

## **DISAPPEARING DISCOURSE: PERFORMATIVE TEXTS AND IDENTITY IN LEGAL CONTEXTS**

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*This article examines how survivors of domestic violence and the institutional authorities to whom they turn for assistance represent verbal aggression in direct quotations and indirect reported speech in legal testimony. Using the theoretical framework proposed by Briggs and Bauman (1992), I suggest that direct quotations and reported speech serve to manage intertextual relationships between (1) the event reported (the alleged abusive incident), (2) the reporting event (the interview), and (3) the legal record in the form of an affidavit. Alterations from direct to indirect reported speech are discussed in terms of their power to neutralize the client's emotion and her evaluation of herself and the alleged abuser. In addition, interviewer-initiated changes from direct to indirect reports of verbal abuse create a text that helps to suggest that the battered woman can be a credible witness for herself and for the legal institutions that agree to advocate for her.*

### **Introduction**

There is a longstanding cultural belief in the United States that adjudicating gender-related violence (e.g., domestic abuse, date rape, and even stranger rape) is very difficult because evidence largely is based on “he-said-she-said” testimony. When people make statements that suggest the futility of trying facts in gender-related cases of violence, they imply certain beliefs about speakers, situations, sexuality, and gender. When, for example, statements point to the problems involved in determining whether a man was clearly and beyond a reasonable doubt the perpetrator of violence and the woman was clearly the victim of his aggression, it seems that there is an underlying belief that the man and

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the woman are on equal footing and that their utterances at the onset are equally trustworthy. However, because both cannot be telling the truth since their stories conflict, clearly one of the two is lying about what happened. In this article, I examine how “he-said-she-said” discourse is treated in the creative endeavor of text-making. Specifically, I investigate how reported speech, both direct and indirect reports of verbal abuse, is represented in women’s affidavits that testify to domestic violence. I argue that people create legal texts as performative entities, where the fabricated text stands in for the speaker(s). The linguistic devices used to represent the speaker—through his/her testimony—are fashioned according to situated and localized ideas about how language should be employed to create desired identity-constructs for the context(s) at hand. We will see that inherent in the construction of texts or in the process of text-making are language ideologies, or beliefs about and values attributed to language and language use (Woolard & Schiefflin, 1994). Embedded in language ideologies are keys that unlock for us the meanings they encode. Essentially the linguistic devices used indicate how we are supposed to interpret information presented in and constituting the text under examination. As Errington (2001) suggests, “‘language ideology’ is a rubric for dealing with ideas about language structure and is relative to social context” (p. 10).

While humans use narrative to report their lived experience in many different types of social settings and for a variety of purposes and circumstances, the U.S. legal system is a vast repository for people’s narratives. Within the adversarial context, however, language is not only vital to the outcome of the interaction, but it also serves as a record for the future. My concern with narrative has been primarily with how Latina women package their accounts of domestic abuse for legal authorities. I have also examined how these legal authorities translate what Latinas say in order to repackage their words into legally convincing texts (Trinch, 2003). Building on this prior work, this investigation examines how these Latinas and their interviewers incorporate references of abusers’ verbal aggression in their creation of what I refer to as *performative texts*.

We will see how reported speech is manipulated by interviewers and affidavit-writers as a key linguistic device in the construction of their clients’ identity as victim-survivors. The settings for

the narratives analyzed in this article are a district attorney's office in Anytown, USA, and a pro-bono law clinic in Someville, USA. In both places, paralegals, attorneys and/or volunteer-interviewers aid women in filing protection from abuse orders.<sup>1</sup>

Intimate-partner violence takes on a variety of forms. Alongside physical, sexual, and life-threatening types of assault, battering victims report that they also suffer from psychological abuse. Victims categorize these nonphysical offenses as humiliating and degrading (Street & Arias, 2001). Street and Arias encourage clinicians and researchers to pay more attention to how psychological abuse—largely enacted through language alone—has an impact on victims. O'Leary (2004) complains that until recently scant attention has been given to verbal aggression in social service and legal arenas. Here, by way of a sociolinguistic analysis of text-making, we will explore the kind of consideration and representation verbal abuse receives in a particular type of legal setting.

As Latina women enter the U.S. system of law linguistically unarmed to create the performative texts they need to achieve legal recourse, they submit to a gatekeeping experience (Trinch, 2001a, 2007). Elsewhere (Trinch, 2003), I describe in detail the legal process women get involved in when they apply for a protective order; here, I briefly outline how affidavits of domestic abuse—the primary legal and linguistic product used to petition the court for an order of protection—are created. Women are referred to offices that aid them in applying for protective orders by police officers, shelter workers, victim advocates, and possibly other social service workers with whom they come in contact. In the data examined here, the women are referred to a district attorney's office and a pro bono law clinic. In both settings, such women are considered "alleged victims" or more neutrally, "clients." While waiting to see an interviewer, the clients are asked to fill out intake forms that request both socioeconomic and descriptive identity data for themselves and their intimate-partners. The women are also asked to give a short example of the types of violence they have been experiencing. Once in the offices of either the paralegals at the district attorney's office or the cubicles of the volunteer interviewers at the pro bono law

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<sup>1</sup>Protection from abuse orders (PFAs) are court injunctions mandated by judges to keep allegedly abusive family members away from complaining parties.

clinic, the clients are asked a series of questions about themselves, their alleged abusers, and then the alleged abuse. I have characterized this interaction as one in which interviewers intercept women's inadequate narrative performances of the past in order to transform them into successful speech acts. Ultimately then, the interviewers' charge to create a legally felicitous narrative has its origins in language ideologies. Such language ideologies favor only certain narrative genres and tend to relegate others to more marginal sociolinguistic spaces.

I select the protective order interview because, from this one verbal interaction, two distinct and observable texts are produced. The first version of the account emerges from the interaction between the client and the paralegal in the interview context. The second version is produced in the affidavit, which is written by the interviewers.<sup>2</sup> The affidavits look similar to the example shown below.

### Sample Affidavit<sup>3</sup>

State of AnyState, County of AnyCounty

Before me, the undersigned authority, on this day personally appeared Bea García,<sup>4</sup> who being by me duly sworn on oath stated:

"I am the Applicant in the above and foregoing Application for a Protective Order and the facts and circumstances contained therein are true to the best of my knowledge and belief."

There is a clear and present danger of continuing family violence and of other immediate and irreparable harm if a Temporary Ex Parte Protective Order is not granted, as shown by the following:

#### Overall Orientation Clauses:

Samuel García is my husband of about five years and we have two children together. We separated on ((date)).

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<sup>2</sup>*Barron's Law Dictionary* (1984) defines an *ex parte* judicial proceeding as "one brought for the benefit of one party only, without notice to or challenge by an adverse party" (p. 170). In this case, clients are issued a temporary protective order until the case goes to court on a scheduled court date when the respondents (i.e., alleged abusers) have a chance to respond. Violations of a temporary *ex parte* order carry no criminal sanctions.

<sup>3</sup>An analysis of the interview and the structure of the affidavit appears in (Trinch & Berk-Seligson, 2002).

<sup>4</sup>All names, dates, places, and other identifying characteristics have been changed to protect the anonymity, maintain the confidentiality, and respect the privacy of all participants in this study.

**Mini linear account #1:**

On or about April 15, 2005 in Utah, Samuel got upset with me for spending forty-five dollars. He poured chips on the bed and put food on the floor and started pushing me around. He continued pushing me around so I pushed him back. Samuel then shoved me into the bathroom by my neck and started shaking and hitting me. I was able to get out of the bathroom when our dog started biting at his ankle. I ran out the door and Samuel came after me and started pushing me. He went back upstairs and someone called 911. When the police arrived, Samuel was arrested. I sustained a bruise on my face and a scratch on my neck. I left for Anytown and do not plan to return to Utah.

**Mini linear account #2:**

In March 2005 Samuel and I were in the car and we were arguing about his dog. He hit me in my buttocks as I was getting out of the car. I told Samuel he was not going to hit me any more and he said he was. Samuel started punching me in the head and shoulders in front of a neighbor. The police were called and when they arrived Samuel was arrested for assault.

**Overall Evaluation:**

I am afraid of Samuel and I am fearful that he will come to Anytown and hurt me because he was arrested in Utah. Samuel has family in Anytown and he knows where I live here. I have been too afraid to stay in my home and need legal protection to keep Samuel away from me.

**Participant Signatures:**

Sworn and subscribed to before me on this ((date)) of April, A.D., ((year)).

\_\_\_\_\_ (signature line for client)

Bea García

\_\_\_\_\_ (signature line for paralegal)

Notary Public, State of AnyState

### Performative Texts

O’Barr and Conley (1985) summarize Hymes’ idea of “break-through into performance” as a “... situation in which a narrator shifts from third-person reporting to enactment of a story by speaking the parts of the characters rather than merely reporting what they said” (p. 680). In this article, I suggest that such conceptualizations of *narrative performance* (Bauman, 1986; Hymes, 1975; Wolfson, 1978) should be reconfigured to understand not only how narrators bring their texts to life but also to comprehend how narrators and their interlocutors manipulate linguistic devices and language beliefs in order to fabricate the necessary *performative text* for a given situation. The term *performative text*

refers to those constellations of linguistic features that are assembled by speakers to create a whole that makes the speakers (in this case, the speakers are also narrators) seem a certain way. Speakers use particular combinations of language elements according to language ideologies for the purpose of enacting a specific characteristic or attribute of themselves. The mobilization of linguistic features that tap into language ideologies creates an “idea of the narrator” that goes beyond the text’s semantic content. The early work of Goffman (1959) and more recently that of Butler (1990) brings us to the question of narrative and performance. In this article, I use ideas of performance and the performative nature of language to take us from the earlier query that addresses what people do with words (Austin, 1975) to a linguistic focus on what people seek to do with texts.

Texts, as entities made up of words, sentences, punctuation, and paragraphs, are created for specific purposes, and as such are related to cultural processes of meaning making. Just as Butler (1990) argues that “gender” is not something that people are but rather something that they do, in part through linguistic practice, a witness’s story of abuse is not necessarily just credible, truthful, or authoritative on its own face. Instead, particular narrative genres and the elements that they tend to include aid individual narrators in the cultural performance of credibility. In other words, there are linguistic features that narrators deploy in some circumstances to make themselves seem and sound sincere, believable, and trustworthy. While a narrator that intends “to tell the truth” may not, in fact, be intentionally using linguistic features that make him/her seem insincere, deceptive, and untrustworthy, the fact that most narrators are unfamiliar with the law sets them up for language usage that is not germane to the context and thus gives way to readings of them as noncredible witnesses.

The affidavit shown above illustrates how interviewers inscribe violence in a typical affidavit. The affidavit can be characterized as a *report genre* that differs in many ways from the *story genre* version of the violence that clients seem to prefer to give in their interviews (see Trinch, 2003; Trinch & Berk-Seligson, 2002). For instance, interviewers—also known as the affidavit writers—always include dates in the report genre to indicate when violence occurs, when a couple separated, or when a prior police report was made. Sometimes, however, interviewers write in even quite

inexact dates, such as “on or about May 2005.” Interviewers, when writing the affidavits, also tend to reiterate the name of the abuser in almost every sentence. In addition, they represent abuse as a discrete incident of violence in narrative form where an action written about first looks as if it occurred first and thus precedes the action written about after it. These mini-narratives of discrete incidents of abuse all have identifiable beginnings, middles, and ends. Whenever possible, interviewers write about quantities and/or durations of time with numbers such as, “And this went on for about 2 hours,” often without making obvious what deictic words such as “this” refer to. The inclusion of these numerical devices (i.e., dates, durations of a particular fight or physical struggle, length of time between abusive incidents, etc.) is purposeful and pragmatic. While these inclusions, often resulting from the interviewer/affidavit writer’s overt power and ability to transform what victims actually say, are often considered to be more precise than their oral counterparts, closer scrutiny reveals that they are really just distortions of what victims said in their oral rendition. Obviously interviewers do not wish to mis-attribute ideas or misrepresent what women say, yet they also must create a text that suggests that the client is sincere, believable, and trustworthy. I argue that while many inclusions and alterations may seem to be making what clients say more precise, in actuality, they are every bit as performative as are the constellation of linguistic items used by clients in their oral renditions of what happened. Rather than “breaking into performance” to take on the voices of the story’s characters, these numerical elements perform “exactitude” and “clarity of expression.” In so doing, such linguistic elements not only constitute the report genre but they also give it the characteristic features it needs to index the cultural value of credibility. Below, we will see how direct and indirect quotes play a role in performing precision and credibility.

### **Background and Theory**

A comparison of the oral and written versions of the same woman’s testimony reveals also how verbal aggression is represented in a purposeful manner through the simultaneous processes of *de-*

*contextualization* and *recontextualization*. Talking about “verbal aggression” is an instance of what Lucy (1993) calls the reflexive capacity of language, or the ability “. . . of language to represent its own structure and use, including . . . metalinguistic activities of reporting, characterizing, and commenting on speech” (p. 1). Linguists also refer to reflexive language as reported speech, and according to Lucy (1993), reported speech comes in three different packages.

### *Direct Reported Speech*

First, there is direct reported speech, which is associated with quotation. Direct reported speech presumably imitates the speech spoken in a prior speech event. Direct reported speech may or may not be introduced by a verb of speaking, but it will always include the deictic perspective of the speaker whose speech is being reported. It is thought of as a re-enactment of the original speech, and it is often given in dialogue form. From the affidavits under investigation, I find Example 1 of direct reported speech:

**Example 1.** Henry then stated, “I’m going to kill you. I can do whatever I want and no one can do anything about it.”

### *Indirect Reported Speech*

Then there is indirect reported speech, which is associated with restating what was said, but doing so by casting the gist of the utterance in other words. Indirect reported speech characterizes or analyzes prior discourse from the perspective of the current reporting event. In writing, this form would be referred to as paraphrase and would lack quotation marks. Example 2 from the affidavits provides an example of indirect reported speech:

**Example 2.** On January 15 Sam was again angry, he threatened to kill me and anyone who got involved.

### *Quasi-direct Reported Speech*

Finally, quasi-direct reported speech is the third type of reflexive language and combines aspects of both direct and indirect



reported speech. It achieves an interpretation of the voice of the reporter and the reported, the narrator and the story character.<sup>5</sup> Example 3 from the affidavits shows how direct and indirect reported speech come together to form the quasi-direct reported speech:

**Example 3.** The defendant accused me of having relations with other men and said, he was “never going to leave me alone.”

Tannen (1989) prefers to call reported speech constructed dialogue, noting that it is impossible for a reported utterance to reflect exactly what was said originally. Still, other linguists argue that direct quotations have an air of authority of representation.

For example, Rumsey (1990) explains that Western linguistic ideology operates on the “dualism of words and things; talk versus action; real world events versus ways of talking about them” (p. 352). For most speakers, words “stand in for things. They are mere symbols or signs, the purpose of which is to talk about a reality that lies beyond them and apart from them” (p. 352). According to Rumsey, there is a fundamental belief in Western cultures that reality can be adequately represented in language. To support his claim, he compares English with Ungarinyin which is an indigenous language in Australia that does not have a grammatical form for direct quotation.<sup>6</sup> English, as we know, incorporates a method for speakers both to report speech and to appear to quote it directly, while, Rumsey claims, Ungarynin does not. Arguably then, by not having a mechanism to suggest that one form of language can be more precise or exact in its representation of what was said than another, speakers of Ungarynin would not maintain such a strict dichotomy between the idea of “words” and the material reality that words are supposed “merely” to represent what was said or done. Matoesian (2001) explains this concept by stating that

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<sup>5</sup>In this example, the speech of the abuser is characterized as an accusation and the speech reported inside the quotes indicates that it is not meant to exactly mimic what he said because the object pronoun refers to the reporter and not to the person it claims to be reporting about.

<sup>6</sup>Ungarynin is a language spoken by indigenous peoples of northwestern Australia. Whereas English incorporates a method for speakers both to report speech and to appear to quote it directly, Ungarynin does not.

[d]irect quotes implicate a broader form of linguistic ideology in which the sole or primary function of language is to refer to things, what Mertz (1985) refers to as the ‘drive for reference.’... [So interlocutors] misrecognize the interactional work direct quotes accomplish in context because grammatical design naturalizes and foregrounds referential value over strategic meaning. (p. 112)

In other words, listeners perceive direct quotes to mean “direct quoting” and often fail to hear direct quotes critically as a strategic device being used by speakers for some pragmatic reason.

Language ideologies, as mechanisms that organize our interactional and communicative world, tend to appear as prescriptive mandates in social realms. When ideologies are inscribed in the rhetoric of powerful institutions, notions that they exist as universals are reinforced. Rumsey (1990) offers an example of the perceived power of exactitude direct quotes have in the courts. He offers the *Guide for Witnesses* in the Attorney General’s Department in New South Wales, Australia. The Guide instructs those who take the stand to use direct quotation wherever possible. It says:

If you are asked to tell the court about a conversation you heard which is relevant to the case, you must always tell the words spoken to you as they were said, e.g., if the person asked you the time, you do not say, “She asked me for the time.” Instead you should say –“She said, ‘What’s the time?’”. Always try to use exact words if possible. (p. 356)

While Anytown’s district attorney’s office gives paralegals no such specific instructions, the training manual in Someville’s pro bono law clinic does instruct affidavit writers to employ direct quotation. It says: “Use direct quotes and describe with as much specificity as possible why the client feels she will be harmed if [the abuser] is not excluded [from the home]” (p. 10). Based on this theory that language ideologies about the power of direct quotes to mimic exactitude are actually embedded and reinforced in English grammar and given the way courts prioritize quotation as noted in both the data from New South Wales, Australia, and Someville, USA, I hypothesized that protective order interviewers would prefer to incorporate direct reported speech to represent

abusers' linguistic mistreatment of victims. Since I had found that interviewers seemed intent on producing texts that performed exactitude and because direct quotation seems in English-speaking cultures to have the power to suggest precision in reporting, it seemed logical that affidavit writers would incorporate direct quotes of verbal abuse. However, as we will see below, this is not the case. In fact, the interviewer/affidavit writers, as legal linguistic mediators of the clients' message, seem to be operating according to a "remove all direct quotations" rule.

### **Data**

While it is true that in protective order application interviews physical abuse gets more attention than psychological violence, the data in this study reveal that verbal aggression does indeed get recorded in the institutional memory of these affidavits. Of the 86 affidavits examined, there are only two that make absolutely no mention of language violence. Furthermore, both interviewers and clients introduce verbal abuse as a type of violence that is worthy of airtime and affidavit space. Moreover, in some cases even interpreters introduce or elicit verbal abuse as a topic of aggression.

Clients do not seem to have a preferred way of relaying the verbal abuse of their intimate partners. Clients utilize a combination of direct, quasi-direct, and indirect reported speech to reflect the various linguistic hostilities they field from abusers. Along these lines, the transcripts suggest that interviewers do indeed believe in the power of direct quotation when it comes to representing linguistic mistreatment. Notice in Excerpt 1 how the volunteer interviewer (referred to as VI below) actually invents and interjects direct quotations for the client (C below). These inventions are then interpreted by the interpreter (I below) in the collaborative act of narration.

#### **Excerpt 1: Interviewer interjects direct quotes into victim narrative.**

VI: What does he say to you when ... say, "I'll kill you" or "I don't want to go"?

- I: ¿Qué le dice cuando pasa eso, cuándo le amenaza? ¿Qué le dice?  
 ((What does he say to you when this happens, when he threatens you? What does he say?))
- C: O sea como ( ) no grite, que me calle ( ).  
 ((Umm, like that I don't scream I, that I shut up.))
- I: Since usually when he's doing this I'll start yelling and he tells me, yells at me not to scream and he grabs me and puts his hand over my mouth.

Though clients do not rely on one form of reported speech over others, they do utilize a considerable amount of direct quotation to represent abusers' injurious speech acts. They couch their alleged abusers' verbal aggression as physical or deadly threats of violence, threats to take children, and threats to remove property and vehicles as well as accusations of infidelity, harassing phone calls, name calling, insults, arguments, and criticisms.

### *Types of Reported Speech Used by Clients*

A variety of the reported verbal abuse talked about by clients in both the pro bono clinic and the district attorney's office is shown in Excerpts 2–4.

#### **Excerpt 2: Clients' use of direct reported speech.**

- Client 1: 'Cause the last time he told me, he said that ( ) in so many words, he said, "One day you'll be alone out in the streets," you know, "that there is nobody around and that's, and I just might be there and I will get you." You know.
- Client 2: Y él me dijo, él tomó el teléfono, y me dijo, "Llama a la policía, bitch. Pero te voy a pe, te voy a golpear."  
 ((And, he told me, he took the phone and told me, "Call the police bitch. But I'm going to hit, I'm going to beat you."))

#### **Excerpt 3: Clients' use of indirect reported speech.**

- Client 1: We're not on speaking terms at all. And he told me he was never gonna let me take my little girl, Anna with me if I left him, that he was going to take her away from me.
- Client 2: Sí, él nomás me llama para decirme que, que, que, me va a matar cuando me encuentre con alguien más . . .  
 ((And he, he just calls me to tell me that, that, that he is going to kill me when he finds me with someone else . . .))

**Excerpt 4: Mixture of direct and indirect speech.**

- Client 1: He was threatening to kill me if I, um, bring my son to go and pick up some clothes, or whatever. That um, and when he came back that he was gonna, beat the shit out of me and, and, kill my son . . . and he said that he was gonna sell the truck so that I wouldn't get out, go anywhere. He goes, "I'm just gonna leave you out in the street cold."
- Client 2: Este, este, es, este hombre me llamó, me llama en mi casa y y y, dice que que, quiere, que "vuelvas conmigo".  
 ((This, this, this guy called me, calls my house and, and, and he says that that he wants that "You'll come back to me"))).

These excerpts show that clients employ an array of direct, indirect and quasi-direct types of reported speech to report verbal abuse. Sometimes the same client will use a variety of forms. The affidavits, however, make clear which form interviewers favor. Whether written by paralegals, attorneys, or volunteer-interviewers, the affidavits indicate an overwhelming preference of all writers to represent verbal abuse with indirect reported speech. Of the 32 affidavits examined from the district attorney's office and the 54 from the pro bono law clinic (for a total of 86), only 22 (or about 25%) incorporate quotation marks to refer to some type of coarse or harmful language attributed to offenders. In other words, 64 affidavits, or 75% of the corpus, are written with only indirect reports of verbal aggression. Some affidavits have more than one token representation of verbal abuse. For example, there are a total of 32 tokens of direct or quasi-direct quotation showing up on these 22 affidavits that include quotation marks. In contrast, on the other 64 affidavits there are 402 tokens of indirect reported speech characterizing abuser verbal mistreatment.<sup>7</sup> These indirect characterizations of damaging language are quite uniform across the data set. For instance, while there are 24 verbs of speaking that introduce indirectly reported assaulting speech at the district attorney's office, most indirect reports, in this case 129 of the 152 instances are introduced by just nine different reporting verbs. The common verbs are given in Table 1 below.

In comparing these two sets of affidavits in various ways, it can be seen that there is more variation among the pro bono

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<sup>7</sup>Of these, 152 appear on the affidavits at the district attorney's office and 250 appear on those at the pro bono law clinic.

**TABLE 1** Verbs Used on Affidavits to Introduce 402 Tokens of Indirect Reported Verbal Abuse

Anytown's district attorney's office	Someville's pro bono law clinic
1. Threaten (36)	1. Threaten (46)
2. Tell (34)	2. Tell (36)
3. Call on phone (14)	3. Say (19)
4. Argue (11)	4. Is (verbally) abusive (17)
5. Accuse (8)	5. Call on phone (17)
6. Ask (8)	6. Argue (17)
7. Say (8)	7. Yell (16)
8. Want (7)	8. Scream (10)
9. Call names (5)	9. Call names (9)
	10. Curse (7)
	11. Talk (6)
	12. Demand (6)
	13. Ask (6)
	14. Accuse (5)

law clinic interviewers' affidavits than there is among those from the district attorney's office (see Trinch, 2001a, 2001b, 2003). Nevertheless, in terms of the variety of verbs used to introduce abusers' severe utterances, the pro bono law clinic is strikingly consonant with the district attorney's office. A total of 36 different verbs of speaking are used in the indirect reports of verbal violence in the clinic, but the majority, or 200 of them, is carried by just 14 verbs of speaking. The high degree of uniformity among these verbs might indicate that interviewers are aware of the type of language needed to create a text that will be adequately performative to achieve the narrators' goals in these legal contexts. However, before I discuss narrator goals of identity-construction and the performative ability of texts to establish these constructs, we should examine the direct and quasi-direct reported speech found on the affidavits.

#### *Direct and Quasi-Direct Reported Speech*

In the pro bono law clinic data set, there are 17 affidavits (out of 54, representing 31% of that sample) that include direct and quasi-direct reports of aggressors' maligning language. In the group of affidavits from the district attorney's office, there are

**TABLE 2** Hearsay Direct/Quasi-Direct Reported Speech

	Quasi-direct reported speech	Direct reported speech
District attorney's office	Tim told Jennifer to put me back on the phone or he was going to "kick her ass."	José walked up to my friend and told my friend, "Take care of her because she is a good fucking woman."
Pro bono law clinic	Respondent told my son that if he told anyone, Respondent would go to jail, get out and then "get his ass" when he gets out.	

only five affidavits (out of 32, 15% of that sample) that use quotation marks of some sort. So, out of 86 affidavits, only 22 affidavits include any quotation marks at all. An analysis of the use of quotation marks in these 22 affidavits reveals that they tend to refer to four types of linguistic affronts. These four linguistic offenses fall into the following three main speech act categories: (1) threats, (2) name calling/accusations, and (3) hearsay.<sup>8</sup> Tables 2 and 3 show examples of how threats, name-calling, and hearsay are represented in these affidavits. These sentences, along with the quotation marks they include, have been copied verbatim from the affidavits.<sup>9</sup> Again, the inclusion of quotation marks of any kind is quite rare in these legal documents. The preference to report verbal abuse indirectly rather than directly cannot be overstated. The very few examples of quotation that we do find are representative of those listed in Table 2 and Table 3.

In Table 2, the sentence "Tim told Jennifer to put me back on the phone or he was going to 'kick her ass'" is a quasi-

<sup>8</sup>*Black's Law Dictionary* (1999) defines hearsay as: Traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness. Such testimony is generally inadmissible under the rules of evidence.

<sup>9</sup>However, all names, dates, and other identifying words have been changed to maintain confidentiality and protect anonymity.

**TABLE 3** Name Calling and Accusations

	Quasi-direct reported speech	Direct reported speech
Pro bono law clinic	<ol style="list-style-type: none"> <li>1. He forced himself on me and attempted to give me a “<b>hickey</b>” on my neck.</li> <li>2. He began calling me names and accusing me of being a “<b>prostitute</b>.”</li> <li>3. During our relationship he was also verbally abusive towards me and called me “stupid,” “<b>bitch</b>,” etc. all the time.</li> </ol>	The defendant abuses me verbally by calling me names or by making wrongful accusations, for example he would say that “you are rotten from the inside from all the <b>dicks</b> that go inside.”
District attorney’s office	None	None

direct report of verbal abuse by the abuser but the verbal abuse is directed toward the client’s manager, Jennifer. It can be seen as quasi-direct because it suggests that some of the words used were the abuser’s words, but obviously not all of them can function as a direct threat to his manager, given that the threat is constructed using the third person “her” for what should have been the second person “your.” In other words, the direct quote would be “kick your ass” as opposed to the third person reference in “kick her ass.” The sentence, “Respondent told my son that if he told anyone, Respondent would go to jail, get out and then ‘get his ass’ when he gets out” uses a similar blend of direct and indirect speech. From the district attorney’s office’s affidavits, there is an excellent example of the hearsay category of direct reported speech—though it is not necessarily representational of verbal abuse—in the following sentence, “José walked up to my friend and told my friend, “Take care of her because she is a good fucking woman.”

To discuss the name-calling and accusations categories, I have listed some of the examples in Table 3. What is striking



is the number of instances for which quotation marks surround expletives or other types of unseemly language. This linguistic finding will be discussed below.

### **Discussion**

That there are so few instances of direct or quasi-direct quotations suggests that there is a constraint against representing abusers' voices directly. This constraint reaches beyond both explicit courtroom language ideology and the intuitive, implicit language ideology presumed to be naturalized in the grammatical design of direct quotation as I had predicted would be the case. In other words, interviewers are operating in accordance with some sociolinguistic restriction that leads them in most cases to disappear the discourse of direct quotation in favor of representations of indirect forms of reported speech. With this finding, two questions come to mind: (1) Why is indirect reported speech the typical pattern for representing verbal aggression in affidavits? (2) Why do interviewers break from the textual standard in the 22 affidavits where we do find direct quotation? That is, what is the significance of the alternative mode of using direct reported speech to frame abusers' voices in general and their verbal abuse more specifically?

Vološinov argues that "one cannot divorce reported speech from the reporting context when analyzing it . . . the true object of inquiry ought to be precisely the dynamic interrelationship of these two factors, the speech being reported (the other person's speech) and the speech doing the reporting (the author's speech)" (Vološinov, [1929] 1986, p. 199, as cited in Tannen, 1989, p. 100). Tannen (1989) states that "by giving voice to characters, dialogue makes story into drama and listeners into an interpreting audience to the drama. . . . Thus understanding [of this type of] discourse is in part emotional" (p. 133).

Given these analyses and interpretations of reported speech, I argue, interviewers employ direct and indirect reported speech in order to manage the women's identity in relation to their abusers. Interviewers have the challenge of making battered women—victims of their own intimate partners—appear logical, credible, and steadfast in their decision to remove themselves

from what is, by and large, an unbelievable situation for nonabused people to understand. In other words, spectators or bystanders to this type of violence often comment that they cannot believe that someone would stand for the victimization of such violence, that they themselves would not allow anyone to treat them in these abusive ways, and that they would not stay in an abusive relationship for even a minute let alone for years. It may be that nonabused outsiders find domestic violence a largely incomprehensible and inconceivable intimate relationship dynamic, and thus they may have a hard time believing it actually exists. It is likely that interviewers, at least at some level of consciousness, know this. So it is the interviewers' job to make these women look like credible victims and steadfast survivors that no longer wish to be in the abusive situation of their own intimate relationship. Interviewer manipulation of reported speech may serve to help create the delicate balance of an identity that is both a "true and good" victim as well as an "unwavering" and "decisive" survivor. By replacing direct reported speech—often given by clients in dialogue form—with indirect reported speech, interviewers may be trying to make it appear as though the client has removed herself from direct dialogue with her abuser. This may be why in the affidavits we find that most aggressive and offensive abuser language is turned into indirect reported speech. Lucy (1993) explains that indirect reported speech can appear like an analysis or interpretation of the reported event from the perspective of the reporting event. He believes that indirect reports say something about the reason the speaker is reporting because they can explicitly describe how the reporter understood the event and what was said in it. The indirect reports then create an *intertextual gap*, in Bauman and Briggs' (1990) and Briggs and Bauman's (1992) terms. That is, the indirect forms serve to distance the client from the emotion and the drama of the events she reports and help to cast her in an analytical, objective observer role. As she is shown to characterize abusive language and dispassionately report it, her evaluations appear to have been removed. The removal of client evaluation is analogous to the way affidavits portray her as having removed herself from the abusive situation.

Perhaps paradoxically, the direct and quasi-direct quotations in these affidavits serve to distance the client even further from the abuser.

The use of direct and quasi-direct quotation in a context where they appear only rarely seems to achieve an even greater distancing effect than do the more frequent indirect quotations, perhaps precisely because they break with the textual norm found in most affidavits. These indirect forms might imply evaluation, but they do so in a conventional way by indexing the formality of the legal setting. Notice that what each of the three main categories of direct and quasi-direct quotation shares are references to the profane or unseemly. Ten of the 22 affidavits that include direct or quasi-direct quotes report words such as “hickey” and “dicks” that are, at best, improper and, at worst, obscene. Therefore, the quotes are not indexing the reported event as much as they are indexing that the client knows she ought not say such brutish things in the reporting event. What seems to make this group of threats and these representations of name-calling somewhat different from those that are represented as indirect quotations is the higher incidence of the use of words considered to be indecorous for the context. Even in the three instances of hearsay, the quotation marks are used to enclose utterances that incorporate words that perhaps for the interviewers, do not belong in the discourse of a “credible” client in a legal setting. In the threats category, we find the same phenomenon. There are dozens of references to threats throughout the affidavits, some of them are referred to explicitly with the word “threat” while others are introduced with verbs such as “say,” “tell,” or “state.” Yet the threats with quotation marks incorporate words such as “ass” or “fuck” and the presence of the quotation marks breaks with the textual standard and gives these words and phrases a special textual status. The same is true for name calling. In 99% of the cases where the paralegal interviewer decides to write about this type of emotional abuse, she writes about the victim “being called obscenities and/or names.” In other words, rather than writing “John called me a bitch,” the affidavit writers say, “John often calls me names and uses obscenities.” This is especially true in the district attorney’s office where there is not a single mention of any obscene word that is not given in quotation marks. In the pro bono law clinic, however, there are some instances of “bad” words that go unquoted. However, there are only four instances of such unseemly words—two references to “bitch,” one to “whore,” and one to “prostitute.” These four

unquoted references to obscenities used by abusers in the pro bono affidavits are underrepresented because the remaining vast majority of the other 250 indirect references to abusive speech includes no such words.

### Conclusion

Merry (1990) claims that domestic disputes and family law are like “matter out of place” in plain court. These data indicate that one way that victims of domestic abuse can be brought into the system is to create texts for them that perform their objectivity, rationality, and understanding. By imbuing their accounts with the expected language for the context, the domestic violence clients are made to look like they belong. Following Labov and Waletzky (1967) and Matoesian (1999), I propose that clients represent verbal aggression in direct quotes to construct a victim-identity, to suggest to paralegal-interviewers how they and their alleged abusers ought to be perceived, and to establish their credibility as narrators. The interviewers’ disappearing direct discourse of verbal aggression and repackaging it into indirect reported speech in the final affidavit creates a witness-identity for clients. Using the theoretical framework proposed by Bauman and Briggs (1990), I suggest that in this context, the use of reported speech serves to manage intertextual relationships between (1) the event reported (the alleged abusive incident), (2) the reporting event (the interview), and (3) the legal record (of the alleged abusive incident and the interview) in the form of an affidavit. The affidavit in this case is then a record of both the abusive incident and an index of the interview or the reporting event.

Feminist scholars (for an excellent review, see Dunn, 2005) are now trying to make sense of the binaristic “victim/survivor” identity options for women who have experienced domestic violence. They make the argument that neither identity is helpful and that both are pernicious for these women. Suggesting that one has survived something emphasizes triumph but leaves no room to deal with loss. Being labeled victim in a victim-blaming, individualistic culture makes victimization equal to weakness. It also unavoidably attaches stigma to the victimized (Goffman, 1963). These data suggest that legal professionals are aware of the

bind of the binarism and that through these types of linguistic maneuvers, interviewers try to manage the stigma that attaches to victims.

As cultural beings we have been trained to believe that only that which is not typical for the context is a performance while everything else is just normal. In other words, men dressed as women are easily interpreted as performance of femininity. But men dressed as men in business suits, though perhaps more common in most of our worlds, are also cultural performances. They just happen to perform (hetero)normative masculinity and middle- and upper-class values of male success as we expect to see it.

Analogously, direct quotation and indirect reported speech are metapragmatic and metalinguistic strategies used by speakers to create different types of performative texts. Both allow speakers to “break into performance,” but the type of performance they undertake varies according to what is socially acceptable in a particular sphere of communication. Paralegals and interviewers do not replace direct quotations with indirect reports of verbal aggression because the indirect quotes somehow are more precise or more truthful. Instead, they do so strategically in order to maximize the gaps between the event reported, the reporting event, and the formal report of the abusive incident in the final affidavit. This consistent change of representation from one text to another neutralizes the client’s emotion and her evaluation of herself and the alleged abuser. With this type of linguistic alteration, a battered woman is made to seem as though she is objective and factual in her accounting of events that she has not only suffered but also witnessed.

Indirect reported speech, in the case of these affidavits, fulfills the dramatic needs of the text by marking the narrator’s involvement in the abusive speech as unemotional. Thus, the way in which narrators (and those that help them create their textual representations of themselves) fulfill their dramatic needs will vary according to what is socially acceptable and linguistically relevant and necessary in each context. In these cases, the result of this strategic move of replacing almost all direct quotations of verbal abuse with indirect references is that the client-narrator seems both factual and objective. Indirect reports of verbal abuse seem to diffuse her emotion by making her seem authoritative and

firm in her choices. More importantly, these affidavits give the impression that the client has acquired a legal identity. As angry and insulting direct quotes disappear, there emerges a dispassionate victim. The affidavit stands in for a person who is both self-empowered and legally legitimate. With the aid of her interviewer the battered woman becomes a survivor of domestic violence who is willing and able to serve as her own formidable witness.

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