ cases against the lesbian mothers. The plaintiffs use entailments to highlight, downplay, and hide aspects of the lesbian mothers’ and children’s experiences; and, simultaneously, the entailments create an interpretive framework, or narrative of sorts, which the judges then use to “understand what the highlighted experiences have to do with each other” (150).

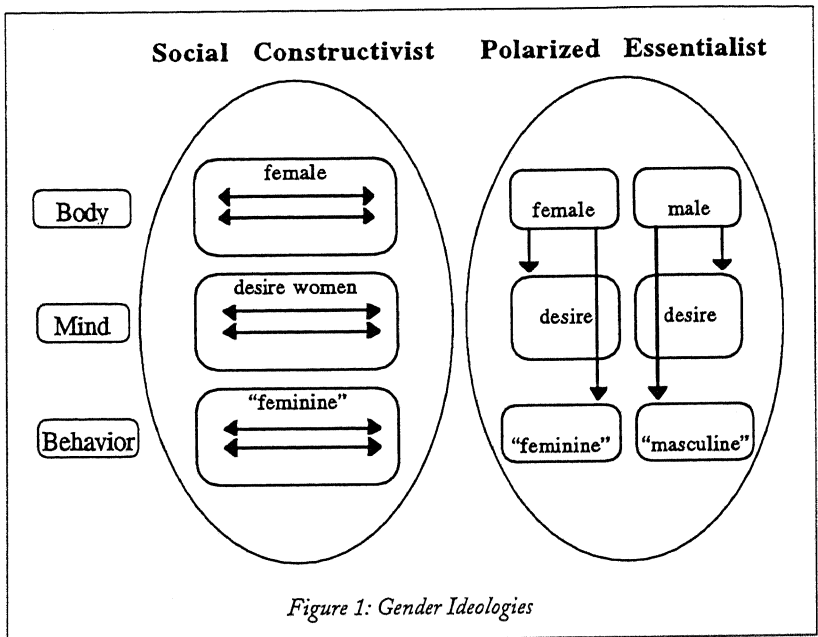
Thus, metaphorical entailments contextualize various pieces of information about the lesbian couples and their children within a cohesive framework, connecting these pieces of information in ways that support ideological claims. However, the similarities between lesbianism and disease are *created*

by the metaphorical entailments; they do not necessarily “exist independently of the metaphor” (147-8). In the next section, we describe the ideology of gender that makes it possible to metaphorically define lesbianism as a “disease.”

### Gender ideologies

In the hearings, the “lesbianism as disease” model that the plaintiffs—and, ultimately, the judges—use against the lesbian mothers is generated by a *polarized essentialist* ideology of gender. The defense counters this ideology to some extent by drawing on a social constructivist conceptualization of gender. Ideologies are the “abstract basis of the socially shared belief systems of groups” (van Dijk, 1995: 244). They are (re)produced through social action (including forms of talk) by group members. A description of the differences between the ideologies of gender will elucidate the connection between the polarized essentialist ideology and the disease model.

The polarized essentialist and social constructivist ideologies of gender are differentiated by assumptions about the relations among the body (biological



sex), the mind (sexual desire or sexual orientation), and behavior (those deemed to be gender-related). See Figure 1.<sup>5</sup> Consequently, the ideologies conceptualize lesbianism in ways that are relevant to the court proceedings.

First, the polarized essentialist ideology assumes that the body, sexual desire, and behavior are polarized into two mutually exclusive categories.<sup>6</sup> The

body is classified as either male or female; sexual desire is for women *or* men; and behavior is exclusively feminine or masculine. The social constructivist model, in contrast, posits that each category varies along a continuum, making multiple combinations possible among (and within) categories.<sup>7</sup> Lesbianism is one of these possibilities. As Foucault (1978) describes, sexual desire is a biohistorical phenomenon that varies culturally and historically.

The second assumption of the polarized essentialist ideology is *essentialism*, the belief that the sex of the body determines sexual desire and gender-related behavior. In contrast, a social constructivist model does not posit a deterministic link between these categories; instead, the model predicts that there are multiple femininities and masculinities, which do not exist outside of social practices, including linguistic practices (e.g. Bing and Bergvall, 1996; Bucholtz and Hall, 1995; Cameron, 1997; Johnson, 1997; Livia and Hall, 1997; Meinhof and Johnson, 1997; Tannen, 1994; Wodak, 1997).<sup>8</sup>

Within a social constructivist model, sexual orientation is a non-issue in assessing parental fitness. Accordingly, the defense draws on this model as it argues for the mothers' rights to retain custody of their children. In contrast, within a polarized essentialist ideology, lesbians diverge from the "norm," and are thus viewed as gender "gone wrong." Bem explains that essentialism and gender polarization circumscribe two mutually exclusive scripts for women and men and, consequently, define "any person or behavior that deviates from these scripts as problematic—as unnatural or immoral from a religious perspective or as biologically anomalous or psychologically pathological from a scientific perspective" (1993: 81). As a result, the polarized essentialist ideology generates lesbianism as "disease"—in mind (psychology), body (biology), and spirit (religion). Thus, the model provides a powerful discursive tool for the plaintiffs and judges to use against the lesbian mothers in the custody hearings.

### Components of "lesbianism as a disease"

The "lesbianism as disease" model is discursively constituted in the hearings by six components. The components that are mapped onto lesbianism are: 1) indications: the contagious lesbian disease is characterized by pervasive sexuality and gender deviance; 2) Contamination/contagion: the lesbian household is contaminated by contagious lesbian women; 3) exposure: the child's health is threatened by exposure to this contamination; 4) symptoms: the child exhibits recognizable symptoms as a result of exposure; 5) quarantine: the child will be socially ostracized to avoid exposing others; and 6) treatment: the child will require medical treatment in the form of psychological counseling.

A portion of discourse from the judicial ruling in *Bottoms v. Bottoms* poignantly illustrates the components of the disease model. The judge employs the coherent structure provided by the model to justify his ruling in favor of the plaintiff. (Italics have been added to the judge's ruling to highlight the most crucial realizations of each component.)<sup>9</sup>

Table 1

Components of the Disease Model in Portions of a Judicial Ruling

Components	<i>Bottoms v. Bottoms</i> Judicial Ruling
Contagious disease:	“The mother, Sharon Bottoms, has openly admitted in this court that she is living in an <i>active</i> homosexual relationship.”
Indication—sexuality:	“She admitted she is sharing a <i>bedroom</i> and a <i>bed</i> with another, her <i>female lover</i> , whom she identified by name as April Wade....”
Exposure:	“She readily admits her behavior in <i>open</i> affection shown to April Wade <i>in front of the child</i> . Examples given were kissing, patting, all of this <i>in the presence of the child</i> .”
Symptom (of child):	“She further admits consenting that <i>the child referred to April Wade, her lover</i> , as to quote the words, <i>‘Da Da...’</i> ”
Quarantine:	“In <i>Roe v. Roe</i> ... it says ‘... the conditions under which this child must live ... impose an intolerable burden upon her by reason of <i>social condemnation</i> attached to that which will <i>inevitably afflict</i> her <i>relationship</i> with her <i>peers</i> and with the <i>community</i> at large.’ ”
Disease:	“[T]here is other evidence of the child being <i>affected or afflicted</i> ....”
Contagious person:	“[I]t is the order of the Court that the custody will be with the grandmother, Kay Bottoms.... There will be no visitation ... <i>in the presence of April Wade</i> ....”

Each of the components of the disease model, with the exception of "treatment," is present in the judge's ruling. (Although one could certainly argue that the judge provides "treatment" by granting custody to the grandparent.) In the following section, we demonstrate how the plaintiff discursively constructs the components of the disease model, making it a resource for the judge's ruling. We will refer again to portions of this ruling in our analysis. Note that we focus on the ruling in *Bottoms v. Bottoms* for illustrative purposes only. Though we do not include many portions from the ruling in *Ward v. Ward*, the judge draws similarly on the disease model in that ruling as well.

### The Discursive construction of "lesbianism as a disease"

In both hearings, the plaintiffs focus on the lesbian couples' sexual activity and, thereby, discursively construct sexual activity as a defining characteristic, or indication, of the contagious "lesbian disease." One way they accomplish this is by reducing the lesbian relationship to sexual activity alone. In *Bottoms v. Bottoms*, the plaintiff's attorney asks the mother (the defendant) to give her definition of a lesbian relationship. The terms of her definition are broad enough to include an array of activities, but the attorney reshapes her definition through a series of constraining questions, compelling her to define the relationship as sexual:

(1a)Attorney: Now, for the record would you tell me your definition of a *lesbian relationship*. What does it mean?

Mother: It means two people of the same sex are *together*.

Attorney: In what way are they together?

Mother: In a *relationship*.

Attorney: Now, you say a "relationship," does that entail *sex*?

Mother: Yes.

Attorney: *Hugging* and *kissing*?

Mother: Yes.

Attorney: *Sleeping in the same bed*?

Mother: Yes.

The mother's use of the term "relationship" in her definition evokes a multifaceted partnership that, like a heterosexual relationship, includes an array of activities associated with maintaining a household and raising a child.

However, the attorney's institutional role allows him to control the direction of the discourse and, thus, to transform the witness's definition to a list of sexual activities.

When the attorney has achieved his desired (sexual) definition of a "lesbian relationship," his institutional—and thus discursive—power allows him to shift the focus by asking another question, ending any possibility of negotiating a broader definition of a lesbian relationship:

(1b) Attorney: Now then, you're not at all ashamed of that relationship, is that correct?

The attorney's shift in focus suggests that the list of sexual activities is, itself, an accurate and complete definition. His question addresses only whether she is "ashamed" of the relationship or not, thus presupposing that the definition of "that relationship" which he has brought about is settled. The presupposition is accomplished through the use of the deictic term, "that," which refers back to the definition that he (in actuality) created, and the discourse marker, "then," which conveys that they jointly created the definition. According to Brown and Levinson, "then" is generally used to mark a conclusion "carried out cooperatively"; however, as in the attorney's question, it can also give the impression of cooperative action "by pointing to a fake prior agreement" in a situation in which there is none (1987: 114–5). The discourse rules of the courtroom require the mother to provide an answer to the question as it is given, compelling her to comply without contesting the presupposition. Consequently, the definition of lesbianism as sexual activity alone stands uncontested.

The judicial ruling in *Bottoms v. Bottoms* reflects the focus on sexual activity. The judge describes the lesbian relationship in sexual terms alone: the mother is "sharing a bedroom and a bed with another, her female lover."

The second component of the disease model, contamination/contagion, captures the belief that lesbianism is a *contagious* disease. In both hearings, the plaintiff discursively conveys the belief that the children are threatened by exposure to contagious lesbian women and their contaminated homes. For example, in *Ward v. Ward*, the father, who is the plaintiff seeking custody of his daughter, expresses concern over the home "environment" his daughter is being raised in:

(2a) Father: I think that's the most important thing that [the child] be in a good, *clean environment* and I don't think the environment she's in is a *healthy* one. A big, beautiful home with a pool and a hot tub and all, that's fine. That's nice, but I just don't see it where it's a *good environment*.

The father contrasts the "clean environment" the child *should* be raised in

with a description of the environment the child is currently being raised in, which he claims is not "a healthy one." The juxtaposition of "clean" with "healthy" evokes a discourse of contamination in which "clean" means "free of disease" rather than, for example, "free of dirt." The father, thus, suggests that the lesbian home is "unclean" and "unhealthy"; that is, contaminated.

In this hearing, *Ward v. Ward*, the judge justifies his ruling by drawing on the belief that the lesbian household is contaminated:

(2b) Judge: [T]his child should be given the opportunity and the option to live in a non-lesbian world or atmosphere to decide if that's what she wants—that's the life she wants to pursue when she reaches adulthood.

The judge assumes that the only way the child will be "given" the "option" to pursue a heterosexual relationship is to remove her from the "lesbian atmosphere." As if merely living with lesbians as a child results in "becoming" a lesbian as an adult.

Likewise, in the judicial ruling in *Bottoms v. Bottoms* the judge assumes that both the lesbian household and the lesbian couple are contaminated.

(2c) Judge: There will be no visitation ... *in the presence of April Wade* ... Nor will there be any *in Sharon Bottoms' home* as long as she has this condition existing.

The threat of exposure is so strong that the mother, Sharon, must locate a place to stay in order to have overnight visitations with her son. The child's mother, April, is not only denied visitation rights with her son, but cannot even be in the presence of the child.

The third component of the disease model, "exposure," is the threat that the child will be exposed to same-sex sexual activity, including the physical expression of affection. For example, the plaintiff's attorney in *Bottoms v. Bottoms* conveys that any display of physical affection is hazardous to the child through his choice of the words *openly* and *hide* when he questions the mother (the defendant):

(3a) Attorney: You and April hug and kiss *openly*. You don't *hide* it at all, is that correct?

The attorney's word choice in this question implies that physical affection between the same-sex couple *should* be hidden. The question is understood in this way, in part, because it is asked by the plaintiff's attorney within the context of building a case against the mother. Therefore, it also compels her to reveal unfavorable information in her own defense (Magenau, 1997).

The judge in *Bottoms v. Bottoms* takes up the attorney's wording (in



example 3a) when he justifies his ruling in favor of the plaintiff (3b):

(3b) Judge: [The defendant] readily admits her behavior in *open* affection shown to April Wade in front of the child. Examples given were kissing, patting, all of this in the presence of the child.

The judge expresses concern about the defendant showing “open” affection “in front of the child.” The judge’s disapproval is conveyed by his use of the word “admits,” since one does not, generally, have to “admit” to doing something positive.

In both hearings, the plaintiff suggests that the children already exhibit some symptoms as a result of exposure to lesbianism, and these symptoms tend to be gender-related. From a legal perspective the SYMPTOM component is crucial for the plaintiff’s case because it serves to demonstrate that the behavior which allegedly renders the parent unfit has an adverse impact on the child. In example (4a), from *Ward v. Ward*, the plaintiff’s attorney uses the question and answer sequence to discursively construct a nexus between living with lesbian parents and an “effect” on the child. He phrases his question to set up the plaintiff’s answer as a symptom caused by the “lesbian relationships” the child’s been “subjected to”:

(4a) Attorney: Okay. Have you seen anything in her behavior that would indicate a *problem* with the *lesbian relationships* that she’s been *subjected to*?

The father, who is the plaintiff, replies:

(4b) Father: Well, [the child] just turned eleven and she don’t want to wear *perfume*, she’d rather wear *Brut*, and *that’s not normal* for a child.

With this statement, the plaintiff claims that the child’s preference for cologne is a result, or symptom, of living with lesbian parents; that her preference is deviant (“that’s not normal”); and, specifically, that it is *gender* deviant since the name “perfume” generally refers to scents marketed to women, whereas “Brut” is marketed to men.

In *Bottoms v. Bottoms*, the grandmother seeking custody suggests that her two-year-old grandson exhibits a gender-related symptom that will eventually become a more serious symptom. She fears that he will be confused about gender in the future if raised by lesbian parents because, she claims, they are raising the child to call his mother, April, “Da Da”:

(4c) Grandmother: [The child’s] being raised calling her “Da Da”... How is he going to know?

Attorney: How is he going to know what, ma'am?

Grandmother: That a female is not a "Da Da." That a "Da Da" is a male?

As extreme as the grandmother's fear may seem, the judge cites it as one of the bases of his ruling, even though the child's mother testified earlier that she and her partner discouraged the child from using the term:

(4d) Judge: [The mother] further admits consenting that the child referred to April Wade, her lover, as to quote the words "Da Da."

Thus, the judge uses the beginning utterances of a two-year-old as one of the bases of his ruling, revealing a lack of knowledge about the development of language as well as how easily the plaintiff is able to elicit fears about gender.

The fifth component of the disease model, "quarantine," refers to the argument in the hearings that the children will be socially ostracized if raised by lesbian parents. For example, the father (the plaintiff) in *Ward v. Ward* states that the parents of other children will not allow them to play at his daughter's home:

(5a) Father: Well, I just don't think it's fair to her because I don't think- people that ain't gay, okay, are not going to let their children go over and play with her knowing she's in a house that's got four women living together in a situation.

The father fears that the child will be shut away without any playmates, like a leper quarantined in a leper colony.

Subsequently, in the same trial, the mother is asked to "acknowledge" the quarantine problem. She suggests that it is not a problem because no one knows that she is a lesbian. The plaintiff's attorney exploits this response, suggesting that children will then enter a contaminated and dangerous environment unwittingly.

(5b) Attorney: Would you acknowledge that as Mr. Ward [the plaintiff] said, the knowledge in the community of the gay and lesbian relationship in that household impacts on her having friends come over and spend the night?

Mother: No one in the community knows of this....  
[some lines omitted]

Attorney: So if a child was to come over and visit, they would come not knowing about what they would be coming into, then?

The attorney's response subtly suggests, in effect, that the lesbian couple has the civic responsibility to inform the community as they would to any present "danger," the equivalent of hanging a quarantine notice on the door. Because the attorney has the power to control the focus of the discourse, the assumption that children will suffer—both the child involved in the custody dispute and any prospective playmates—remains uncontested.

In the judicial ruling in *Bottoms v. Bottoms*, the judge draws on the "quarantine" component of the disease model when he cites a legal precedent:

(5d) Judge: In *Roe v. Roe*... it says "... the conditions under which this child must live ... impose an intolerable burden upon her by reason of social condemnation attached to that which will inevitably afflict her relationship with her peers and with the community at large."

By citing social prejudice as a basis for his decision, the judge ignores the expert testimony of a developmental psychologist who testifies that children raised by lesbian or gay parents are no different from children raised by heterosexual parents in terms of their social relations with peers or adults.

Finally, the court participants assume the child will need "treatment" as a result of exposure to lesbianism. This component is realized in the hearings as the need for psychiatric counseling. For example, in *Ward v. Ward*, the father (the plaintiff) states that his daughter will need therapy whether he gains custody or not:

(6) Father: She's going to need therapy. I think she should have therapy. I think—She's eleven years old, and I don't see where she's equipped to handle it.

The assertion that counseling is necessary presumes that the mother's relationship could either psychologically damage the child or at least be psychologically challenging for her. In her expert testimony, the developmental psychologist notes that many children must deal with some difference, whether ethnic heritage, religious or otherwise; but that coming to terms with difference does not entail psychological challenge. In the plaintiff's case, it is an ideological choice to treat lesbianism as an a priori challenge, but to leave unproblematic other ways that families differ from the "norm." For example, the fact that the father in *Ward v. Ward* was convicted of killing his first wife does not give rise to the assumption that the child will need psychological counseling to come to terms with this "difference."

## Conclusion

The metaphorical elements in these hearings are not random or incidental language choices. The judicial decisions in both the *Bottoms v. Bottoms* and *Ward v. Ward* custody hearings are built on the structure provided by the disease

metaphor. These decisions are legally-binding and, because the law is constituted in precedent, the impact of these decisions is exponential.

We have demonstrated, first, that the plaintiffs discursively construct lesbianism as a contagious disease that is harmful to children and, second, that the judges exploit the disease model to justify their rulings in favor of the plaintiffs. Lakoff and Johnson explain that metaphors are discursively powerful because they "sanction actions, justify inferences, and help us set goals" (1980:142). Furthermore, we demonstrated that the disease model is produced by (and reproduces) a hegemonic ideology of gender. Our analysis demonstrates that the discourse in lesbian child custody cases promotes a heterosexual, nuclear family structure and traditional gender roles. Thus, the legal proceedings sustain and enforce hegemonic gender ideologies, advancing the belief that families that diverge from the "norm" are a threat to society.

Since the time of the 1993 hearing examined in this paper, Sharon Bottoms and April Wade appealed their case again, and the ruling in this 1993 hearing was overturned—only to have the Virginia State Supreme Court overturn that appellate ruling. A fourth appeal resulted in the grandmother's custody being upheld once again. Sharon and April finally dropped their fight for primary custody, but continue to fight for April to have visitation rights with their son.

Mary Ward appealed the custody ruling in this 1995 hearing, but the decision was upheld. In September, 1996, she appealed to the Florida Supreme Court. In January of 1997, while waiting to hear whether they would consider her case, Mary Ward died of a stress-related heart attack.

<sup>1</sup>We use "plaintiff" to refer to the person seeking custody, his or her attorney, and the case presented by the attorney. Likewise for the "defense," as those seeking to retain custody.

<sup>2</sup>We selected these two-high profile cases for analysis because they are legally and socially significant. *Ward v. Ward* was the first case in the state of Florida to deal with a homosexual parent's rights being challenged on the basis of sexual orientation. *Bottoms v. Bottoms*, though not the first case in Virginia to deal with a homosexual parent's rights, was the first nationally that involved a "non-natural parent" challenging the parental right of a biological parent.

<sup>3</sup>This paper is part of a project in which we examine the role of the discourse of the family courts in maintenance of a hegemonic ideology of gender and reproduction of inequality of lesbian women and gay men in the U.S. Other themes of analysis in this project include: a) discursive construction of an archetype of family to portray lesbian parents and their children as non-family; b) institutional discourse practices and the silencing of alternative discourses; and c) exploiting professional and legal principles in the justification of conservative judicial rulings.

<sup>4</sup>As part of his framework, *Critical Discourse Analysis*, Fairclough defines

hegemony as “leadership as well as domination across the economic, political, cultural and ideological domains of a society” by an “economically defined class” through “concessions” or “ideological means, to win their consent” (1995: 76). He points out that hegemony is a focus of “struggle around points of greatest instability between classes and blocs” which occurs “on a broad front,” including “the institutions of civil society (education, trade unions, family)...” Connell applies the concept to masculinities and patriarchy.

<sup>5</sup>Figure 1 is based on Kendall (1999).

<sup>6</sup>Our assumptions of “gender polarization” and “essentialism” are based on Bem’s “lenses of gender” by these same names.

<sup>7</sup>For a discussion of biological sex as a social construction, see Butler, 1990; Bem, 1993; Nicholson, 1994; and, in relation to language, Bing and Bergvall, 1996.

<sup>8</sup>These are the most recent theoretical discussions about the relationship between language and gender in which the researchers explicitly advocate a social approach.

<sup>9</sup>The analysis is based on the court reporters’ transcripts of these hearings. Our examples are exact reproductions from these transcripts.

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