

Risky subjects: narrative, literary *testimonio* and legal testimony

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Abstract This article compares the textual production of legal testimony with that of literary *testimonio*. Using the controversy sparked by David Stoll's exposé of Rigoberta Menchú's less than "factual" account of her life lived amidst the genocide of indigenous peoples in Guatemala, the analysis asks why Menchú should be indicted or acquitted based on cultural notions of legal testimony. I use the concept of language ideologies to explore how listeners hold narrators to standards of truth. By suggesting that there are interpretive ideologies of narrative production and function at work, the argument is made that any detractor can find a way to discredit narrative truth. I show this by examining how Latina women and state actors create legal testimony about domestic abuse. While these narratives share much with the Menchú *testimonio*, in particular the risks they present to their narrators, I conclude that the everyday victim in the U.S. adversarial system has much more to lose, and inevitably has far less discursive power, than Menchú. I examine these topics and themes from sociolinguistic and discourse analytic perspectives.

Keywords *Testimonio* · Testimony · Narrative · Rigoberta Menchú · Domestic violence · Protective orders · Risk · Silence · Speech

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Introduction

“Trials are ... lost by those whose stories are like the shapeless housecoat that truth, in her disdain for appearances, has chosen as her uniform.” (From *The Crime of Sheila McGough*, by Janet Malcolm).

“No,” is my answer to Arturo Arias’ question of whether it matters if Rigoberta Menchú’s *testimonio* conforms to how Western science contextualizes documentary facts (Arias 2001a, p. 88).¹ There have been quite a few Latin Americanists (Beverley 1993, 1999; Ferman 2001; Nelson 2001; Pratt 2001; Rodríguez 2001; Sommer 2001), in addition to Arias, who recognize the role that Menchú’s text played in helping to end the Guatemalan government’s massacre of the *indígenas*.² Moreover, as Arias himself argues, the book has helped to create respect for the indigenous, regardless of questions about its authenticity. And more importantly, from the perspective of a linguistics professor, who teaches language and culture and courses on discourse and discrimination, the controversial character of Menchú’s nonconformist text gives instructors an opportunity to engage students in critical discussions about truth and fact, and therefore, such nonconformity is what makes the book all the more teachable. For these reasons alone, the text is worthy of being on a syllabus.

However, as a text with factual problems, *I, Rigoberta Menchú*, matters most to me, not as an educator, but as a sociolinguist studying narrative in context. The various readings of Menchú’s *testimonio* elucidate and parallel many of the problems surrounding *fact* and *truth* in the production of the thousands of oral and written narratives of violence created within the U.S. sociolegal system each year. Specifically, I refer to the texts that are constructed as testimony by Latina women who seek legal recourse to deal with domestic violence in the United States. These narratives are not published as canonical, teachable texts that appear on reading lists or in university bookstores with ISBN numbers. Although they are not literary, they are no less about language and the reproduction of power and powerlessness.

Discourses about violence, whether spoken or written, and specifically, narrative representations of past violence have a fundamental relation to risk, danger, and

¹ Menchú, a Guatemalan indigenous woman who, through her work as a human rights activist and through the publication of her *testimonio*, *I, Rigoberta Menchú, An Indian Woman in Guatemala*, became a significant force in bringing the world’s attention to the military’s calculated killings of the indigenous in her country.

² Menchú identifies as a Mayan woman from Guatemala. In the early 1980s, she was put in contact with a Venezuelan ethnologist in Paris, named Elisabeth Burgos-Debray. As the story goes, Menchú could not read or write in Spanish, and it was only at the age of 23 that she had enough fluency in Spanish to be able to tell her story to a global audience. Burgos-Debray engaged Menchú in an interview where the two talked about the oppression of the indigenous in Guatemala. Burgos-Debray, then published the first edition of the book that resulted from their conversations in French in 1983. Shortly thereafter, the book was published in Spanish with the title: *Me llamo Rigoberta Menchú, y así me nació la conciencia* (Translated literally to English as: *My Name is Rigoberta Menchú, and that is How my Consciousness was Born*). The English title is given in the text above. In 1990, Menchú was awarded the Nobel Prize for peace in recognition of the international work she was doing for human rights.

Nine years later, anthropologist David Stoll published *Rigoberta Menchú and the Story of All Poor Guatemalans*. Though his purpose remains unclear to me (see Smith 2001 and Warran’s 2001 discussions of his purpose), his means to that end entail pointing out a series of factual problems that his research on Menchú’s testimonial narrative uncovered.

vulnerability. For example, *testimonio* as narrative has been defined as a marginalized person's urgent narration of an unjust event for purposes of social change (Beverley 1993). In addition, testimony in the U.S. legal system is commonly understood as a declaration by a witness under oath before a legal authority. Taken together, a comparison of these two text types reveals significant risks for narrators. Understanding their differences and similarities can help us to better understand what is and what can be expected of narrative. In legal settings, the importance of factual truth is obvious as Westerners expect witnesses to provide the "truth, the whole truth and nothing but the truth." Until the *Rigoberta Menchú Controversy* (Arias 2001b), the importance of facts for literary *testimonio* was arguably less obvious, though obviously now, no less vital.

The broad purpose of this article is to investigate how language facts make narrative risky when narrators try to inscribe past abuses in institutional memory (cf. Linde 1999; Trinch 2001a). Capturing memories of violence in institutional documents (i.e., canonical literary texts, truth commissions, and the transcripts of a victim's "day in court") has been conceptualized as a way of bringing ensuing violence to an end (e.g., through exposure), as well as a method of guarding against future violation (e.g., through education). When creating these institutional documents, narrative is seen as a tool of representation (Kress 1996), a communicative resource used by narrators to portray their realities. As such, narrative—when taking the form of testimony and *testimonio*—is often believed to be the result of the powerful act of speaking. For instance, Cienfuegos and Monelli (1983, p. 46) describe testifying as a way of allowing "the individual to transform past experience and personal identity, creating a new present and enhancing the future."

As we will see, from a linguistic vantage point, legal testimony and literary *testimonio* share similarities in what sociologist Goffman (1981) calls production formats and in what linguistic anthropologists, Briggs and Bauman (1992) call externalization processes. Nevertheless, some scholars and activists forgive Menchú's factual errors by insisting that literary *testimonio* is not "legal testimony." The prominence of such a position, from my perspective as a sociolinguist, begs a reversal of the analysis. That is, rather than using "the law" to penalize or pardon Menchú, we can employ Menchú and the ensuing controversy to understand the production of truth in legal settings. Building on Sommer's (1991) analysis of Menchú's silences, I use the Menchú case as a lens with which to examine the risks involved for Latinas narrating domestic violence in more ordinary texts within the U.S. civil and criminal justice system.³

³ Beverley and Sommer have been writing about Menchú for more than a decade. While both have been attacked and lauded for their readings of *I, Rigoberta*, each has also been critical of his/her own as well as responsive to others' thoughts on this text.

Beverley (1993) seeks to define *testimonio* as a literary genre that is, well, non-literary. Always clear about his solidarity with Menchú, Beverley has analyzed the text as complicated and complex, "sincere" yet, embellished, crafty, if not necessarily poetic, and always ideological. Focusing mostly on what Menchú says and how she says it, Beverley's study (1993, 1999, 2001) emphasizes the text as an agent of social change.

Patai (2001) accuses Beverley of considering Menchú to be a "sophisticated narrator" after the publication of Stoll's study. This may be true, but only in as much as Beverley argued that Menchú's *testimonio* goes against literature; not because he ever considered Menchú to be a naïve narrator.

Initially, the risk involved in testifying inheres in both literary and legal testimony as “spheres of communication” (Bakhtin 1986, p. 60): the person who bears witness also shoulders the burden of having done so.⁴ For both types of victims, the danger associated with speaking out is often a paradoxical matter of life and death. Not to speak is risky, and to speak is risky, too. The most dangerous and in some cases, lethal, time for women in battering relationships occurs when they try to leave an abuser. Menchú echoes this danger when she tells journalist, Aznárez (1999/2001, p. 114), “Today I can tell you all of these things because nobody will be assassinated tomorrow because of it.” Clearly, for people trying to survive dangerous situations, speaking can put their lives in jeopardy. However, more subtle risks arise from conventional ways of thinking about language use that go unquestioned by communities. These conventional ways of thinking about language are what sociolinguists call language ideologies (Verschuereen 1999, p. 198). Woolard (1998, p. 3) defines language ideologies as “[r]epresentations, whether explicit or implicit, that construe the intersection of language and human beings in a social world ...” She argues that language ideologies are almost always presented as universal truths, when in fact, they are really linked to “inhabitable positions of power ...” (Woolard 1998, p. 7). Whether and how the collaborative act of narration brings about safety (i.e., power) and new risk (i.e., subalterity) for speaking victims depends on the kinds of language ideologies that operate in the context at hand.

The intersection of language ideologies

That the individual who has *voice* exercises and/or obtains power is a prominent ideological trend that is supported by linguistic, discursive, and narrative theories.⁵

Footnote 3 continued

Sommer holds a position similar to that of Beverley’s with respect to Menchú’s social purpose. However, Sommer’s study (1996, 1999, 2001) steers us to listen to Menchú’s audible omissions. Sommer argues that Menchú taunts the reader by withholding information to emphasize the ways she differs from her interlocutors. According to Sommer, Menchú does this to create the type of distance that commands respect. For example, Sommer analyzes Menchú’s refusal to speak as a recurring reminder of the fact that she is foreign—and thus, shall remain enigmatic—to us. She shares an anecdote about Menchú’s refusal to translate some Quiché terms she used to open her remarks at Harvard. Sommer (1996) recounts Menchú’s reasons: “They were a formal and formulaic greeting in Quiché, she said, and they would lose their poetic quality in a different rendering.” She then analyzes her reasons in the following way: “This speech act was not hostile, but it was a reminder of difference: its meaning resided in the very foreignness of words” (Sommer 1996, p. 122).

⁴ Felman (in Felman and Laub 1992, p. 3) discuss how people are somehow appointed to bear witness, an act that she describe as one “from which the witness-appointee cannot relieve himself by any delegation, substitution or representation.”

⁵ Evidence of this ideology can be seen in the titles of the following recent monographs: (Gilligan 1982; Taylor et al. 1995; Francisco 1999; Haag 2000). The titles of recent edited volumes, as well as a perusal through their tables of contents provide further evidence of this intellectual current holding that speaking (and especially through writing) is a powerful way to represent oneself (see, for example Hall and Bucholtz 1995). And not surprisingly, books dedicated to the writings of and study of Latina women also seem to emphasize the importance of “speaking,” as is the case in Galindo and González’s (1999) book on language and gender, entitled *Speaking Chicana*.

These theories are built on evidence that speakers use narrative to forge their subjectivity (Lykes 1999),⁶ to aid in the construction of individual identity (Schiffrin 1996; Johnstone 1996) and/or to claim group membership (Norrick 1997). Psychoanalytic and therapeutic approaches argue that narrating secrets or struggles can result in a feeling of relief (Felman and Laub 1992). Narrative may also serve to re-inscribe diverse voices historically silenced by hegemonic forces (Aron 1992). In addition, critical race and law theorists such as Delgado (1995, 1989) and Crenshaw (1991) draw on literary theory to create legal storytelling that is meant to help all types of readers understand the realities of people unlike them. In these ways, speaking, and more particularly, narrating are constructed as both a path to power and the destination from which one who inhabits a powerful position can create the world.

By way of binary comparisons, those who are silent are often characterized as passive.⁷ However, several scholars now ask whether power and safety in voicing and passivity and risk in silence leads to a false dichotomy of subjectivity and objectification (Montoya 2000). We also know that safety is not always what narrators find in speaking out. All survivors must weigh the social consequences that could result from their linguistic possibilities of voice and silence.⁸

Interpretive ideologies

Notions of maintaining or breaking silence themselves become language ideologies, and as such they are not at play alone. Instead they intersect with other ideologies available for the interpretation of narrative. “Norms of interpretation implicate the belief system of a community” (Hymes 1972, p. 64), and thusly they direct the judgments of an interlocutor given the task of evaluating narrative and its teller. Norms of interpretation are the criteria that are intimately and incriminatingly connected to beliefs people have about power. However, much of the sociolinguistic analysis of narrative has focused on the narrator’s purpose for telling and has largely ignored what listeners perceive as the narrator’s purpose. So, a question that remains is: “When one hears a narrative, what does s/he believe to be the primary purpose of the narrator?” The answer to this question may explain what it is that makes narrating a potentially risky endeavor. If we ask what the pretextual expectations are with relation to narrative, two salient linguistic ideologies of interpretation come to mind. The first originates from what is typically perceived to be the function of narrative, and the second stems from what is widely believed about the way narrative is produced (Trinch 2003).

First, I would argue, the purpose of an oral narrative is often understood by listeners as a teller’s attempt to offer “the true” linguistic rendition of an event. This ideology is underscored by narrative syntax itself, by which simple past tense or

⁶ Subjectivity is defined here as an expression or the bringing into prominence the individuality of the person.

⁷ However, data showing silencing can be found in Eades (1996, 2000).

⁸ See Gal (1991) for a review of sociolinguistic study on silence.

present tense forms articulated one after the other give the appearance that what is narrated first, actually happened first (Labov and Waletzky 1967). In addition, subdisciplines of linguistics historically have been preoccupied with referential, as opposed to interactional, functions of language, undoubtedly fostering this belief about oral narrative (see Lucy 1993). Hence, listeners in ordinary conversation hear narrators in mostly referential, as opposed to pragmatic terms.⁹

The second pervasive ideology with which narrative is interpreted holds that most listeners believe that the teller is the sole author of the narrative drafted. Schegloff (1982, p. 174) explains that listeners consider narratives to be the sole linguistic products of the narrator, because "... bits of talk and behavior produced by other than the "main speaker" are regularly discarded when discourses—the stories, the arguments, etc.—are extracted from the tangle of detail which composed their actual occurrence." Moreover, that a narrator can/must own his/her utterance is further reified by constructs such as intellectual property, plagiarism and copyright (Scollon 2001). And thus, the intertextual nature of all discourse, as it is described by Bakhtin (1986), goes fairly unnoticed.

In intellectualizing the subject, it becomes clear that these two linguistic ideologies of narrative purpose and production are counterfactual. Beyond identity and subjectivity constructions, narrative purpose can also entail the reiteration of cultural or social norms (Brennis 1996; Haviland 1996), the reconstitution of an institution (Linde 1999), and the hammering home of a point in conversation (Polanyi 1985), to name a few. So, a completely factual re-presentation of the event may not be only impossible but it frankly may be quite secondary to any given narrator's more pressing concerns.

Along these lines, the notion that a narrator can be held solely responsible for the telling is itself a fiction. As O'Barr and Conley (1996, p. 132) put it, "Stories simply do not exist outside their telling, but are context- and audience-specific." This is not to say, however, that some audiences do not exert more control over the way an event is recounted than do others.¹⁰ Yet, because communication involves a dialogue, the results narrators desire from the act of telling do not always match the expectations of their interlocutors. A felicitous utterance can never depend solely on speaker-intention. And the desired perlocutionary effect depends too on the interpretive, ideological expectations with which listeners come to the speech event. Knowing this, narrators show an awareness of the dialectical nature of representation, because they constantly mediate between their own narrative purposes and the expectations they believe their listeners possess. Through meta-commentary

⁹ In an illuminating article, Rumsey (1990) argues that standard average European (SAE) languages such as English embody and entrench the ideology that language is capable of representing language through and by the grammatical features of direct quotation. He makes this point through a contrastive analysis with Ungarinyin, a language spoken by the Ngarinyin people that inhabit northwestern Australia. Their language does not have direct quotation as a possibility in grammatical design. Matoesian (2001) explains, "[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'." Matoesian's point is that listeners focus on the referential and fail to notice the pragmatic and interactional work their interlocutors do when talking and/or narrating.

¹⁰ See Eades (2000) for a good example of how aboriginals are constrained in the collaborative process of courtroom storytelling.

narrators manage their own cultural and contextual notions of risk and safety. When faced with both the responsibility of owning and co-creating linguistic items, narrators indicate that they know that they can do much more than merely “tell about the past” with narrative.

Menchú at risk

It is now well known that in his book, *Rigoberta Menchú and the Story of All Poor Guatemalans*, Stoll (1999) points out a series of factual errors in Menchú’s testimonial narrative. While no one argues that several members of Menchú’s family and thousands of other Guatemalans were massacred and tortured by the military, for some readers, the inconsistencies Stoll exposes call Menchú’s authority, and credibility into question.¹¹ These reactions to factual inconsistencies in Menchú’s *testimonio* suggest that the expectation that her oral narrative be true was present as an exploitable resource for those who perceived that her voice put their own power at risk. In retrospect, it is notable that Beverley’s (1993) early definition of *testimonio* does not indicate that the narrator is telling the truth, but only that the interlocutor who listens, hears it as true. Also noteworthy was Beverley’s prediction that any definition of *testimonio* could potentially be oppressive.

Moreover, Beverley states, “... I would like to get students to see [Menchú] as a person with an ideological agenda. Her book wants to create solidarity” (Wilson 1999, p. A16). Interestingly, Stoll arrives at a similar conclusion, but he insists that because the Mayans with whom he talked said that they did not see the violence occur the way Menchú did, her *testimonio* is misrepresentative of the Mayan people.¹² It is almost as if Menchú’s opponents believe that telling a story to achieve a political purpose is more evil than what the Guatemalan military indisputably did do to the indigenous.

However, what are more surprising than the reactions of her detractors are the responses of some academics that pledge to continue to support Menchú, without embracing the book and its discrepancies as part and parcel of a *bona fide* political or ideological agenda. In the *Chronicle of Higher Education*, one academic was quoted as saying, “But even if everything Mr. Stoll writes is true ... it is important to remember that Ms. Menchú’s book is a narrative, not a piece of legal testimony” (Wilson 1999, p. A16). Arias (2001a), making a similar claim, states: “... *testimonio* is not the equivalent of a sworn testimony in which every fact has been

¹¹ For example, when Stoll’s findings were first distributed internationally, newspapers published stories entitled: “Tarnished Laureate” (Larry Rohter, *New York Times*), “Lies by the Nobel Prize Winner” (Jorge Palmieri, *El Periódico de Guatemala*), “The pitiful lies of Rigoberta Menchú” (Octavio Martí, *El País*, Madrid), etcetera.

¹² What Stoll says he does with words, and what he actually does with them in the text are two different things. He claims not to be adversarial, but many instances within his text prove otherwise. Rodríguez (2001, p. 343) eloquently states the main problem with his study, “What could have been an excellent scholarly exercise in the unraveling of the difficulties of organizing populations, and even a theoretical position on hegemony, and counterhegemony, becomes a piece of propaganda at worst, and at best, a sentimental writing of indigenous misrepresentations of indigenous people.”

verified and can be classified as evidence of a crime.” Rather than extending the “reach of law” to judge or exonerate Menchú,¹³ I ask what the Menchú case can tell us about the production of, as well as our expectations for, legal testimony.

This question brings us to a series of others. First, are literary *testimonio* and legal testimony somehow inherently different? And second, why do scholars like Arias (2001a, pp. 75–76) who, on the one hand, argue: “Authenticity and truth—if they exist at all—resist comprehension, expression, and definition ... even the most strategically planned elocution may elude the speaker’s intentions because of the polysemy of language,” and on the other hand, expect that legal testimony can really be held to a different set of “truth” standards than can *testimonio*? Is it, as Arias (2001a, p. 76) suggests, that the reader’s desire to have Menchú’s narrative prove to be “factual” stems from his/her “seeing ‘authentic’ indigenous subjects as noble savages whose alleged primitiveness puts them closer to some imagined truth”? Or is it that the expectation that someone’s story be true has its genesis in the interpretive ideologies of narrative function and narrative production. While it is my sense that certain intersectional identities of narrators play a role in how much derision and contempt listeners have for those “less than truthful,” recent scandals with Oprah’s Book Club (e.g., James Frye’s *A Million Little Pieces*) suggest that the subalterity and/or ethnicity of the narrator are not what drive listeners to discredit and dismiss their accounts when they are shown to have invented some of their “facts.” I would argue that ideologies are inevitably available to any narrator’s detractors in the form of what Woolard (1998, p. 7) calls “signifying practices in the service of the struggle to acquire more power.”

Victims of domestic violence at risk

Indeed, within the criminal justice system, the notion that narrative might be used for any purpose other than an accounting of the facts is nearly non-existent. Furthermore, it has been noted that the American adversarial system, by building the interpretive ideologies of narrative function and production into the adjudication process, operates on the principle that witness testimony should not change (Matoesian 2001; Trinch 2003). Unlike state-sponsored violence toward entire communities or even stranger-assault, domestic violence enjoys the privilege of privacy. Yet, if Latina women do have to overcome fears of transgressing cultural constraints of exposing the failure of the family (Low and Organista 2000) and of possibly feeding the dominant culture’s stereotypes of violent families of color (see Behar 1993; Montoya 1999; Rivera 1997) to seek intervention, they, like Menchú, expose themselves to the other risks involved in speaking.¹⁴

¹³ The Law and Society Association, a professional organization of sociolegal scholars, defines the “reach of law” on its web site as “the impact of law in a globalized world, the extent to which law regulates social and political life within and across borders, how law defines the experiences and treatment of diverse groups within societies, the promulgation of law and legal systems in developing societies, and the significance of law in everyday life.”

¹⁴ I examine the risks inherent in narrating violence in the protective order application because these data correspond with Klein’s (1996, p. 192) finding that civil protective orders have “become the chief means

The data I analyze are tape-recorded interactions between Latina women and paralegals employed by the state in protective order application interviews. Similar to Burgos-Debray's conversations with Menchú, these interviewers ask victim-interlocutors questions about their relationships, the abuse they have suffered and their fears of future mistreatment. These paralegals then draft a text known as an affidavit to which each woman, who qualifies as a victim of domestic violence, must swear to be true and correct (see Trinch and Berk-Seligson 2002 and Trinch 2003 for detailed ethnographic accounts of these interviews).

From the moment of institutional engagement, victims put themselves at risk in numerous ways. First, the tape-recorded interviews, when compared to the written affidavits, show that sometimes the interviewers simply get it wrong. However, interviewers, unlike Burgos-Debray, do not have access to the taped oral texts, so understandably, when re-presenting the oral story narratives in written report form, they sometimes attribute actions to the wrong actors or mistakenly name people or places. This finding parallels Menchú's explanation for the confusion regarding the death-by-malnutrition of one of her brothers, Nicolás¹⁵: "... The incoherence in this is that in the book, it seems that they are talking about Little Nicolás, my younger brother. It was so easy to erase with the stroke of a pen the history of two Indians ..." (Aznárez 1999/2001, p. 113).

Beyond such misunderstandings, women also risk feeling unsupported by their interlocutors, because the form and content of the affidavits are strictly defined. This causes their interviewers to have to act as both advocate and *gatekeeper*. On the one hand, the interviewers' purpose is to help women secure court orders that will presumably assist them in their search for safety. However, on the other hand, these interviewers must also determine each client's eligibility and establish the legally and linguistically relevant facts. Consequently women, wanting a "day in court", instead often meet with an interview situation where the potential for gain necessitates some loss, because a specific genre, namely a legal affidavit, is imposed on the abuse story they wish to tell (Trinch 2003). If Menchú used her interlocutor to seek solidarity, Latina survivors of domestic violence may wish to do so also. In fact, there is evidence to suggest that some women might desire to have their story heard as "truth" even more than they desire a protective order. However, as there was for Menchú's voicing to the world about the Mayan genocide, so too are there calculable costs for Latinas who make their private experience public.

If the content of victims' stories does not conform to the state's requirements of proof of "family" and "violence," then women risk being ignored, not having their feelings validated, and they risk having to leave with their experiences less than fully documented. Hence, some women might even find themselves in a heightened state of distress as a result of what was supposed to be an "advocacy" interview.

Footnote 14 continued

of protecting victims of domestic abuse in many jurisdictions." Moreover, as Ptacek (1999) notes, protective order applications are perhaps the most frequented legal venue from which women negotiate with the state in their search of a life free of violence.

¹⁵ Stoll points out that Menchú's brother "Nicolás" is still alive. In response, when asked to explain the incongruity, Menchú, while artfully ethnicizing the subject, argues she had two brothers named "Nicolás."

If women's accounts can meet the state's definition of "violence" and their relationship with the alleged abuser meets the state's definition of "family," the interview will result in a written account of intimate-partner violence, formalized as public property. Once the story is inscribed in the legal document, these women continue to lose control over their stories, as they can no longer tell it their way, and they can no longer decide what can be done with it. The prosecution, for example, can always use a sworn affidavit against an "uncooperative" victim who recants in a criminal investigation. The institutionalization of the private story into the public report is perhaps an example of the transformation of a subaltern voice into a non-subaltern one in Spivak's (1988) sense. The very purpose of the interview is to take what lay litigants—with no formal legal training and in some cases, very little formal education—say and to transform it so as to reproduce the current legal standard. The affidavit becomes a speech act with a greater chance of being felicitous in the petition of a protective order, but the transformation it has undergone puts the narrator at new risks. First, it misrepresents who she is, what she might know or understand about the legal system, and how she represents herself and the violence she suffers. Second, that to which the victim swears to be "true and correct" is really nothing more than an approximation of that which she really said.

If, as Beverley (1993, p. 76) also predicted, "*testimonio* implies a challenge to the loss of authority of orality in the context of processes of cultural modernization that privilege literacy and literature as a norm of expression," then there must be a reason why such revolutionary reversals are not occurring in other institutional settings as well. Or is it that as the research on *I, Rigoberta* is done, neither the genre of *testimonio* nor Rigoberta herself has really challenged the cultural processes that privilege literature and literacy within academic disciplines or anywhere else, for that matter?

"The speaking me"—aware of the risks

Literary critics understand that the narrator in literary *testimonio* speaks with the first-person singular "I" as a means of representing the collective experience of all people in the same sociopolitical situation as the narrator. In legal testimony, the first-person singular "I" is taken to refer to the narrator alone as the individual eyewitness. Whether others have witnessed the events at issue, as is regulated by hearsay rules,¹⁶ is a question that only those *others* can answer.

Pragmaticists know the first-person pronoun "I" is a deictic term devoid of semantic content that usually serves to anchor the speaker in the context of his/her speech situation (Levinson 1992).¹⁷ Interpreting the first-person singular pronoun as only the "speaking me" does not work for every analysis (Mey 1993), and the

¹⁶ *Hearsay* is a legal term "applied to a species of testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others" (*Black's Law Dictionary* 722). "... the law states a preference for what a witness has seen over what a witness has heard" (O'Barr and Conley 1996, p. 117).

¹⁷ Other such terms include: here/there, up/down, and even north/south. As indexes that signal their referents without naming them, they cannot be interpreted outside of the sociolinguistic arena in which they are used.

deictic center can be shifted or projected to include other participants. To Menchú's advantage, the deictic center of literary *testimonio* can be filled by a host of different referents. We see in the passage below, an excerpt taken from the first paragraph of *I, Rigoberta*, how speakers like Menchú know how to exploit this possibility:

Excerpt #1: Menchú exploits the unanchored nature of first-person pronouns

My name is Rigoberta Menchú. I am 23 years old. This is my testimony. I didn't learn it from a book and I didn't learn it alone. I'd like to stress that it's not only my life, but the life of my people. It's hard for me to remember everything that's happened to me in my life since there have been many bad times but, yes, moments of joy as well. The important thing is that what has happened to me has happened to many other people also. My story is the story of all poor Guatemalans. My personal experience is the reality of a whole people (I, Rigoberta Menchú, p. 2, emphasis added).

At the same time that this utterance claims first-person responsibility, it artfully disclaims the possible solitary confinement of bearing witness that has been discussed as being inherent (Ferman 2001). This narrator tells her interlocutor(s) that she will be protagonist and mouthpiece because she identifies with those who suffer. She also performs her humanity through references to “the good and the bad” and through her admission to memory lapses, thus indicating that she is not just “victim.” So, as if Burgos-Debray's influence were not enough to confound the issue of “authorship” the text's opening paragraph conflates the elements of Goffman's (1981) utterance-production formats of “author,” “animator” and “principal.”¹⁸ Menchú's putative words in *I, Rigoberta* and in post-Stoll utterances manipulate these functional roles by erasing the boundary lines between witnessing and reporting. The role of the listener in the construction of these texts of violence is crucial. And Burgos-Debray acts as not only a listener, but also as audience for Menchú's performances. Entering into an opportunity to speak and faced with the knowledge that many of the world's sectors do not know of the humanity of the indigenous in Guatemala—either because of dehumanizing racism or because of ignorance—Menchú seized what may have been perceived in those days as a “once-in-a-lifetime chance” to state the obvious—that indigenous peoples are human.

If one knew nothing of Marxism, the repeated references to *consciousness* could be read as an insistence of her own and, metonymically, her peoples' human faculties of cognition. Ironically, as the story unfolds, it is this fact indeed that is all that is true: Menchú is not a martyr, not a saint, not an icon or Goddess, but a human. Her careful concern to construct herself as more than just a *victim* (i.e., with references to birth, death, marriage ceremonies and “moments of joy as well”) ends

¹⁸ Deconstructing the speech of the President of the United States, Duranti (1997) and others (Matoesian 1999) have made clear how this triad of participant roles functions. The presidential speechwriter is author of what the president says, because s/he is the person who selects words, strings them together in syntax and provides the cohesion for them. The White House press secretary is animator, as she is the person who actually delivers the words, while the president is principal of the utterance, taking all credit and all criticism for what is said.

up being only reinforced by Stoll's findings. Why is it surprising then that long before Beverley (1993) and Sommer (1999) began theorizing about the metonymy of "I", Menchú herself had adopted this and other discursive strategies that would later allow her to respond to critiques and criticisms of her "facts"? Though Stoll argues that Menchú is being canonized by the academic left as a perfect, pure icon, it seems that the most recent work to begin with that premise that she was anything other than "human" is his. Nelson (2001) argues that the shock and surprise many readers feel when they learn that some of Menchú's assertions are not facts is similar to the feelings people have when the punch line of a joke is revealed. However, Nelson herself notes that neither Menchú nor Stoll are jokes, and for this reason, I argue that people's derision upon learning of the inconsistent versions of what might have really happened stems more from the fact that people expect narrative to be true, quite unlike their expectations for jokes. Menchú so poetically instructs her readers of the power of representation. And she does this over and over again.

However, Latina survivors of domestic violence are unable to be as coy as Menchú during the entextualization process.¹⁹ As we will see, the law and those who administer it are able to exploit such discursive strategies in their representations and productions of reality. The affidavit of one of the women—Bea Manrique is her pseudonym—attests to how clear the distinction between author/ animator and principal must be in the legal arena. And though obviously no less human than Menchú, women like Bea Manrique, who also talk about life, death, birth, and marriage ceremonies, have a difficult time avoiding the reduction of their complex identities to the simplistic and stigmatized identity of "victim" (Goffman 1963) in the institutional setting, and as such, in the end, their humanness is beside the point in the tallying of the facts.

Sample affidavit²⁰

State of AnyState

County of AnyCounty

Before me, the undersigned authority, on this day personally appeared Bea Manrique, who being duly sworn on oath stated:

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

¹⁹ During the course of 13 months of fieldwork in two different cities in the U.S. Southwest, I observed and tape recorded interviews between service providers and Latina survivors of domestic violence in ten different social and legal organizations. Once participants gave me permission to tape, I retreated into the background, as much as possible, to allow service providers to do their jobs. In these two cities, two distinct agencies helped women apply for protective orders: a district attorney's office and a *pro bono* law clinic.

²⁰ All names, dates, and other identifying characteristics have been changed to protect the privacy and the anonymity of the people who cooperated with me during data collection.

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:

Samuel Fernandez is my ex-boyfriend. We have no children together. We lived together for eight months. We separated on May 15, 2005.

On or about June 20, 2005, Samuel refused to leave my house after spending the night over. Samuel got upset because I brought up the fact that he has stolen from me in the past and that he still did not have a job. Samuel told me to shut up. Samuel struck me on my face with his open hand several times. Samuel also pushed me around. Samuel grabbed me by my shoulders and pushed me up against the wall. Samuel pinned me to the wall by my throat. I bit Samuel on his armpit and chest to get him away from me. I also scratched him. Samuel still did not let go of me. Samuel got even more forceful with me. Samuel finally let go of me and left. I called the police. I sustained pain and swelling to the left side of my face and bruises to my right arm, shoulders, and thigh. I have filed charges with the Anytown Police Department.

In May of 2005, Samuel did not want to let me leave. Samuel grabbed my feet and pulled them up causing me to fall to the floor. Samuel pushed me around. The neighbors called the police.

On or about May 13, 2005, Samuel pushed me several times up against the wall. Samuel also raised his fist to hit me several times but instead punched the wall and made several holes on the wall.

Samuel has physically abused me numerous times in the past. I am afraid of Samuel and fear for my safety. I need legal protection.

Applicant's signature

Subscribed and sworn before me on this day the 25th day of June A.D. 2005.

Notary Public's signature, State of AnyState

Bea Manrique's loss of authorship in drafting her story is the first step in reducing her to a simple victim identity. This loss is evident in the way that the affidavit represents the interview participants and manifests first-personness. The victim's testimony gets framed not by her own, but rather by the paralegal's authority. The document begins with a first-person point-of-view operation that indexes the paralegal at the deictic center of the utterance with the line: "Before me, the undersigned authority ..." The cataphoric indexicals "me" and "undersigned authority" can only finally be traced to an interpretable referent in the paralegal's name, which is typed, signed and imprinted with an official notary public stamp in the last frame of the document.

In addition, the document also functions linguistically to lend the paralegal the claimed legitimacy by imbuing her utterance with legalese, or items which often "serve to create and solidify group cohesion within the [legal] profession ... when lawyers [and other legal personnel] use these linguistic features, they subtly communicate to each other that they are members of the same club ..." (Tiersma

1999, p. 3). Clifford (1986) notes that linguistic form itself implies certain ideologies. In these affidavits, linguistic form indexes authority by: (1) splitting the verb phrase “personally appeared and stated,” (2) post-posing the subject after the first verb, (3) creating a relative clause between the subject and its second verb “stated,” and (4) PP-fronting, or moving a series of prepositional phrases to the front of the utterance. Lexical items, “duly sworn” and “undersigned authority” also contribute to the creation of the paralegal’s importance. The utterance ascribed to her performs the authority the paralegal claims to be.

Therefore, what the affidavit is meant to represent is a text of two “first-person accounts” of separate and distinct incidents. The first includes the interviewer’s account of the speech event in which the second—the victim not only giving a narrative of abuse, but also presumably taking an oath: “I am the Applicant in the above and foregoing ...”—took place. The double quotation marks around the oath indicate that the paralegal is the “speaking me” there. She reports the woman’s speech as a direct quotation framed by the verb, “stated,” a metalinguistic comment giving the utterance its textual status (Verschuere 1999).

The third paragraph shows an impersonal construction stating the determination that the client needs a protective order. Though the paralegal is the person who made this determination, the utterance is not anchored to a deictic center. The gerund of the verb “continue” presupposes that there has been family violence as it simultaneously predicts that there will be more. Thus, before violence is even mentioned the woman’s narrative is lent credibility and authority through these institutional frames.

Next comes the victim’s account, written as a linear, Labovian narrative of events that occurred in the past. It acts as evidence that substantiates that a court injunction is necessary. Although including a first-person, victim-witness account of abuse, the affidavit is not actually designed to be a linguistic rendering of Bea Manrique’s abuse. Instead, the document serves as an account of the paralegal’s having witnessed Manrique’s narration. Paradoxically, within this construction, the “authority” on the page (i.e., the paralegal) accepts no responsibility for what is written there.

As was the case with Menchú, challenges that arise with respect to the veracity of these legal texts are directed to victims and not to their co-authors or editors. So, while “authority” in the affidavit and in *I, Rigoberta Menchú* might be ascribed to the paralegal and the ethnographer, respectively, accountability is ascribed to victims alone. In both cases, the participants’ individual contributions to the construction of the texts are obscured. Basically, the social roles of the participants in the two text-making processes are transformed from interviewer/interviewee to victim-witness, and in the affidavit, notary public, while in the testimonial narrative, academic editor. Nowhere present are interviewers’ questions, edits, or interruptions. As a consequence of the act of omitting to make the information contextually relevant, interpretive ideologies of narrative function, and production are reinforced in both Burgos-Debray’s, and the paralegal interviewers’ textual absence, and in the oath-like representation of the victims.

Distinctions between Menchú, and survivors of domestic violence lie in the ability these different narrators have to withhold information at different stages. Throughout Menchú’s *testimonio*, she reiterates her right, and need to maintain

certain silences. In fact, in the very last lines of the text, shown below in Excerpt 2, Menchú states:

Excerpt #2: Menchú's insistence on maintaining silences

Nevertheless, I'm still keeping my Indian identity a secret. I'm still keeping secret what I think no-one should know. Not even anthropologists or intellectuals, no matter how many books they have, can find out all of our secrets (Menchú/Burgos-Debray, p. 247).

It is unclear whether Menchú keeps secrets, because she senses danger in the other's knowing, or whether she insists on keeping secrets as an attempt to perform her own authority, and resistance to the interrogation. Sommer (1996, 1999, 2001) suggests that the context of her telling entails both possibilities. That is, Menchú performs her self-authorization "in a situation that threatens to replace her indigenous authority with foreign advice" (Sommer 2001, p. 248).

In contrast to Menchú's strident silences are whispers of wishes to hold silence in Latina women's legal testimony. Excerpt #3 below shows how victims of domestic violence are also aware of the dangers involved in narrating. This particular victim, quite unlike Menchú, seems powerless to resist her interviewer's authority. The excerpt begins with the interviewer's looking for a motive for the violence that the victim has just narrated.

Excerpt #3: Metalinguistic, and metapragmatic awareness of the dangers of speaking²¹

P: So he got upset when you asked him to leave?

C: When I asked him to leave, and also when I, kept on saying the truth, you know, about how he is. What he's done to me. **He didn't want to hear it. I bit him, am I supposed to tell you all of this?**

P: Mhmh. Yeah, because he is gonna bring it up later, so might as well, um, it's best that we know most everything, because otherwise um, he's gonna tell us, **and that's gonna look worse, it's gonna look like you're hiding something.**

C: O.K.

²¹ The transcription conventions used here have been adapted from those found in Matoesian (1993). They are as follows:

P: refers to the paralegal or volunteer interviewers.

I: refers to the interpreter in the interview.

C: refers to the client in the interview.

CF: refers to the client's friend or family member who acted as an interpreter in the interview.

[A single left-hand bracket indicates an overlap.

(.00) Timed intervals indicate pause-lengths to nearest second.

() Single empty parentheses indicate that audio material is inaudible.

(with words) Single parentheses that enclose words indicate transcriber's best guess.

((with words)) Double parentheses enclosing words denote the description of a sound such as ((laughter)).

(.) A period enclosed by parentheses indicates a brief pause or less than a second.

"Words" Single quotation marks with words, immediately following Spanish data are my translations of the Spanish into English.

P: So, um, **we** need to know that, in case that he brings that up, so that **we** already, I mean, um, it's not gonna take **us** by surprise.

C: Yeah.

P: O.K.

C: O.K.

P: **Did you tell the detective that?**

C: No.

P: You didn't tell

C: [I was just thinking about it, I guess last night

P: [Mhmh

C: [I was just like, I guess I should say something before it comes up.

P: Mhmh ...

Manrique's commentary on language use indicates her awareness that speaking is dangerous. First, her "voice" has shown itself to be problematic in the context of her relationship with the alleged abuser. She tells the paralegal that the abuser became upset first when she stated her desire that he leave, and then when she spoke the "truth" about how he behaves. Next to her "voicing" is his unwillingness to listen. This creation of temporal juncture suggests that a communicative breakdown between victim and abuser results in Manrique's own act of violence.

The client moves from "story" time to "discourse" time, or, out of the past and into the reflexive present of the telling (Schiffrin 1987), immediately after admitting to having bitten the abuser. Halting her narration of the past, she inquires as to what she should be saying and underscores the risk of speaking in the interview context.²² According to Tannen (1993, p. 24), the use of the modal "to be supposed to" "lexically measures the addressee's actions against expected norms." Manrique asks whether her addressee expected to *hear* that she had bitten the abuser. The utterance shows a metapragmatic awareness on the victim's part of how identity is constructed through interaction. Under Tannen's analysis, it is likely that the hyperbolic prepositional phrase, "all of this", stands in for only the potentially incriminating utterance, "I bit him." It is the only phrase that can run contrary to what the narrator might perceive to be the addressee's expectation.

In a reporting context a narrator's purposes may be complex, and arguably, one such purpose for this client is to be perceived as a victim. While Manrique brings together evidence to make her case, she recognizes that an admission of her own act of physical violence could take her out of the "victim category." The only other categorical option is that of "aggressor." Because intimate-partner violence is not an incident, but rather a relationship, the one-dimensional categories used to refer to discrete, random, and anonymous acts of violence do not function in the domestic sphere where violence is continually, and contextually created. However, Manrique reveals her cultural membership by noting the expectation that victims and aggressors ought to play distinct roles in the enactment of crime. Interestingly, this client's aggressive acts are recorded in the affidavit for the judge to read. My own

²² The utterances that come before and include "I bit him" reflect story time, because they are meant as a linguistic representation of events that took place in the past.

research (Trinch 2003) and that of others, notably Leigh Goodmark's (2008) study, suggest that in legal documents, battered women are usually not represented as having fought back physically.

In stark contrast to the "voicing equals power" equation, this victim's comments on language use suggest that she is cognizant of the risks involved in voicing in both public and private domains. She juxtaposes these risks and these spheres of the home and the criminal justice system, demonstrating that she knows that speaking puts her in danger in both places. "Speaking up" at home leads to disruption of family harmony, perhaps even violence and "speaking about" the violence in public can lead to being perceived in ways she does not desire.

The client's awareness that such information may lead her interlocutor to conclude that she is not really a victim is supported by the paralegal's answer. Instead of asking, "All of what?", in response to the victim's question, the paralegal merely answers affirmatively. Then, through a series of her own metalinguistic comments, the paralegal tells the victim why she must tell all. Her use of the predicate adjective "worse" indicates an implicit comparison: "Your biting the abuser indeed looks 'bad,' but your not mentioning it will undoubtedly look even worse." As with Menchú, here too, we see that looking like a "liar" can be construed as looking worse than looking like an "aggressor." Not coming clean early on gives the impression of duplicitously concealing information. And thus, interpretive ideologies of narrative can apply to post-textual understandings of silence just as they do for post-textual understandings of speech.

The gravity of such an error of omission is further emphasized by the gatekeeper-footing the paralegal takes here (Goffman 1981).²³ With her admonishing utterance, the paralegal implies that what is important is the institution's concern that the client be a good witness; not the client's concern of how her admission might make her appear. Though the paralegal does not directly say that her employer's needs are more important than the victim's, the frames from which she speaks imply it. For instance, the paralegal's use of the "exclusive we" tells the victim that the paralegal is part of an institution to which the victim does not belong. In addition, the paralegal never addresses the victim's concern of danger, as might be expected of a victim-advocate. Although gatekeeping need not be synonymous with the victim-blaming, understanding Honneth's (1995) discussion of recognition and disrespect, suggests how the former comes to feel like the latter.

The paralegal then brings up another risk endemic to a victim's speaking with her question, "Did you tell the detective *that*?", where the deictic item, "that" anaphorically refers back to the victim's admission. This question highlights the importance of referential consistency of a victim's account in every institutional telling. Here, the paralegal reminds the client to take care not to impeach herself with inconsistent versions. With very few words, the paralegal performs as an institutional and a linguistic gatekeeper. She controls this woman's entry into and

²³ Goffman (1981) describes *footing* as the alignment one takes up in relation to another in conversation. Footing is an analytic term that allows us to see these paralegals function as both advocates for their clients in some utterances, but as gatekeepers for their institution in others.

passage through the entire legal system by ensuring that what needs to be said, is said every time and in every place.

With the interpretive ideologies of narrative function and narrative production in place, referential inconsistencies leave narratives vulnerable to the challenges posed by a conversational technique known as a “complaint about a complaint.” Matoesian (1993, pp. 44–45) calls the “complaint about a complaint” a “topic slift” that “... lifts the relevance of a reply to topic and slips in a response to flaws concerning the actions, motives, or character of the complaint ... The device changes topics, shifts blame and responsibility, formulates the topic or action, switches defensive to offensive positions, and expands the sequence.” Arguably, this is exactly what happens when Stoll deconstructs Menchú’s testimonio, and it is also a technique used by defense attorneys and alleged abusers to discredit victims.

This same interview also brings to light the risk of a victim’s continued susceptibility to disbelief and explicit blame, perhaps an inescapable by-product of the act of narrating violence. This risk is depicted in the excerpt shown below.

Excerpt #4: Victim-blaming responses justify institutional definitions

P: Do you want to go on to court to get a court order, or do you just want me to send him a letter to leave you alone.

V: What is the, the difference?

P: See, there’s if, if, usually, if, on that, on that day that he came by, on Monday, V: Mhmh

P: If, if uh, see you allowed him to stay there, right?

V: Mhmh

P: **And he shouldn’t have assaulted you, no matter what. M’kay, uh, and, and I don’t know if the attorney will accept it for a protective order, being that you gave him permission to go, to go in.** You can file criminal charges, like you did through the police department and try and get a no contact order through the court, but as far as the protective order, um, if he comes again, you know, you need not to let him in, because

V: Mhmh

P: **otherwise it’s gonna be hard for us to do a protective order cause we have to show that you’re afraid of him, and, and, therefore he can’t go near you to hurt you. O.K.?**

V: Mhmh

P: And um, that’s why I was asking if you want me to put it through for a protective order, ... ((MORE EXPLANATION OF PROCESS))

V: Mhmh

P: And if he comes over, you know, don’t let him in. Don’t go near him. Don’t uh, uh, you know, just tell him, “Hey, I already put a protective order, you can’t come near me.” You know, and reinforce that letter that we sent him. O.K.? Because if we send him a letter and you let him come in, you know

V: [(It defeats the purpose).

P: It’s, it’s gonna defeat the purpose. Mhmh, so. It’s up to you. I mean, I can put it through the attorney for a protective order and see if she’ll let me put it through.

Ah, being that she, ah, he's hit you before. But still, um, being that, that he, he's hit you all these times, you know, I wouldn't let him close, um, near me so that he could hit me again. M'Kay? Um, and like I said, you did file the charges, and and, that's probably what the attorney is going to recommend, which is what you already did

Paralegals, probably by virtue of their dual role as advocate and gatekeeper (Trinch 2001b), inevitably ascribe some blame to victims. Martin and Powell (1995) argue that victim-blaming responses by police officers and prosecutors are primarily caused by institutional demands to secure convictions. In the above example, victim-blaming seems to be motivated by the needs of the district attorney's office. The victim-blaming response is precisely what serves to justify the paralegal's need to privilege institutional definitions of violence and fear over the victim's. Arguably, whether intended as such or not, this is what some find objectionable about Stoll's study on Menchú's narrative.

Though available to speakers for a multitude of purposes, narrative also serves people as a resource of representation to bear witness to crimes against humanity, personal tragedy, and other causes of suffering. In contemporary contexts where state-sponsored violence has resulted in gross human rights violations, bearing witness is seen as a means of restoring civility, and even rebuilding society (Cohen 2001; Goldblatt and Meintjes 1996). Women have also been encouraged to "break the silence" on gender-related violence to bring an end to the cyclical nature of domestic oppression. Given the predictable ways in which intimate-partner violence occurs, and a state's unwillingness or incapacity to bring this widespread, and systematic violence against women to an end, there are now arguments that this type of violence could also be considered a human rights violation (Marcus 1994; Beasley, and Thomas 1994).

Both narrators and their listeners bring with them the hope and perhaps even the promise that by producing a narrative, the violence can be brought to an end. Language, the primary means of representing what occurred, is at best, elusive, but not because of its "hopelessly imprecise" nature. Rather, in both institutional spaces, bearing witness can be subjected to interpretive ideologies of narrative function and production—language ideologies readily available as means of complaining about complaints. In short, the interpretive ideologies of narrative function and narrative production can always be employed by those who wish to use them in the service of maintaining or acquiring power.

Gratefully, in literary *testimonio*, judge, jury, and executioners become academics who deconstruct constructs such as "subjectivity," "ethnicity," "solidarity," "purpose," "function," and "structure." Stoll's complaint about Menchú's complaint will certainly affect Menchú's *norms and ways of speaking*, because such complaints always create a new context for the message. In fact, we see how this process of message transformation is at work in Menchú's subsequent interviews. In the interview with Aznárez (1999/2001), for example, Menchú, is no longer talking about keeping secrets. Nevertheless, it is doubtful that Stoll can silence her or any of the academics who support her.

As Warran (2001) points out, Stoll's study and the *Rigoberta Menchú Controversy* are strikingly reminiscent of the old Mead/Freeman debate in anthropology with which Clifford makes the point that all ethnography is allegory:

As Freeman sees it, Mead was simply wrong about Samoans. They are not the casual, permissive people she made famous, but are beset by all the usual human tensions. They are violent. They get ulcers ... In 170 pages of empirical overkill, [Freeman] successfully shows what was already explicit for an alert reader of *Coming of Age in Samoa*: that Mead constructed a foreshortened picture, designed to propose moral, practical lessons for American society ... as Freeman heaps up instances of Samoan anxiety and violence, the allegorical frame for his own undertaking begins to emerge. Clearly something more is getting expressed than simply the 'darker side,' as Freeman puts it, of Samoan life" (pp. 59–60).

However, in the Stoll/Menchú controversy, "the reach of law" is used by opponents to condemn and by proponents to defend Menchú. While the issue of discrepancies in Menchú's narrative makes for an adversarial setting in which we may all judge her and one another, they only serve to amplify her main message—the one about the humanness of the indigenous in Guatemala. However, in survivors' accounts of domestic violence within a court of law such discrepancies overpower and drown out subaltern voices.

The issues involved in the production of legal testimony and literary *testimonio* are similar, but there are also significant differences as to why discrepant versions of violence are produced (Trinch 2003). And these two communicative genres pose risk differentially for their narrators. Menchú displays discursive power throughout her testimonial narrative. She acts as a manipulative narrator, who though perhaps not fully knowledgeable of her audiences and the potential effect her story would have on them, she clearly was able to anticipate some of the risks involved in her co-narration. Ever mindful of her point of indigenous humanity, Menchú started by minimizing the intertextual gaps between her own story and the stories of the people with whom she identifies. In the end, and with any luck, to D'Souza's (1991) chagrin, Menchú is worth teaching not only because she survived something horrible, but because she is a gifted narrator. One who has the power to enlist listeners and to seduce them.

While the stories that survivors of domestic violence tell are not *testimonios per se*, these accounts, as does *testimonio*, also challenge the rules of discourse as their contents and form resist the constraints that the law tries to impose (Sarat and Felstiner 1995). However, in contrast to the narrators in protective order interviews, Menchú's discursive power becomes even clearer as the inaccuracies in her story reawaken the debate about representation the *testimonio* initiated when it was published. It is ironic that Menchú's veracity be questioned based on a book in which she both asserts her agency and chastises Western scholars for their arrogant production of knowledge. For survivors of domestic violence in protective order interviews, the possibility of maintaining such a degree of discursive power is nearly impossible. This is not because they are less human, or less aware of how their texts are produced, but rather because of the way that they are constructed as

victims. In order to get help, these women must first submit to the institution's definition of what help is, then they must submit to the institution's definition of what counts as needing help. Latina survivors of domestic abuse in the U.S. must settle for a very fragmented, institutionalized version of their accounts. This fragmentation causes discrepancies in victims' accounts, and to a certain extent, it serves to reproduce their victimization. However, Menchú's inconsistencies, shown to us by Stoll, can be read as a measure taken by Menchú to reinforce her position as a subject. And arguably, perhaps that was all she really wanted to show in the first place.

As the discrepancies exposed in Menchú's story are compared to those found in women's narratives of domestic violence in the sociolegal system, we are reminded of the relevance of Spivak's famous question: "Can the subaltern speak?" In these academic and legal settings the communicative onus is always placed on the subaltern to make herself understood. Though there is no story, no utterance, and certainly no essential or authentic subaltern discourses, there most definitely are narrative spaces in which a "main teller" might feel less encumbered by the elicitations, judgments, and determinations of her interlocutor than she might in others. While maintaining that she granted Menchú a great deal of control over her own story, still Burgos-Debray admits to *needing to alter* Menchú's narrative in significant ways,

Rigoberta's narrative was anything but chronological. It had to be put in order ... I had to reorder a lot to give the text a thread, to give it the sense of a life, to make it a story, so that it could reach the general public, which I did via a card file... (Stoll, *Rigoberta Menchú* 185)

The paralegals who write affidavits on behalf of the victims of domestic violence would very likely say something similar. The space limitations of the affidavit ensure that for each woman, many incidents of violence go unrecorded, and for the most part, any expression of their identity unrelated to discrete, recent incidents of victimization is erased from the institutional document. Still, from Burgos-Debray's description of her participation, and given the fact that she did not question Menchú's facts, it is clear that she acted as a different type of intermediary between Menchú and the reading public than do the paralegals between victims and judges. For this reason, suggesting that these paralegal intermediaries "give voice" to these women is too romantic; their job is really one of translation for a third party who refuses to acquire the linguistic skills needed to comprehend these women's narratives of violence.

The judges' deficit, supported by their fraternal legalese, serves in the exercise of their own authority, because they can continue to command that these Latinas' narratives of violence be transformed, in some cases from Spanish to English, and in most cases from complex oral stories, that are not always organized according to the authority of temporal sequencing or to the simple linearity of written reports. In so doing, the judges avoid making themselves vulnerable to different narrative genres and to different narrators.

With regard to Beverley's question about *testimonio's* power to contest the authority of the literary and the literate (1993, p. 76), both Stoll's response and the

controversy suggest that yes, it succeeded as a challenge to literature, literacy, and even social science, but perhaps only in as much as it was taken to be those things in the first place. When comparing Menchú's narrative to narratives of violence, which truly are more mundane, and that happen to undergo a similar entextualization process, it remains unclear as to how far-reaching such a challenge can be. After all both Menchú and the women who seek protective orders still can only make their case when their oral stories are transformed into authoritative written reports. Menchú, having escaped quite tangible risk in the form of death, has nothing to lose in the face of Stoll's exposé, because she is able to claim the poetic license always available to literary works. Thus, ironically, the narrative *I, Rigoberta*, once described as a simple and "mundane" story of an Indian woman's victimization with a description of its narrator as "an ecological saint, made famous by her very obscurity, elevated by her place in history as a representative voice of oppression" (D'Souza 1991, p. 73) turns out to be "real literature," that is, *I, Rigoberta Menchú* is a good book, in part created by a really good storyteller. And for those who don't like her kind of literature, well, "[i]n the end, the pragmaticists tell us, what matters is our loyalty to our human beings clinging together against the dark, not our hope of getting things right" (Rorty 1980, p. 150).

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