

## Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking

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Using ethnographic data, I examine prosecutors' discourse on case convictability (the likelihood of a guilty verdict at trial) in sexual assault cases. The analysis shows how prosecutors construct discordant locales through their categorization of victims, defendants, jurors, and their communities and the location of crime incidents. It demonstrates how prosecutors use discordant locales to justify case rejection. By ascribing stereotypical characteristics of a neighborhood to victims, defendants, and jurors, prosecutors construct distinct groups with different cultures who live in geographically separate spaces and have different schemes through which they interpret the everyday world. To construct discordant locale categorizations, prosecutors employ race, class, and gender imagery. Through this imagery they construct multiple normative standards of moral character of persons and of places. I argue that through the categorizations of place as discordant locales, prosecutors inadvertently reproduce race, class, and gender ideologies in legal decisionmaking. I conclude with policy suggestions for expanding and equalizing citizens' access to justice.

**W**hat categories do prosecutors use to assess sexual assault cases? What are the ramifications of using case convictability as a decisionmaking standard? How do race, class, and gender become salient in prosecutors' decisions?<sup>1</sup> In this article I attempt to answer these questions by analyzing ethnographic data about prosecutors' work in a sexual assault unit. In the process I show how micro-level processes such as categorization are linked to organizational practices such as the convictability standard and that

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<sup>1</sup> My analysis here focuses on prosecutors' construction of race and class differences; however, gender norms and ideology (e.g., about acceptable, normal behavior for women) are central to the substance of these differences. This is particularly visible because these are sexual assault cases.

these contribute to macro-level patterns of race, class, and gender differences.

In the course of everyday work, legal agents categorize places and persons to inform and account for their decisionmaking. Categories describe locations, actors, and actions (Sacks 1972). For example, they may describe a suspect as a “child molester,” the location of an incident as “four-corner hustlers’ territory,” or a defendant’s actions as “self-defense.” Legal agents’ *choice* of descriptions is purposeful activity, selected to accomplish particular tasks, such as establishing the credibility of a defendant or arguing for an out-of-home placement for a juvenile offender. The chosen category implies a set of supplemental features that are typically associated with the category (e.g., “welfare mother” may imply “poor black woman without motivation”). Thus, categorical descriptions are the basis for ascribing other characteristics, activities, and motives to the persons and places under consideration (Sacks 1972; Watson 1978, 1983; Atkinson & Drew 1979; Maynard 1984; Jayyusi 1984; Benson & Hughes 1983).

Categorization work involves the intertwining of description and evaluation (Matoesian 1993; Holstein 1993; Loseke 1992; Miller & Holstein 1991; Jayyusi 1984). Judgments are made through challenge and negotiation over whether descriptions “fit” “normative requirements of categorical incumbency” (Matoesian 1993:26). For example, do this woman’s actions leading up to an assault give her the moral authority (i.e., her behavior corresponds with typical features of the cautious woman) to call herself a “victim” (Frohmann 1991; Matoesian 1993)? Or do that woman’s behaviors qualify her as a “battered woman” and therefore entitle her to entry into a battered women’s shelter (Loseke 1992)?

Previous research has demonstrated how descriptive practices have been used in legal processing. Person descriptions have been used to constitute moral character for purposes of negotiating plea bargains (Maynard 1984); to determine an organizationally relevant response to a juvenile’s behavior (Emerson 1969); and to assess the credibility of a rape account (Frohmann 1991; Matoesian 1993, 1995). Place descriptions have been invoked by police (Sacks 1972; Bittner 1967; Rubinstein 1973; Skolnick & Fyfe 1993) and prosecutors (Stanko 1981–82; Frohmann 1991) to identify trouble and suspicion, suspects (Sacks 1972), and motives and identity (Atkinson & Drew 1979). Activity descriptions have been used to identify persons and infer moral character (Sacks 1972; Atkinson & Drew 1979).

A little explored dimension of categorization work is the interplay of place and person descriptions. An examination of prosecutors’ discourse on case convictability (the likelihood of a guilty verdict at trial) reveals how when deputy district attorneys (DDAs) categorize both victims, defendants, jurors, and their

communities and the location of crime incidents, they are constructing *discordant locales*. By ascribing stereotypical characteristics of a neighborhood to victims, defendants, and jurors, prosecutors construct distinct groups with different cultures who live in geographically separate spaces and have different schemes under which they interpret the everyday world. In other words, “discordant locales” refers to a clash of cultures represented by these disparate locations. These descriptions are informed by prosecutors’ knowledge of the sociogeographic landscape, cultural images of race and class, and work-related knowledge. I use “discordant locales” as a shorthand for a discourse practice used by prosecutors to justify case rejection.

Discordant locales create good organizational reasons for case rejection. When jurors, victims, and defendants are from discordant locales, prosecutors anticipate that jurors will misunderstand the victim’s actions and misinterpret case facts and thus lower the probability of guilty verdicts at trial. This is highly problematic for prosecutors because convictability is the organizational standard on which prosecutors file cases. If cases are unconvictable, prosecutors have to bear the consequences.

An analysis of prosecutors’ decisionmaking discourse refines our understanding of the use of moral character by legal agents. In addition to providing an example of how place and person descriptions *work together* in legal settings to construct moral character, prosecutors’ construction of places as discordant locales is significant because it acknowledges multiple sets of normative behaviors against which prosecutors can evaluate standards of moral character. This differs from how scholars traditionally have viewed moral character, as *a* moral or normative standard from which some people deviate. It opens up the possibility of more than one cultural norm. Recognition of more than one normative standard has the potential to decenter dominant social relations, depending on how prosecutors use their knowledge when constructing discordant locales.

For prosecutors, these multiple normative standards are connected to race and class, and the prosecutors routinely focus on gender norms because the cases being considered are sexual assault cases. Thus this study examines how race, class, and gender are *made* salient within the organizational structure and logic of case convictability. I examine how prosecutors’ discourse invokes and orients toward race, class, and gender through the categorizations of places and persons. I address the implications of this for a just legal system in the conclusion.

## **Data and Method**

This research is drawn from a larger ethnographic field study on the prosecution of sexual assault crimes by deputy district attorneys in special sexual assault units. The data for this study were collected through participant observation. For eight months I observed case processing in the sexual assault unit of the prosecutor's office in Center Heights, one of 11 branch offices in a major metropolitan area on the West Coast. During this time I observed 40 case processings. Four attorneys staff this unit. The cases brought to the Center Heights courthouse are drawn from five police jurisdictions, which cover predominantly poor black and Latino communities. Jury panels are drawn from a 20-mile radius of the courthouse. The communities that fall within this circumference are segregated by race and class and range from poor to very wealthy. Potential jurors are randomly chosen from voter registration, driver's license, and welfare roll lists.

I recorded my observations of the interactions in detailed field notes. I was not permitted to tape any of the case proceedings; thus I attempted to record the talk and interactions I observed as accurately as possible. I supplemented my field notes with open-ended interviews with the prosecutors and detectives in the unit. These interviews were recorded. The data for this study are drawn from a mixture of observations and interviews.

The methodological approach I employed can be characterized as "constitutive ethnography" (Mehan 1979; Holstein 1993). A central premise of constitutive ethnography is the ethnomethodological principle that social structures and social facts are interactional accomplishments (Garfinkel 1967; Cicourel 1968; Heritage 1983, 1984). To understand prosecutorial decisionmaking, I analyzed the interactional work and discourse through which prosecutors arrive at their decisions.

The methods employed in this study also contribute to the body of work that demonstrates how ethnographic methods can contribute to the concerns of ethnomethodology and conversational analysis (see Cicourel 1987; Holstein 1993; Miller 1994). I began my work with the ethnographic concern of describing how the decisions were made, and how prosecutors, detectives, and victims understood the work they were doing. As time progressed I narrowed my focus to how participants accounted for, explained, and described their decisions. This narrowed my note taking to participants' talk and nonverbal behavior. I analyzed my data using the constant comparison method of grounded theory (Glaser & Strauss 1967; Charmaz 1983). The accounts were systematically analyzed for prosecutors' accounting practices by looking for patterns, inconsistencies, and contradictions in the accounts. Substantive and analytic categories were developed through this process.

The majority of accounts for which prosecutors constructed discordant locales were given during case filing decisions. There are several possible explanations for this. First, the “normal” cases filing practice, shaped by the convictability standard, was to reject cases. If prosecutors thought jurors would vote not guilty because of cultural differences, the cases were typically rejected. Second, in case rejections, unlike case filings, prosecutors must justify to their supervisors why the case should not go on for adjudication. This justification occurred in both oral and written form. Interestingly, discordant locale categorizations did not appear in the written justification. I speculate this has to do with the organizational concerns for future case processing. Prosecutors do not want to identify “problems” that could be used by the defense in the event of future prosecution. Third, I suggest that the differences between jurors and crime participants were part of the “reality” of trying cases in Center Heights. If prosecutors decided to file cases, they chose not to make this a salient issue until later in the process, for example, in discussions during voir dire about the difficulties of selecting a jury. The question of why this issue is salient at some times and not others is important, but cannot be addressed here in detail.

Before I proceed to examine prosecutors’ accounts, I will look briefly at the context of case filing decisions.

### **The Context of Prosecutorial Case Filing Decisions**

Case filing is the point when prosecutors decide which cases will go on for adjudication by the courts. The standard used by prosecutors for this decision is case convictability—the likelihood that a jury would return a guilty verdict (Miller 1970; Neubauer 1974; Mather 1979; Stanko 1981–82; Frohmann 1991). Typically, prosecutors assess cases as unconvictable and they are rejected from the system (Frohmann 1991; see Frohmann 1996 for exceptions to this rule).

The concern of district attorneys with convictability is shaped by the organizational policies and procedures of the prosecutor’s office and the courts. The decisions are made within the organizational context of the prosecutor’s office, the institutional structure of the court system, and the political context of the community. Prosecutors’ decisions have implications for promotion possibilities, transfers, their own reputations as well as the reputation of their unit, and the branch office (Neubauer 1974; Frohmann 1992; Martin & Powell 1994).

Concern with convictability creates a “downstream orientation” in prosecutorial decisionmaking—that is, an anticipation and consideration of how others (i.e., jury and defense) will interpret and respond to a case (Emerson & Paley 1992). During complaint filing, prosecutors orient particularly toward “the

jury,” an ideal type formed from a composite of their previous trial experience, discussions with other prosecutors, and prosecutors’ general cultural knowledge about the norms and mores around sexuality, heterosexual relations, and violence.<sup>2</sup> This orientation takes two forms. First, prosecutors anticipate defense arguments to assess whether they can construct a credible account of the incident for the jury. Second, prosecutors invoke anticipated jurors’ interpretations of case “facts” as the standard of convictability. Thus, the ability to construct a credible narrative for the jury and the jurors’ ability to understand what happened from the victim’s viewpoint are pivotal in prosecutors’ assessment of case convictability. A prosecutor’s anticipated inability to get a guilty verdict from a jury is a legitimate justification for case rejection. Nevertheless, prosecutors grapple with the tension between the organizational criteria for case filing and the implications of rejecting a complaint that is believable but not convictable. This struggle is displayed below by a deputy district attorney as she reflects on the loss of a case:

What am I going to say? We are not going to file the case because we can’t get twelve people to convict, that’s our policy? Say we are down south, a white man rapes a black woman fifty years ago. There is strong evidence but we know twelve people aren’t going to convict him. Would it be ethical to play along with biases and prejudices of community? Can I say, Sorry Ms. Victim, I know you were raped, but I know the chances of winning are slim to none? That is like saying I am going to perpetuate the biases and never going to know change because I am never going to test them. There are no evidentiary problems in the case. Do we measure evidence against the ruler of convincing twelve people, but the jurors’ biases and prejudices are not on the ruler? The question is for the filing standard do you take these biases and prejudices into consideration during filing decisions? I am not going to ask the [head deputy]. Hopefully you don’t. It is a different question if there are evidentiary problems. . . . You know outcome has a lot to do with the cases you file. I think I said to you right after I lost the Goldsmith case I can’t get cold feet and not accept this case because I lost the last one. I think it is key to ask what guidelines do we use when we know jurors have biases and prejudices and we know the jury won’t accept it. . . . I think we should file cases because we believe the victim, but I’ve gotten in trouble for filing cases. You think a jury would find him guilty. Obviously I don’t know. I’ve had cases I’m sure would be guiltyies, but then the juries hung.

This quotation exposes the continual dilemma prosecutors face as they balance responding to the harm a rape victim has experienced against meeting the convictability standard. Recogn-

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<sup>2</sup> Maynard (1984) discusses how legal decisionmakers also orient toward a jury while assessing the merits of a case during plea bargaining.

nizing that jurors' biases and prejudices play a role in case outcomes, she wrestles with how much weight to give jurors' positions. She also points out the organizational consequences ("I've gotten in trouble") of not adequately predicting jurors' decisions and basing filing decisions on them. How prosecutors balance this tension has implications for the victim, defendant, the DDA's career, and the concept of justice.

In the next section I examine prosecutors' typical categorizations of Center Heights and areas where jurors reside. This is followed by an analysis of how prosecutors, through the interplay of place and person descriptions, construct discordant locale categories. After that I discuss how prosecutors' representations of multiple perspectives in their talk gives their accounts authority and legitimacy. Each part of the analysis reveals how prosecutors maintain and reproduce cultural stereotypes about race, class, and gender through their decisionmaking practices.

### **Categorization of Center Heights and Jurors' Communities**

Categorization is a process of classifying specific places, persons, and events as general types. The descriptions used in this categorization are drawn from a mixture of prosecutors' experiences with case processing and generic cultural knowledge. These examples provide an overview of the typical categories DDAs use to characterize Center Heights as a location and the victims who live in this community.

In the first excerpt, an investigation into the police mishandling of a call for assistance revealed that the police response was based on the officer's assumption that the girls needing assistance were prostitutes, not victims of sexual assault. In between interviewing the victims and talking to the detective on the case, the DDA commented to me:

The girls are right. The first cop car responds and says there was no one there. They were right about car 127, it was in the area with two white guys. They didn't believe her so they didn't want to waste their time and left. They see a lot of garbage, but sometimes, 10% of the time they are wrong, something really happened. . . . The cops hear a lot of garbage, lots of women lie, like the other case we had. They probably thought they [the girls] were hookers.

A few minutes later, the detective offers the DDA the following explanation for what happened on the street.

I know what happened out there. They [the patrol officers] probably thought they [the girls] were prostitutes or that these were the girls' boyfriends and they [the boyfriends] took the jacket and [the girls] couldn't get it back. They see so much bullshit out there.

The categories constructed in these comments are prostitutes, “garbage,” women who lie, and the area. Through description of what is usual (“garbage,” “bullshit”), the DDA and the detective intimate that the majority of women in Center Heights who make accusations are not credible. Both the detective’s and the DDA’s remarks assume that women on the street at night typically are prostitutes or are playing games with police power for their own gains. Either way, the value and veracity of the women’s calls for assistance are not worth much. Even though the DDA admits that in this case “the girls are right,” the implication is that in general, the police response would be considered reasonable and acceptable because of how they categorize the women they typically encounter.

In the next excerpt the prosecutor also makes a connection between place and moral character. The DDA is discussing with the detective why she cannot prosecute a case:

The girls were brought up in this neighborhood. They are not prostitutes, but they have no credibility, they never had credibility.

Once again, the DDA categorizes the neighborhood in terms of prostitution. This morally laden place description applies to all women who live in the community. Living in the community is a discredit to a woman’s moral character.

On the other hand, sometimes prosecutors think they can counter the discrediting that arises from being in the community. The next excerpt is part of the DDA’s closing statement to the jury. Here she presents an alternative characterization of the women who live in Center Heights.

50th and Milwaukee is a prostitute area, but it is also a neighborhood. But she lives there. Is she held responsible because she doesn’t have enough money so she can live elsewhere?

The DDA recognizes how place descriptions can be associated with persons and their moral character. Here the prosecutor is providing the jury with an alternative characterization of place and person—a poor woman who lives in the community not because she is a prostitute but because she can’t afford to live elsewhere. Providing an alternative and more sympathetic framework for making sense of the case, the DDA is constructing the woman as a victim of class inequality and rape.

The power of the place images can be seen through the extension of the images to those who come into the community from outside. In the next excerpt the woman who was assaulted lives outside of Center Heights. Prosecutors, drawing on their location categories and place images of Center Heights, question the victim’s motivation for being in the area. They assume if people come into Center Heights, especially at night, it must be to engage in illegal activity. The victim’s presence in Center Heights

draws suspicion and challenges her moral character. The DDA is discussing his uncertainty about filing a case with a detective not involved with the case.

The girl is 20 going on 65. She is real skinny and gangly—looks like a cluck head [a person so strung out on drugs they will do anything for a high]—they cut off her hair. They picked her up on the corner of Main and Lincoln. She went to her uncle's house, left her clothes there, drinks some beers and said she was going to visit a friend in Center Heights who she said she met at a drug rehab program. She is not sure where this friend Cathy lives. Why did she go to Center Heights after midnight, God knows? It isn't clear what she was doing between 12 and 4 a.m. Some gang bangers came by and offered her a ride. I think she was turning a trick, or looking for a rock [crack cocaine], but she wouldn't budge from her story.

In this place description, the DDA implies characteristics about the victim's activities and moral character. These character types are further developed through victim and suspect person descriptions. By interweaving place and person descriptions, the prosecutor constructs an image of the victim as a drug addict who sells her body to support her habit. This image is consistent with prosecutors' typifications of the people and activities in Center Heights.

The question "Why did she go to Center Heights after midnight, God knows?" implies the middle-class white point of view that Center Heights is not a place a reasonable person would choose to go. The prosecutor's suspicion about the victim's motives for being in the area is enhanced by the time of her arrival (after midnight) and her inability to account for her time between midnight and 4:00 a.m., a time when "good" women would be off the streets. This time, together with the space, is used to construct her questionable moral character.

Numerous place descriptions are cited to call her story into question. The "Main and Lincoln" intersection is known by police and prosecutors for its prostitution activity. She came to visit a friend she met in a "drug rehab program." Coming into Center Heights after business hours to visit a friend at an "unknown address" suggests to prosecutors that she is there to engage in illegal activities. Knowledge that she has been in drug treatment and the fact that she goes to her "uncle's house" and has some beers before she goes out bolster the description of her as a drug addict.

The person descriptions used by the prosecutor construct the victim as someone who could reside in Center Heights. That is, she "fits" the place image of Center Heights residents. This nullifies any positive status that could arise from being an outsider. The prosecutor describes her as a "girl 20 going on 65, skinny and gangly, cluckhead," suggesting that the victim is a drug ad-

dict who came to Center Heights to trade sex for drugs. This description has moral implications discrediting her as a victim.

Because the victim is not credible, the prosecutor's description of her assailants as "gang bangers" strengthens the prosecutor's position that the victim is a prostitute. The term "gang banger" invokes an image of violent young black men who are involved in activities such as drug dealing and prostitution. Interestingly, if the victim were credible, this description would strengthen the victim's argument that she was raped.

In each of these location categorizations, the moral character of the victims and suspects is discredited, increasing the likelihood that a jury would perceive the case as unconvictable.

Center Heights is not the only place categorized by the DDA. In the next excerpt, a DDA talking about his case [abstracts] features of the jurors' communities and Center Heights, contrasting the communities and their residents.

I had to think about what the jury would think. They are from other areas, they are white and wealthy. Most of the defendants and victims are black and Latino. It is a culture difference. The jurors don't understand why she went out at midnight. That was probably when she got her kids down to sleep and finally had free time to go out and party. But the people in Mission Hills don't think that way. . . . The white upper-class jurors don't understand the victim and defendants' lives, and the black and Latino members of the community see it as police harassment, for example, in a drug bust, and vote not guilty. I don't understand why they can't see it as their opportunity to help clean up the community.

The DDA uses contrasting place and associated person descriptions to categorize Center Heights, "other areas," and their residents. The jurors, from "other areas," are white and wealthy. The victims and defendants, from Center Heights, are black and Latino. Referring to cultural differences, the DDA suggests that the normative behavior of the two groups differs, and that is why the white middle-class jurors will not accurately understand what happened. But even jurors who live in the community cannot be relied on to understand the prosecutor's perspective. He suggests that these black and Latino jurors, through their experiences with police, will vote "not guilty" because they do not understand or trust the police. This is the only time I heard prosecutors refer to jurors who live in Center Heights. All other characterizations, as you will see, reference white middle- to upper-class jurors. The DDA's remark highlights the belief that *all* jurors present problems for case conviction. It also raises the question, Why do prosecutors not include the poor jurors of color as members of a typified jury?

Above I examined how prosecutors categorize Center Heights, jurors' communities, and their residents. We can see

that as a group, each place category with its associated persons creates problems for prosecutors in the construction of convictable cases.

In the next section I examine how the interplay of prosecutors person and place descriptions constructs discordant locale categories. In particular, I focus on prosecutors construction of jurors and victims as members of geographically and culturally separate places, noting the problems prosecutors anticipate that this reality will cause for case prosecution.

### **Constructing Discordant Locale Categorizations**

Prosecutors presume that we live in a segregated society and that since the occupants of these segregated spaces have distinct cultures, they use different interpretive frames for making sense of and organizing the world. Living in segregated space means people have limited first-hand knowledge of people who are different from themselves. When people have limited contact, they form “place images” of other communities and their residents to make sense of their lives. We acquire these images through television, the news media, film, and music. Place images are

the various discrete meanings associated with real places or regions regardless of their character in reality. . . . They result from stereotyping . . . , or from prejudices . . . . A set of core images forms a widely disseminated and commonly held set of images of a place or space. These form a relatively stable group of ideas in currency, reinforced by their communication value as conventions circulating in a discursive economy. (Shields 1991:60–61)

When prosecutors invoke the different place images of Center Heights and the “other areas” where jurors are depicted as residing, they are constructing discordant locales. Discordant locales are part of the discursive economy of prosecutors.

In the following excerpt, a DDA captures the dilemma prosecutors face constantly in their decisions about case filing and how to try the cases they accept. Convictability, in part, rides on having a jury that understands what life is like for the victim and the defendants. Through contrasting descriptions of actual and ideal jurors, the DDA constructs discordant locales. This comment is made to the detective and myself during a break in voir dire proceedings.

What I need is a panel of jurors from here [Center Heights] who understand what life is like living here in Peterson Gardens.

By stating the type of jurors she “needs,” the DDA is suggesting that the actual members of the jury pool are from outside the community and are uninformed about life in Peterson Gardens. She implies that the cultural distance between jurors and

victims will make it difficult for jurors to make accurate judgments about case facts. Within the context of the larger geographic region, “Peterson Gardens” and “Center Heights” are code words for poor people of color. In much of the prosecutors’ talk, race is either taken for granted background knowledge or the “race” and “class” of residents is invoked through place images and descriptions of behavior, communities, and cultural difference. Categories of place are constituting the racial and class identity of the residents (Atkinson & Drew 1979).

The next example is a passage from an interview, with comments to the detective after the interview. The DDA’s questions and comment reveal two categorical descriptions: the Center Heights community and the victim. The DDA intimates the power of these different descriptions when considering how the jury, who reside outside of Center Heights, may interpret the situation.

**DDA:** So you left LaDonna’s house about 1:15–1:20 a.m. and you got to the corner about 4:30–5:00 a.m. Do you think the jury will believe that? You walked a thirty-minute mile—six miles equals three hours. Right on the money. I’ve got to figure this out because if we establish something way off the mark, the defense will use that to say you are lying. Will these people be willing to come in and corroborate you? Detective Palmer told you what the defendant said: same old story. “You were all out there selling your bodies for cocaine and you agreed to sex in exchange for cocaine he gave you.” At the hospital if they tested the blood for any drugs would they find any?

**Witness:** No.

**DDA:** Drugs stay in the system a long time. Cocaine for seventy-two hours. PCP for two weeks and marijuana for two days. Will we find cocaine?

**Witness:** No.

**DDA:** That is something else we can use to rebut the defense lie that you were out selling your body for drugs.

Throughout this interview, the DDA tried to “make sure” that the defense could not successfully argue that the women were trading sex for drugs. When the women left, the DDA asked the detective:

What do you think? I kept them here a little longer to make sure they were playing it straight. They didn’t have the money to get home any other way so they have to walk long distances. People might wonder, but when you are less fortunate . . .

The DDA initially categorizes the victim as a prostitute by quoting the defendant’s account of events: “You were out there selling your bodies for cocaine and you agreed to sex in exchange for cocaine he gave you.” Preceding the quote with the statement “same old story” suggests that this defense is often used

against rape allegations in Center Heights; it is a form of “discursive hegemony” that makes prostitution activity appear “natural” and “normal” for Center Heights. The DDA plays this categorization of women in Center Heights off an alternative description of women in Center Heights as poor, well-meaning individuals who, because of their lack of resources, are often victimized.

The “people” whom the prosecutor suggests might wonder about the victim’s behavior are the jurors. The jurors, we know from previous characterizations, are typically described as white and wealthy. The victims and suspects are black and Latino and poor. By expressing concern that the jury will view the victim’s behavior through the lens of drugs and prostitution rather than poverty, he is suggesting that jurors categorize Center Heights as a drug- and crime-ridden community. By anticipating the jurors’ viewpoints, he constitutes discordant locales, two places where residents have distinct categorizations schemes for making sense of the victim’s behavior and describing her moral character.

In each of these accounts, the DDAs construct Center Heights and the jurors’ communities as discordant locale categorizations. These discordant locales are described as being implicitly racially and explicitly economically and culturally distinct, with different frameworks for making sense of everyday interactions and behaviors.

In the next set of excerpts, I explore how prosecutors position themselves within their talk to lend authority and neutrality to their accounts.

### **Voice and the Construction of Discordant Locale Categories**

In the course of accounting for decisions, prosecutors animate the roles of several court participants (i.e., jurors, detectives, public defenders, and district attorneys) (Goffman 1981). When the DDA enacts a particular social role, s/he is *voicing* the positions of others (Wortham & Locher 1996; Bakhtin 1981 [1935]). Speaking in multiple voices reveals the various organizational relationships prosecutors orient toward (e.g., the public defender, the jury, the district attorneys office, other agencies, other court events) in the work of case processing (Maynard 1984). These orientations make visible prosecutors’ downstream concerns with convictability. They also reveal prosecutors’ culpability in the decisions that are made.

Prosecutors voice the positions of others to evaluate actions, actors, events, and locations and as a strategy for producing legitimate, authoritative, and persuasive accounts of case decisions. Through expressing others’ positions, the DDA displays the complexity of case processing, giving their accounts a measure of professionalism and authority. They also demonstrate objectivity by

taking account of various participants' standpoints (i.e., victims, jurors, and court officials). These multiple positions are a key element in the construction of discordant locales; by shifting between the perspectives of jurors, victims, residents, defense attorneys, and prosecutors, the DDA voices the discordant categorization schemes.

In the following sequence, the DDA constructs discordant locales by animating the detectives' and jurors' interpretations of life in Center Heights.

[Here's] another case which is real borderline. Detective #1 brought it in. It was late at night. She is out on the street by herself, at 11 p.m. Right away the defense is going to use that to say she is prostituting herself. It is a problem. She comes out of a house. The defendant, who is a stranger, comes up to her and comes onto her. Instead of going back into the house, she continues to go down the street with him. One on one, no corroboration. The jury isn't going to believe it is rape. She is not afraid of him, she walks down the street, she doesn't try to get help. It doesn't make sense. The detective says to me I don't understand. This is how it is done in the ghetto. Girls don't run back into the house. I asked the victim where she was going. She said she was walking to the stop sign to meet her boy friend. I asked the detective about that. She said that is how it is done in the ghetto, they agree to walk halfway since neither has a car so the guy can't pick her up. I asked the victim if she was afraid to be out at night. She said she isn't afraid to be out at night because she carries a knife . . . I told the detective ok, I don't live here. So I asked [detective #2] what he thought. He said baloney, that's not the way it happens in the ghetto. I run it by [DDA #2]. She says it isn't fileable. She believes the rape happened but it isn't provable beyond a reasonable doubt unless you get more evidence. It is hard for a jury to believe one victim's story, especially when the story is odd. If we had another victim, it would make the case stronger. So I rejected it for further investigation, so it's not a filing but it isn't a reject.

The DDA uses multiple voices to construct discordant locales. He projects the defense's interpretation of the victim's behavior: "she is prostituting herself," followed by the defense's evidence for this interpretation. The evidence is constructed by categorizing the victim as a "prostitute" and contrasting her behavior with what the DDA suggests he and a jury would expect of a "young woman" (the implied alternative category) who is approached by a strange man. He projects the jurors' interpretations by contrasting the victim's behavior with that of a "young woman." Providing the defense and juries' rationale in list form ("The jury isn't going to believe it is rape. She is not afraid of him, she walks down the street, she doesn't try to get help") attaches an evaluation to the behavior and gives the account authority and legitimacy. The DDA presents the defense's position and the jurors' interpretation in typified form (typical responses

to similar situations) but as though he were reporting an actual conversation. Presenting information as though it were reported speech gives the prosecutor's account legitimacy (Parmentier 1993).

The DDA switches to the detective's stance. Through the detective's voice, the DDA presents an alternative normative framework for making sense of the victim's actions—the normative behavior of “the ghetto.” By animating the positions of the detective and the DDA, the prosecutor creates cultural differences between two places, Center Heights and the more middle-class communities of the jurors. He also acknowledges that there may be more than one set of normative behaviors through which to interpret the victim's actions. Voicing these perspectives situates the detective as a *knowledgeable outsider* (one who is familiar with the customs and routines of Center Heights residents), in relation to the prosecutor, who, aligns himself with the jury as an uninformed outsider. Through detective #1 the DDA presents a “balanced” reasoning process. Faced with the knowledgeable outsider's version as discrepant with his own, the prosecutor acknowledges alternative categorizations, stating: “I told the detective, I don't live here”; then the prosecutor asks a second detective and a DDA for their interpretations, positioning himself as open and unbiased. The DDA voices detective #2's position, contradicting detective #1's characterization of Center Heights culture. When the second DDA also gives him a reality check—she believes there was a rape, but it isn't fileable—that seals the decision. Ultimately the case is rejected.

In the end, DDA #1 takes the role of professional prosecutor, positioning himself with the typifications of the projected jury. Using the anticipated jury's interpretation as if it is a fact, he draws on his representation of the jurors' responses as the criterion for case rejection: The case does not meet the organizational standard of convictability. Referencing the jurors' interpretation as an actuality naturalizes or conceals his initial construction of their position as fact. He gives the impression of a well-balanced and fair decisionmaking process.

Drawing on this standard privileges the jurors' categorization scheme over that of the victims: “It is hard for a jury to believe one victim's story, especially when the story is odd. If we had another victim it would make the case stronger.” Accepting the “strangeness” of the victim's behavior reinforces a system of gender relations that suggests women should be more afraid of strange men than of men they know<sup>3</sup> and that women should not be in public space at night because being there is dangerous. When the DDA uses, accepts, or does not contest putative moral

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<sup>3</sup> This reinforces the false belief that women are in more danger from men who are strangers to them than from acquaintances (Warshaw 1994).

ascriptions embedded in discordant locales, class-based gender norms are reinforced. In this case, poor women have to meet middle-class standards of safe behavior to remain honorable.

The next excerpt is the concluding segment from the earlier passage about a woman who comes to Center Heights to find a friend she met in a drug rehabilitation program. Unlike the previous account, the DDA positions himself as more knowledgeable than, but on the same continuum as, the jurors. Like the previous account, in this account the DDA adopts, rather than challenges, the moral ascriptions of a drug addict, reinforcing class-, race-, and gender-based norms. As the discussion is winding up, the DDA says to the detective:

I don't understand the kind of life she lives. People in Mission Hills and Glen View [upper- and middle-class white suburbs] don't understand it either. It is a lot easier to dirty up a victim like that. The defense will tear her to shreds. Her story is so unbelievable.

After discussing the case with the detective, the prosecutor characterizes the problem through discordant locales. Although the victim is not from Center Heights, he ascribes to her the norms, values, and attitudes of the location. These are synonymous with the lifestyles of drug addicts, prostitutes, and the unemployed. This creates a structure of two distinct cultures, that of the victim as an outsider-insider (i.e., to the culture of Center Heights) and the ignorant outsider status of the jurors. The DDA positions himself closer to the jurors than to the victim. The prosecutor suggests if he, who works in the community, does not understand the victim's life, how can a jury. Any understanding they do have of the victim would be a composite of their place image of Center Heights and of poor women who become drug addicts. Neither would provide an adequate scheme of categorization for a guilty verdict.

In the previous two accounts, the DDAs align themselves ultimately with the jurors as the ignorant outsider. In contrast, in the next account, the DDA's categorization of discordant locales is constituted through her understanding of the jury. Here the prosecutor plays the role of knowledgeable outsider and cultural translator. The DDA is telling me about a preliminary hearing she just finished at which some of the suspects who had not yet been arrested appeared in the courtroom to watch the hearing. When the victim walked into the room, she identified her other attackers and police arrested them immediately. The DDA is telling the story of the case.

I asked her why she didn't say anything about it [a previous rape]? She said it would get back to her girlfriend and they would know who did it and they would kill her. I asked how come she reported this rape? She said that there were three girls on the corner with her, and they [the attackers] wouldn't

know which one told. It is such a different world. I go home to Oakdale Beach and watch the sunset, and they are here thinking about survival. I don't think someone is going to shoot me or rape me. I have to understand the way of life here or I'll never be able to convince a jury. If I don't, they won't understand why she was out at 5 a.m., and why she didn't report the first rape but she did report the second.

The DDA categorized the locations as discordant locales by contrasting her concerns at night with those of victims who live in Center Heights. On a continuum of familiarity with life in Center Heights, the DDA positions herself as more knowledgeable than jurors. By acknowledging her limited understanding of life in Center Heights, she locates jurors farther out on the continuum, increasing the cultural distance between places, bolstering the categorization of discordant locales. Her knowledge of life from the standpoint of the victim suggests the outsiders are the naive jurors. Her role as cultural translator recognizes that although jurors may be outsiders, their ability to understand the victim's standpoint is crucial to case convictability.

In the final example, the DDA provides extensive place descriptions of Center Heights, jurors' communities, and their residents. This quotation is taken from an interview in which I ask the DDA to discuss the reasons why he might file or reject a case. As part of his explanation, the prosecutor refers to two geographic areas: Center Heights, where the incidents occur and victims live, and "other" areas where potential jurors reside. Note that the prosecutor's standpoint shifts throughout the passage. Through a series of contrasts, the prosecutor constructs these places as discordant locale categorizations—differentiated by race, class, and culture.

That is, the different perspective that we take here in Center Heights, which is in the part of the county which is generally regarded as the low income ghetto area of the county as compared to other areas of the county which are more affluent; we do take a different perspective simply to this extent: For whatever the sociological and cultural reasons are, a higher proportion of women in [this] part of the county tend to be women who . . . are on AFDC as their source of income, do not have jobs and so their lifestyle, and again, this is not a generalization but it seems to . . . I'm just suggesting it happens more often in this part of the county than in other parts of the county, they'll sleep late in the morning; they'll get up around noontime and so their one o'clock in the afternoon becomes like our eight o'clock in the morning. And their time for evening recreation would be 11 o'clock at night, 12:00 at night, 1:00, 2:00 in the morning which would be comparable maybe to an evening recreation time from 6:00 p.m. to 10:00 p.m. in another part of the county. And so it's quite common for them to be out on a street and again for economic reasons, they cannot afford to go to shows or theaters or restaurants. And so,

their more common form of entertainment is simply to be out in the evening just chatting with others whom they meet out on the street. It doesn't cost any money and it's a friendly, fun way to spend an evening of just enjoyment and pleasure. And again, because of the timetable, that would oftentimes tend to be around 11:00 at night, 12:00 at night, 1:00 or 2:00 in the morning. I'm just saying this, for a jury to come into Center Heights who comes from a more affluent part of the county and sees these facts that this woman was out at 1:00 in the morning out on a street and did not have a job, a formal . . . any sort of formal income, who didn't understand the culture and lifestyle and pattern in this part of the county, could come to an immediate conclusion that that woman must be a prostitute. . . . Because of the kind of community we are in which is primarily a low income ghetto, minority black and Latino area. Again, the fact that people, for economic reasons, live in a way that others would misinterpret.

This revealing exposition helps to show the kind of background understanding that is behind the shorthand references to place and persons I have shown in previous excerpts. The prosecutor creates two distinct locations through a series of contrasting place descriptions between Center Heights and "Other" areas where the jurors live. He describes Center Heights as a low-income ghetto, in contrast to the Other areas, which are in more affluent parts of the county, where the jurors reside. In addition to the economic distinctions, the terms "ghetto" and "affluence" are indirect references to race. In American parlance, ghetto does not mean poor white. It more specifically is used to refer to African Americans. The majority of those who are affluent in America are white. He reinforces the separateness of the areas, with the phrase "a jury comes into Center Heights," implying they are outsiders.

The dissimilarity between the areas is continued through contrasting person descriptions which are rich in cultural meaning. The DDA describes the residents of Center Heights as poor, unemployed, on AFDC, and prostitutes. He does not directly describe the jurors, but we know from the place description that they are "affluent," that is, middle to upper middle class.

Although the prosecutor's description is presented to show understanding and even sympathy, the "facts" he cites resonate with the larger discourse of American achievement ideology. The ghetto—the place where people are unemployed and on AFDC, sleep late, and then search out evening entertainment—is a place that in terms of the American achievement ideology implies flawed moral character. The attribution of "prostitute" is the final stone cast in this implied moral judgment. A prostitute is morally flawed and unworthy of respect. This image is compounded for black women, who, regardless of class, are perceived

as prostitutes and available for sex (Davis 1981; hooks 1981; Giddings 1984).

The prosecutor also invokes time to symbolize normative patterns of daily living. Center Heights residents live a different schedule, not because they work a night shift, but because they sleep late (i.e., are lazy). The dimension of time emphasizes a sense of distinct communities, living separately not only in space but time. Time is also used to form evaluative readings of the victims', suspects', and jurors' moral character.

Unlike the descriptions about Center Heights residents, those of the jury are not elaborated. Interpreting the place description "affluent" in the context of the American achievement ideology, we can assume that jurors are employed, which equals hardworking, which equals morally responsible. Although unspecified, the DDA's image of the jurors appears to rely on an idealized typification of responsible, middle-class, primarily white citizens.

In the above passage, the prosecutor shifts his stance throughout. Through this shift he can align himself with "what the jurors say" rather than him constructing the jurors' stance as well as his own. This enables him to hide his voice, giving the account legitimacy. The DDA positions himself as a knowledgeable outsider in contrast to the jurors, who are ignorant outsiders. He does this through his detailed descriptions of life in Center Heights and jurors' interpretations of that life. The ability to give detailed descriptions of everyday life gives his account authority and professionalism. The DDA also positions himself as knowledgeable outsider by associating himself with the Center Heights Prosecutors' Office and the unique understanding they have: "a different perspective that we take here in Center Heights; because of the kind of community we are," as opposed to others unfamiliar with life in Center Heights. Indeed, he situates himself as an insider by using the first person. Then the DDA positions himself with the jury through the use of third-person pronouns. When speaking about life in Center Heights, he refers to Center Heights residents as "them," "they," and "their," implying he is part of the "us," "we," and "our." At one point he actually states "*their* one o'clock in the afternoon becomes like *our* eight o'clock in the morning." He repairs this overidentification with the jury by substituting "in another part of the county" for "our" in the next sentence. By shifting his standpoint, the DDA does not totally identify with his own class and geographic background or that of the jurors. He vacillates between depicting the jurors' and victims' cultures as Subject and Other. When he adopts the victims' standpoint, the jurors become Others or Outsiders. This reversal of the mainstream characterizations of Other seems to suggest some identification with the victims (albeit as a knowledgeable outsider) and a recognition of the limitations of the

mainstream culture, from the perspective of which it is not possible to understand, or perhaps even do justice for, victims who live in Center Heights. Regardless of standpoint, the DDA distinguishes two places with two groups of people who do not share normative behavior. He is building a case for others (outsiders with no insider knowledge) misinterpreting the conduct of Center Heights women.

As this DDA continues in the interview, his references to two distinct cultures reinforce the image of separate places and separate lives. He continues to shift standpoints as he is speaking.

Another example that I can think of is people coming in for parties. In other parts of the county, crashing parties is just not done. If you're not invited to somebody's party, you just don't attend. Again, in a low income area, where people . . . as I say, cannot afford to go out . . . most of the entertainment just takes place in people's homes. . . And so, you see in an area like we have here in Center Heights, a lot more informal spontaneous kinds of parties or gatherings of people. Strangers who don't even know the person who's hosting the party will just walk in. Sometimes a rape will result. And here again it is just another example of how sometimes you have to educate people. Let's say a young lady lives a half a block away from where there's one of these informal spontaneous parties, gatherings if you will, of people and she and a girlfriend decide to go in. And it turns out, let's say that there are some pretty rough gang bangers already there and these girls consensually, voluntarily enter into the home, and they are drinking beer and wine along with everybody else. The gang bangers end up taking them into a rear bedroom and raping them. A jury . . . a juror from a different part of the county who wouldn't think of entering into some stranger's apartment uninvited for some party . . . not having any idea who is in attendance would view this poor victim quite negatively, would not condone the victim's conduct and would probably conclude that the victim brought it upon herself and that the defendants are not guilty. And again, only because of this lack of understanding of the difference in the way people sometimes need to live in the low income, in the ghetto areas of society . . .

As in the first part of the account, the prosecutor employs place descriptions to construct distinct locations. Here he uses the phrases "coming in" and "from a different part" to indicate the jurors' movement into and out of Center Heights. Moving in and out of places suggests they are bounded, separate from one another. The DDA continues to describe Center Heights as a "low income ghetto," and areas where the jurors reside as "other areas of the county," which have been previously associated with affluence, reinforcing the association of differences in economic status and geography. The prosecutor's description of people who live in each area continues to develop the distinctiveness of each location and population. As in the previous excerpt, the

DDA is speaking from the standpoint of Center Heights residents.

The DDA's person descriptions construct the behaviors of the two groups as contrasting. He builds this contrast by linking economic status with descriptions of normative behavior. He suggests that as a result of poverty, persons in Center Heights have more informal and spontaneous gatherings in their homes, hang out in the streets, and go to parties without explicit invitation. This stands in contrast to middle-class jurors who, it is implied, can afford to pay for entertainment and therefore do not hang out on the streets or attend parties uninvited. These contrasts are also presented as jurors' judgments of Center Heights residents' behavior. The evaluation is conveyed by pairing each description of behavior in Center Heights with a negative judgment of the behavior and an indication that jurors would do just the opposite. We are told that Center Heights residents crash parties but jurors don't. Crashing parties is not polite. Politeness is a hallmark of middle-class society. We are also told that Center Heights residents have spontaneous parties, whereas jurors have planned engagements. Interestingly, the prosecutor's point of reference for the contrasts are the norms in Center Heights. Speaking from the standpoint of victims, as a knowledgeable outsider, the DDA suggests his identification with victims. He identifies the problem as the jurors' ignorance, not the victim's lifestyle.

The DDA describes the victim as a "young lady," a term of respect and innocence, whereas he describes the perpetrators as "gang bangers," a category of moral degradation in middle-class society. Making this distinction attaches moral character to the parties involved, a "young lady" is naively caught up in a bad situation. Gang bangers conjure up images of young men of color engaging in violence and crime, an image reinforced by the place description "ghetto."

The DDA's use of the term "young lady" further positions him relative to the conduct of Center Heights residents as a sympathetic knowledgeable outsider. Unlike potential jurors, he recognizes that although some women's conduct in Center Heights is different from middle-class conduct, it is nevertheless innocently motivated. The DDA then explains the logic behind the jurors' perspective of the incident and victim. He makes clear that they have a different set of normative behaviors and values and that jurors would not approve of the behavior in Center Heights. The prosecutor suggests that the jurors would not only disapprove of the victim's behavior but see her as precipitating her own rape, and therefore culpable. She would not be seen as a "real" victim in their eyes. He attributes the jury's misunderstanding of the victim's behavior to their insufficient knowledge of the lives of poor people of color. Different economic and racial

groups have different cultural standards. These differences are maintained through geographic segregation. He suggests that victims will not receive justice in this system.

Prosecutors construct Center Heights and “Other” areas where jurors live as discordant locales. Through the interplay of person and place descriptions they characterize these areas as distinct geographically, racially, economically, and culturally. Categorizing these places and persons as discordant locales provides an organizationally sound justification for case processing decisions.

In accounting for cases, prosecutors voice the standpoints of different court players. Although they temporarily decenter the mainstream standpoint of the jurors by adopting that of Center Heights residents, this decentering becomes a technique for demonstrating the prosecutor’s own objectivity. The prosecutor’s shifts in alignment allow the DDA to display consideration of a case’s complexity and the power of organizational logic. It is a mechanism for the prosecutor to express frustration at jurors’ ignorance, the prosecutor’s position vis-à-vis the victim and prosecution, and to display one’s position as an organizational player. The prosecutor’s ability to shift standpoints shows the potential for change if legal agents can act from those nonhegemonic standpoints. It also demonstrates the power of institutional logic that they do not act from other standpoints.

## **Conclusion**

Discordant locales are prosecutors’ categorizations of places and the people associated with them that they encounter in the work of case prosecution. DDAs’ categorizations are informed by their typifications of area activities, residents and their lifestyles, and cultural images and ideologies of specific race/class groups. Mapped onto the place descriptions are sets of attitudes, behaviors, values, and norms that are attributed to those who reside in, use, or pass through these areas. Through the interaction of place and person descriptions, prosecutors constitute the moral character of persons and place.

Categorization of places as discordant locales is a justification for case rejection. Prosecutors maintain that different race and class groups create separate cultures, which in turn have distinct categorization schemes for understanding the social world. These differences, according to prosecutors, lead to misinterpretations by jurors of victims that would result in “not guilty” verdicts if the cases were forwarded. The organizational concern with convictability renders discordant locales a legitimate and frequent unofficial justification for case rejection. This would not appear on official, written accounts of case rejection; reasons

given there typically would be “victim’s unwillingness to cooperate” and “insufficient evidence.”

Given the convictability standard, what are the implications of discordant locale categorizations for the legal system? In addition to possible individual miscarriages of justice that occur when prosecutors decide not to pursue cases that they believe to have factual basis, I suggest that the pattern of their decisions has wider sociolegal significance. An intended consequence is the evaluation of cases as convictable or unconvictable, winnowing “weak” cases out of the system. This is seen as organizationally necessary, to relieve the overburdened court system of cases that would use up resources and lead “nowhere.” An unintended consequence of prosecutors’ decisions is to legitimize specific ideologies of race and class and contribute to the reproduction of social inequality in the criminal justice system. Whether prosecutors are recognizing the force and reality of the moral judgments of middle-class white jurors or adopting these judgments as the basis for their decisions, certain people are more likely to be excluded from justice. As Merry (1990) argues, participation in the justice system is part of a sense of entitlement. Whatever the paradoxes of victims actually using the legal system, when some victims are routinely dismissed because their stories do not fit the hegemonic group’s image of a real victim, that widens the division between those who have access to the law and those who do not. Furthermore, prosecutors using this justification reinforce the idea that social arrangements organized around race and class are “natural,” which in turn reifies the differences and misunderstandings.

For those working to create a just legal system, these data suggest that changes in organizational policies may be necessary to expand and equalize citizens’ access to the law. Reformulating how the convictability standard is used through policy changes would be one possible intervention. For example, allowing prosecutors to file a certain percentage of believable but risky cases without regard to convictability without negative consequences may open the boundaries of what prosecutors conceive as convictable. In addition, giving anticipated jurors’ norms and values less weight at the filing process might also bring a greater variety of cases into the system. If prosecutors dealt with actual juries to prosecute more of these cases, they might learn how to win the cases, hence expanding what is perceived as “convictable.”

Examining how prosecutors construct discordant locales reveals the depth at which we must look to see how race, class, and gender systems are constituted and maintained through legal decisionmaking. The ideologies that constitute the social order are not just perpetuated by overt or purposeful activity. Micro-level interpretive practices that may not appear to have race-, class-, or gender-biased intentions nevertheless contribute

to the institutionalization of these biases. Prosecutorial accounts can unintentionally perpetuate historical social relations by contextualizing prosecution decisions in cultural representations of places and people. We live in a culture that has been built on an unequal distribution of economic and political resources by race, class, and gender. Drawing on these frameworks of interpretation to make sense of case facts and to justify case decisions continues the current social order and its division of resources and influences.

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