Aspects of Legal Narrative

Russell Lee-Goldman
UC Berkeley

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In the conception of narrative developed by Labov (Labov, 1972, 1981, 1997; Labov & Waletzky, 1967/1997), the typical narrative is that of personal experience. The core formal element of this type of narrative is its temporal organization, and in particular the juxtaposition of two events that cannot be reversed while preserving the coherence of the story (a "temporal junction" (Labov, 1981, p.225)). Another formal constraint on narratives concerns their overall organization. In general, a narrative will start with a brief abstract and/or orientation section, which is followed by complicating actions, a resolution, and possibly a coda. Sprinkled throughout the entire narrative, though appearing frequently in the complicating action and resolution areas, are evaluative statements (Labov, 1972, pp.386–70).

Functionally, a narrative is constrained to be a communication of "tellable" or "reportable" events (e.g., Labov & Waletzky, 1967/1997; Labov, 1997). Because the oral narrative is a rather unusual form of conversational turn, there must be some special significance to the message conveyed. Labov calls this "reportability." A story with high reportability will hold the interest of the listener/reader, and will stave off questions like "so what?" and "who cares?"

This sort of analysis has been profitably applied to a narrow class of speech acts, in particular narratives of the "near-death experience." However, it is an open question as to how far such a framework can be extended to other genres of language use.

Some, such as Ochs and Capps (2001) look at cooperative, multi-agent produced narratives, and find that the distinctions and categories that Labov proposes for his narratives are not entirely up to the task of analyzing all narratives. Indeed, it may be that much of spontaneous speech and conversation is unlikely to fit very easily into the very special sort of speech category that Labov is concerned with.

In this paper I will examine the other end of the spectrum—legal briefs submitted to appellate courts. These documents are formulaic in the extreme, containing several elements that remain unchanged from document to document and author to author. However, because the attorneys involved have the task of persuading a panel of judges of their cause, there

is a bit of narrative wiggle-room and space for "storytelling." I will show that, taking into consideration the special circumstances surrounding an appellate case, legal briefs can be analyzed within a Labovian framework.

In particular, I will show that their overall structure conforms to an abstract-orientation-complicating action-resolution-coda structure, and their complicating action and resolution sections contain evaluative expressions. I will then examine the form and function of the evaluative expressions, and in particular compare the appellant/defendant's brief with that of the respondent/prosecutor.

1 Appellate brief as Labovian narrative

The data for this paper are taken from seven appellate cases handled by the Superior Court of California in Alameda. They consist of the appellant's opening brief, the respondent's reply brief, and the appellant's reply brief (where available). Each case had the same appellate attorney, and nearly all had the same responding attorney. Although this may seem an artificial limitation on the data, limiting the analysis to two different authors makes it possible to locate consistent uses of (for instance) types of evaluative statements or rhetorical strategies that might be dismissed as anomalous or non-standard given just one occurrence for one author.

The brief maximally contains the following sections: title, table of contents, table of authorities, introduction, statement of the case, statement of facts, argument, and conclusion. The table of contents and authorities (i.e., cited cases) and introduction may be omitted, but the other sections are always present.

The **title** contains the name and address of the attorney, the name of the court, the two parties in the legal action (appellate and respondent), and a title like "Appellant's Opening Brief." The format is entirely strict, with no variation permitted. This could loosely be considered a type of abstract, in that it tells the reader exactly what is contained, though gives absolutely no hint as to the actual content. It is thus a rather defective abstract.

The **tables of contents and authorities** are optional, and also have a standard format. This could (very loosely) be considered a type of abstract or orientation, but it seems ridiculous to consider them such. They will not play a role in the following analysis.

The **introduction**, when present, does indeed act as a full-fledged abstract. In my data only the prosecuting attorney included introductions in his briefs, and then only sporadically. An example of one follows.

> R.R. (appellant) claims that his conviction for inflicting corporal injury on a co-habitant should be reversed because the trial court improperly allowed expert testimony regarding Battered Women's Syndrome, and for instructional error. Since

> the challenged testimony was admissible, and there was no instructional error, the claim [sic] are without merit.

This is clearly an abstract for the brief as a whole. The appellant is named, and placed in the role of a claimant. The charges of which he was convicted are mentioned, the reasons given (by the appellate attorney) for a reversal of judgement are mentioned, and then argued to be "without merit." This is exactly the contents of the brief, though with the meat of the argumentation omitted. Here we can already see the structure of the brief as a whole - orientation/background (who, what), complicating action (conviction, argument for reversal), resolution (arguments brought to bear), and coda (the arguments are without merit).

Following the introduction is the **statement of the case**, a brief statement of court proceedings up to the time of the appeal. This is in turn followed by the **statement of facts**, a summary of the series of events leading up to the trial, including any new facts revealed in the course of the trial. Next is the **arguments** section, where each attorney makes his or her case regarding why the judgement should be upheld or overturned. It is in these middle sections where the author of the brief has freedom to create their narration of the case.

In the statements of the case and facts, the attorney has a chance to tell their side of the story. They attempt in these sections to first lay out what they feel are the important parts of the case: the parts that will be most relevant for the argument portion. Although no information that is new to the judges is put forward in the statements, each attorney spins the story to put a positive light on their argument. These thus form a part of the narrative that combines the orientation with parts of the complicating action section. The material laid out in these sections lays the foundation upon which the argument is later built. In this way they act as an orientation. However, as I will show later, some aspects of the sequence of pre-trial events will be singled out by the appellate attorney in their argument (for instance, it might be argued that some action taken by the police following some action taken by the appellant should be interpreted as a violation of constitutional rights). In this case the juxtaposition of the appellant's action and police's action is a complicating action sequence. Telling them out of order would sabotage the attorney's argument. Further, the juxtaposition of the statement of facts section and the argument section is another type of "complicating action sequence." Although the facts of the case are in a sense "timeless," in that they are already established, they must be established before a coherent argument *about* them can be mustered.

The argument, for the appellant side, contains a series of points of legal procedure that are argued to have produced an unacceptable result in the trial court. The points of procedure may include police conduct, trial court events, jury selection and instructions, and so on.

The appellant side argues that the conventions of the criminal justice system have not been properly followed, and so the lower court's ruling must be overturned. On the other hand, the respondent argues that each of the points of procedure raised by the appellant are not in fact in contest, and that everything was handled properly and fairly (the respondent reads the brief of the appellant before submitting his or her brief; the appellant may then submit a final reply). Most of this section consists of legal argumentation, and a large part of the space is taken up by citation of prior cases. However, the parts of original prose that are present contain, expectedly, evaluative comments.

The argument portion of the brief occupies the "resolution" part of the narrative structure. It is in the resolution part where new information is introduced to the court. The appellant will bring up case law and prior judgements in an attempt to convince a panel of judges that the justice system has not been properly used. If such arguments did not exist, the appeal would also be nonexistent. The Argument section is thus what provides the appeal with its tellability or reportability. Here is where the appellant says, "Look, here is why you should care about all the facts that I just told you. Things went wrong, and justice was not done, and this is inexcusable: fix the mistakes." The more egregious the mistakes, the more reportable the appeal will be.

On the other hand, the respondent's job is to discredit the appellant. The points of procedure brought up are argued to be non-issues, and everything is claimed to be perfectly in line with proper procedure. It is thus a sort of anti-tellable narrative. If everything were right in the world, and the appellant realized that their points were meaningless, then the respondent's brief wouldn't even be necessary. However, because the appeal process is part of the criminal justice system, the appeal is legitimate. Thus the respondent's reply to the appeal is also "tellable" in the sense that without it the appeal process would not be complete. Alone it does not reportable, since it expresses a "nothing special happening here" mentality, but as a reply to an accusation, it is eminently tellable.

Finally, as predicted by Labov's model of the personal narrative, elements of evaluation are visible throughout the statement of facts and argument sections of the brief. These help convey the importance of the narrative, telling the reader that "you should find the facts presented within to be compelling and important for legal and moral reasons."

Finally, the brief ends with a brief **conclusion**. It is highly formulaic, with no information the judges do not expect. The form is often similar to the following: "For the above stated reasons, the judgement should be affirmed/reversed." There are of course variations, including especially the appellant changing the second clause to "the appellant respectfully requests this court to reverse the judgement." If more specific requests are made, such as reversing some pre-conviction decision made by the trial judge, it is also mentioned in the conclusion. Although this is slightly atypical from the point of view of the personal narrative,

which may only rarely end with an explicit "moral to the story," it is still visibly a type of resolution or coda. It is where the attorney says, "so here is what should happen: this is why I wrote this brief."

In the following sections, I will examine the central sections of the appellate brief, demonstrating exactly how they function in their orientation-setting and resolution-providing roles in the overall narrative of the brief. In particular, I will pay attention to the persuasive elements of the statement of facts and argument. I discuss two main ways in which even information shared between all parties is manipulated in order to serve one side or the other. In particular I will demonstrate how elements of evaluation, primarily framing, play a role in the construction of the appellate brief.

2 What is said

There are two major dimensions along which the author of a brief can manipulate the document so that it functions to persuade the appellate judge of their point of view. One dimension is *what is said*, and the other is *how it is said*. The first dimension is concerned with which elements of the case are mentioned at all in the brief. In the statement of the case and statement of facts (and to a lesser extent, argument), each attorney chooses, to some extent, what part(s) of the case they include. Some elements are basically obligatory, such as the time of arraignment, a description of the circumstances under which the arrest was made, and the time and manner of conviction. However, beyond those elements the attorney is free to create whatever story is possible—as long as everything stated is true.

2.1 Statement of the case

The statement of the case (SOC) is a very short summary of the logistics of the case from criminal charges to the present. A typical string of events is:

1. Charges brought against defendant
2. Motion to suppress evidence filed, denied
3. Conviction and sentencing
4. Filing of timely notice of appeal

In most cases these are basically identical between the two sides of the case, indicating that they do not play a large rhetorical or argumentative role. Even when they do differ, it is not clear that this is a particular type of rhetorical strategy. For instance, the appellant's opening brief may contain detailed information about motions to dismiss various pieces of evidence before trial, noting that the motions were denied. However, these are not necessarily

the points that will later be raised in the Arguments portion. Thus it is hard to say that these are essential to the main part of the narrative. It is, however, telling that motions made to suppress evidence that are granted are never mentioned. It may be that such motions indeed were never granted, or it may be that listing denied motions may prepare the reader of the brief to feel that much of the trial was biased against the appellant.

Thus, this can also be considered a bridge between the abstract and the main part of the narrative, with two major differences from oral narratives. First, all the facts mentioned are known to all sides (though their significance may not be), and second, parts of it may not be materially relevant to later argumentation.

2.2 Statement of the facts

The statement of the facts (SOF) is where the attorneys enter the core of their storytelling. It consists of a summary of the findings of the trial court, which is basically the series of events leading up to the charging of the defendant with some crime. Because the appellant has been found guilty, the official story is that of the prosecutor (minus any elements that the trial judge ruled inadmissible in court). Further, like the SOC, all the facts here are known to all sides of the case (though, again, their significance may not be). Given this, it may be expected that the SOF should not differ greatly between the two sides. However, this is far from the case. In fact, this part is where the attorneys begin to set up their case.

Attorneys have several methods for manipulating the content of the SOF. First, they can chose which parts of the case to omit and which parts to include. Although all the major parts will likely be included, parts that portray individuals in a certain light are subject to manipulation. This not only sets up the later argumentation, but it also frames the participants in an advantageous way. Second, crucial parts of the case may be mentioned in very different ways, using different vocabulary, by the two sides of the case. This also contributes to the overall impression that the appellate judges will be exposed to upon reading the briefs. In this section I will examine six specific instances (across three cases) of strategic or rhetorical use of some information that, while not necessarily bearing directly on the key facts, nevertheless function to color the brief in a particular way (in a later section I will examine the second technique, which involves evaluative statements).

In one case, police officers were called to investigate a suspiciously-parked vehicle. After approaching the vehicle they determined that one of the two occupants was be under the influence of methamphetamine. The appellant notes in her brief that "[Deputy T.] testified that there was nothing suspicious about the truck, **which was parked legally**, or the occupants of the truck" [emphasis added]. The information that the truck was parked legally is not present in the respondent's SOF. Although the information is only tangentially related to the case at hand (which is claimed to involve a 4th amendment violation, though

approaching the truck is not part of that violation), its inclusion here puts the defendant in an innocent light—they were doing nothing wrong.

In another case, police searched a house on suspicion that drug manufacturing was occurring there. Afterwards, one officer searched a nearby car belonging to one of the (ostensive) residents, and found drug paraphernalia. The residents of the house were detained and handcuffed for approximately 45 minutes. Both briefs note that handcuffing is common for such procedures, especially where a drug search is involved. However, the respondent's brief also includes this: "Drug sellers and users are commonly unpredictable and violent." Including this in the brief prepares the reader to have more sympathy for the police officers' actions and motivations. Because the crucial question is whether the actions were appropriate, anything that can give the police officers more credibility is important. On the other hand, the appellant's brief contains the following line that the respondent did not include: "Appellant testified that she was pushed to the ground on her knees and handcuffed while the officers pointed guns at her. She did not feel free to leave." This works for the appellant the way that the previous inclusion works for the respondent. Here we can sympathize with the appellant, who was improperly treated by the police, and (as the attorney will later argue) was not legally detained. Of course, the manner of the detainment is not directly related to whether it was constitutional, if the manner was rough, then this counts as a point against the officer.

In another case, a floor salesman at K-Mart was found guilty of verbally molesting a 12-year-old girl. He is not appealing the judgement, but contesting the requirement that he register as a sex offender. When the minor asked the salesman where she could find a certain type of pants, the salesman took her by the arm and took her to the kids section of the store. Along the way he asked her about her love life, school, and whether her parents were in the store. Eventually he left her in the kids section, and she met her father ten minutes later. In the respondent's brief, this is related with "She told him she was leaving on a trip as a ruse to get away from him [...] Irma finally saw her dad approximately ten minutes later." No explicit mention is made of the fact that the salesman leaves her alone, though it is easily inferrable. In contrast, the appellant's brief has "After Appellant left, she remained in the juniors' department for another 10 or 15 minutes when she heard her father calling her name." Here the time period between the departure of the salesman and the reuniting with her father is made explicit. Further, note the use of *remain*, which is generally taken to be voluntary/agentive when in the frame of [$\mathrm{NP}_{animate}$ *remain* $\mathrm{PP}_{location}$]. This may have the effect of suggesting that the girl was not so shocked as one might have thought, given that she did not go out to search for her father. Both methods get the same set of facts across, but one frames the situation as a girl who chooses to remain in a location, whereas the other frames it (implicitly) as a distraught father searching for his daughter.

In the same case, the respondent notes in the SOF that the salesman's daughter "admitted that [her father] understood what the English word 'girlfriend' meant." The salesman speaks English poorly, so whether he understood what he was saying to the girl becomes an important point. This piece of testimony shows that he did, in fact, understand this. However, the appellant's brief does not contain this piece of information. It is important that whether or not he understood this fact does not bear directly on the appeal, which does not contest the guilty verdict *per se*. Nevertheless, including it impresses upon the reader the fact that what the salesman did was indeed a heinous, possibly malevolent act. Omitting it leaves open the possibility that it really was all a misunderstanding.

In another, even more radical case of manipulation by inclusion (still in the same case), the appellant's brief includes the following line: "Aurelio Florendo, Appellant's wife, testified that she was a teacher at St. Bede Catholic School." She testified to her husband's very limited English ability. However, the information about her profession is omitted in the respondent's brief. It may be that the inclusion of such information lends credibility to her testimony, and further shows that the salesman is a member of a functioning family. Again, none of this is material to the appeal, but it can have an effect on the judges who must decide whether to limit the severity of the punishment given.

From these cases we see that the inclusion or omission of small pieces of information on each side of an appellate case can color the overall facts of the case in favor of one side or another. There are two main parts of the case that are open to this type of manipulation: facts about the case and meta-facts about the trial. In the first four instances (the truck's location, the validity of the detention, the danger of drug users, and the timeline of the girl at K-mart) the inclusions/omissions are in the actual crime-committing part of the story. The last two instances (if the salesman understands the word "girlfriend" and the employment of his wife) are not necessarily about the crime *per se*, but about information that came out only because certain questions were asked to witnesses who were not participants in the crime scenario. This is information about what happened during the trial itself. Each side will be selective regarding which part of the story they tell so as to place themselves in the best possible light, and this can be effective even if the information in question is not technically related to the actual arguments.

In a sense, the choice to include or omit certain parts of the case are a type of "meta-evaluation." Because the material used to produce the briefs is common knowledge, the judges know (or could find out—or could have their clerks find out) which parts are missing from each brief. Thus an attorney can tell the judge that certain parts of the case are irrelevant or highly important by omitting or including them, respectively.

In the next section I will examine more explicit instances of evaluation. These are present mostly in the SOF and argument parts of the brief.

3 How it is said

The second aspect to persuasive narrative in the appellate brief is *how* facts are framed. The lexical items and sentence types selected to express events portrayed in the brief clearly reveal the author's attitude towards the facts, and further how they think the reader should feel regarding the facts. It is in the details of word choice where the author can express him or herself, and offer evaluative expressions. Sentence type is more restrictive, even moreso than lexical choice, but in particular negative sentences have evaluative uses in Labov's sense (1972, pp.380–1). In this section I will examine three aspects of *how* in the appellate brief: the use of semantically contentful lexical items that evoke evaluative frames; adverbs that necessarily encode a sort of evaluation; and negation.

3.1 Nouns and verbs

By choosing to describe certain situations or individuals with particular words, an attorney can portray certain elements in a light favorable to their client. One instance, which actually straddles the line between the *what* and *how*, is the following text taken from the appellant's opening brief (emphasis added):

> Deputy Sheriff JT of the Alameda County Sheriff's Office testified that on [date], he was dispatched to investigate a suspicious vehicle. An anonymous caller reported [. . .].

Contrast the phrase introducing the caller, "an anonymous caller," with the respondent's introduction of the caller:

> Deputy J.T. of Alameda County Sheriff's Department was dispatched at [time] to [address] to investigate a suspicious vehicle parked across the street from that address. The caller stated that the vehicle [. . .].

The Appellant's choice to use *anonymous*, or rather their decision to not remove the label, is indicative of a stance that she will take for the entire brief. In the case at hand (mentioned earlier) police officers approached a legally parked car because someone had called saying it was suspicious. By noting that the caller was anonymous, the appellant can cast doubt on the credibility of the caller—often those who choose to remain anonymous have something of their own to hide. Though that may well not be the case here, it leaves the possibility open. That possibility is suppressed in the respondent's brief, which uses a definite description, merely referring back to whatever case history the judges may have at hand. It is more of a neutral stance on the identity of the caller.

A clearer case of framing a situation can be seen in returning to a case mentioned above involving several officers searching a house suspected of housing narcotics producers and users. The respondent describes the situation as follows:

> On [date] Deputy P of the Contra Costa County sheriff's office executed a search warrant at [address]. [...] Deputy P arrived at the residence with approximately 10 sworn officers. In addition, approximately three animal control officers accompanied the group to manage the numerous canines that were located at the residence.

This is to be contrasted with the appellant's account of the same event:

> [T]hirteen officers - ten police officers and three animal control officers - raided [address] to search a warrant on a third party, FD, and his residence, for evidence of methamphetamine sales.

These are quite different. First, the respondent uses the neutral expression *execute a warrant*, which does not specify the actual action, merely the result (namely, that the action allowed by the warrant was fulfilled; this is similar to words like *manage (to)* and *risk*). On the other hand, the appellant uses the work *raid*, clearly an evaluation-laden term, applied negatively to figures of authority who are viewed to be acting improperly. In fact, *executing a warrant* is by definition a legal action, whereas a *raid* is often done *without* regard for the law. *Raid* also requires a multi-person agent, evoking a type of "swarming" image; execution of a warrant has no such connotation. Second, notice that the subject of *raid* is indeed a plural NP, whereas the subject of *execute* is a single person: again, downplaying any sort of improper action the police might have taken. Finally, in the respondent's brief there is a separate purposive clause associated with the animal control officers, while they are lumped in with the rest of the officers in the appellant's description (note also that there were in fact no animals on the premises). This shows that they were not there as a show of force—their presence was legitimate. All of these differences amount to a very different picture of what happened, although the "facts" are supposedly already established and not contestable in the appellate case.

A similar case is one where police officers, concerned that illegal drug activity was taking place at the resident of a convicted drug user (who was on probation), searched an apartment where they believed the drug user lived. The appellant contends that the police officers knew that the user did not live at the apartment any longer, and merely used her conviction to gain entry into the residence. She claims:

> [That] this case is an instance of a ruse and deception cannot be clearer. The court found that the evidence clearly showed officers knew R was not there.

Here there are two important things to notice. First is the use of *ruse*, and earlier in the brief, "impermissible ruse." Although there are not many positively-evaluated words in English to describe intentional deceit, there are more neutral words than "ruse," or the earlier-used word "trickery." The alternative, which the respondent takes, is to merely state that the police officers "used" the search warrant to gain entry. This is maximally vague with regards to the manner of usage. The appellant's wording, then, casts a negative shadow on the actions of the police officers. Also note the choice of the factive verb *know* rather than *believe*, implicating that in fact R was not there, and making the officer's actions even more reprehensible.

A final such instance of framing the events leading up to the case is the use of *grab* in the following discourse from the respondent:

> While she was browsing, she saw appellant, wearing a K-Mart red vest and name tag, watching her [...] took her by the hand. Ms. Arriola stated that he grabbed her hand. She did not extend it to him. At first she said it was like her father would take her hand, gentle, but then when she tried to get out of his grasp, he tightened his grip and she became afraid.

Grabbing is different from taking. Grabbing is forceful, and lends itself to a reading where the appellant was strong, ruthless, and greedy (of course *grab* does not entail this *per se* (cf. *when the train slows down, grab the nearest railing to keep from falling over*, which has the "forceful" meaning, but no emotional connotation)). Needless to say, the appellant's brief did not contain the word *grab*, but instead *take by the arm* and *hold*, which are typical nice-parent actions.

Another way attorneys can subtly manipulate the brief is by selecting different frames within which to describe the events of the criminal trial. In particular, since much of what happens in a trial is communication, attorneys make strategic use of speech verbs of different types in order to advance their cause.

There are three main verbs of speech that are used: *claim*, *state*, and *testify*. *State* is generally neutral regarding the validity or credibility of the person doing the stating. Indeed, we find that *state* is used by both the appellant and the respondent to describe the testimony of witnesses favorable to either side. Similarly, *testify*, which in the courtroom is a technical legal, has a similarly even distribution, occurring for all speakers in both sides' briefs. The lay definition of *testify* is essentially 'claim with extremely strong conviction.' This differs slightly from the legal use, where it is assumed that those under oath will give testimony that is true, or at least that they believe to be true. Finally, there is *claim*. This verb carries with it the strong implication that the person making the claim may not be telling the truth, either by deception or ignorance. This is reflected in the use of *claim* in the briefs.

In the appellants' briefs, *claim* is used most frequently of testimony from officers, and in the respondent's brief, it is used most frequently of testimony from the appellant or the appellant's accomplices. The word is also used by the attorneys to refer to the arguments of the opposing attorney. The distribution of these three words demonstrates the level of manipulation that can be built into a legal brief.

3.2 Adverbs

The second major class of words that attorneys can use to express evaluations are adverbs. These generally don't add new information in the narrow sense. That is, no new facts are introduced by evaluative adverbs. What they do accomplish is highlight portions of the narrative that is significant to the overall moral of the brief's story.

One commonly-used adverb in the briefs is *just*. In the briefs examined, only the appellant used it:

> Appellant and her husband were just resting in their car.
>
> Appellant was just walking around outside of the house when the officers with their guns drawn came upon her.
>
> [...] danger that a jury will just accept the expert's opinion wholeheartedly and decide the case on that basis.

In the first two, *just* is clearly used to portray the appellant as innocent, non-confrontational, and not deserving of their fate. Police officers are not supposed to approach people who are "just" resting in their car, because that is the extent of what they are doing—and there is nothing wrong with being in one's car. Similarly, someone who is "just" walking around outside their house is not supposed to be the target of a police investigation. The third use is slightly different. It is used of a hypothetical action of an uninformed jury, implicating that whatever decisions the jury makes will not be sufficient for standards of justice: they will "just" do as they are told, without thinking critically of the evidence.

An example of the respondent using evaluative adverbs can be seen in the following passage, which discusses the merits of the appeal:

> Having received the benefit of a favorable plea bargain, appellant still challenges the partial denial of a motion to suppress.

Here, the use of *still* highlights the perceived incongruity or improperness of the appellant's actions. The respondent here nearly expresses exasperation with the fact that the appellant maintains her position, even though the proper action would be to count her blessings with the favorable plea bargain. This sort of exasperation is even more clearly seen in the following passage:

> Appellant [unfortunately] was not required to waive her right to appeal as part of the plea bargain.

Note here the use of *unfortunately*, which is clearly an evaluative predicate. Interestingly, it is enclosed in square brackets in the original, which separates it from the rest of the text, creating an external evaluation (Labov, 1972, p.371).

However, the vast majority of evaluative adverbs are used by the appellant, likely because the burden is mostly on the appellant (who will most likely fail in the appeal). In particular, criticizing the actions of antagonists in the case (namely, the police officers) is the primary area where these adverbs shine. Consider the use of *own*, *at all*, and *even* in the following three excerpts.

> The officers' own testimony conflict with each other as to [. . .]
>
> [. . .] he admitted that he did not read her Miranda warnings at all.
>
> He did not know about the deep lung air needed for the accurate measurements. He did not even know the minimum amount of theory of the breath instruments taught at training.

First, the appellant uses *own* in the first example to highlight the fact that the testimony was contradictory. In other words, of all the people whose testimony one might expect to be contradictory, the police officers are pretty low on the list (especially given the importance of their testimony in the case). It is thus telling, so the appellant says, that their testimony is in conflict. In the second example, *at all* has a similarly evaluative use, emphasizing the fact that even the minimal amount of reading of Miranda warnings was not done, contrary to what officers are expected to do. Finally, the appellant in the final example uses *even* to again evoke a scale on which *knowing the minimum amount of theory* is placed at the very bottom—and the officer did not even meet that standard. Each of these adverbs contributes to the narrative not in a contentful sense, but in an evaluative or rhetorical sense. No information would be lost if they were omitted, but the attorneys advance their version of the story by pushing the reader of the brief towards their point of view.

3.3 Negation

Finally, I will consider the use of negation in legal briefs as a type of evaluation. Negation, the explicit assertion of the non-existence or non-occurrence of some event functions as an evaluative expression by virtue of evoking the expectation that the negated state-of-affairs should have actually taken place, or would have if something unexpected had not prevented it. Negation is used by the appellant to assert that proper procedure was not followed; it is

used by the respondent mostly to respond to claims made by the appellant, or to preempt claims that improper actions were taken.

One set of examples comes from a case where an officer used a (possibly invalid) search warrant to enter a residence:

> [...] not a consensual encounter [...] there was no suspicion [...] no criminal activity of any kind [...] he did not obtain a search warrant ... did not see anyone resembling Recent. In fact, he stated that other than the statements my Mary and Shannon there was no physical evidence that she lived at the address.

Each of the negated clauses above expresses some state of affairs that would have legitimized the officer's actions. However, lacking consent, suspicion, criminal activity, a search warrant, and the sighting of the suspect, the officer was clearly acting outside his purview, or so the appellant claims. Many similar examples can be seen in all of the appellant briefs examined.

The respondent can equally well use negation, as in the following case of the "raid" of a meth-producing residence:

> He did not use threats or demands, he did not draw his weapon.

Each of these claims are implicitly made by the appellant in her opening brief, and the respondent quashes any possible mention of them in the reply brief by explicitly stating that any improper actions, like using threats or drawing a weapon, were taken. However, it is clear that negation is primarily a tool of the appellant, whose job it is is to show how nothing proper, and everything improper, was done. The hypothetical situation, where the outcome of the trial would be fully justified, is evoked by stating that the hypothetical situation is indeed just that—unrealized. On the other hand, the respondent's role is to say that everything that happened was justified, and there was nothing of note. This sort of argumentation does not lend itself to using negation, though it is possible (in the meta-theoretical situation where the negated facts are facts that are *anticipated* to come up in future argumentation).

In the above sections, I have shown how a key part to a Labovian narrative, the evaluation, is incorporated in the appellate brief. Among the possible methods used by attorneys are evaluation-connoting nouns and verbs, evaluative adverbs like *even*, and negation. Each contributes its part to the thrust of the argument of the brief, which is that the contents are eminently reportable, and should be paid heed, lest the court improperly reverse (or uphold) a previous decision.

4 Conclusions

A legal brief is almost as far from a personal life-and-death narrative as one can get and still remain in a "let me tell you my story" situation. Several differences exist between these two types of narratives. A legal brief is highly formulaic, bounded by arbitrary style constraints as well as registral constraints. A legal brief also contains in large part commonly-known or knowable information, like the facts and outcome of the case, which forms nearly half of the body of the brief; the personal experience narratives, on the other hand, are largely populated by new information for the addressee. However, the function of the legal brief is, loosely speaking, roughly the same as the prototypical narrative: the teller has a set of facts which he or she deems important, those facts are spun in a way favorable to the teller, the facts are embellished and highlighted to point out just why the addressee should care, and finally some resolution is attained. The question of whether such an analysis would hold over a wider range of briefs, appellate and otherwise, however, remains open.

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