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## PARATEXTUAL PRESENCES: FOOTNOTES IN U.S. AVIATION-CASE APPEALS

### Abstract

This corpus-based study explores the role of footnotes in the legal decisions on aviation-case appeals issued by the U.S. National Transportation Safety Board (NTSB). The manual and computerized scrutiny of the 34 samples disseminated online by the Board during 2012 shows that footnotes are engagement devices aligning with expert and lay readers and fulfilling a wide range of functions. Ideationally, they support the legal argument exposed in the in-text, either by providing detail and summaries of previous and current proceedings or by introducing subtopics. Interpersonally, they mark subjective stance, give voice to different communities of practice, act as resources of strategic politeness, and brand the NTSB institution according to the Freedom of Information Act's ideology. As predicted, argumentative appeals contain the most footnotes and citations within them, the latter being invariably non-authorial and on the whole non-integral and non-factive. Their metadiscursive quality of asides, conveyors of shared knowledge, directives, endophorics and glosses, as well as their value as membership indicators, justify the conception of footnotes as convergence spaces of proximity (compliance with expert communal conventions) and positioning (deferential attitude towards outsiders).

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### Key words

judicial decisions, paratext, footnotes, citation, NTSB, interpersonality.

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## Sažetak

U ovoj korpusnoj studiji istražuje se uloga fusnota u odlukama o žalbama upućenim vazduhoplovnim organima, koje je doneo američki Nacionalni odbor za bezbednost saobraćaja (NOBS). Manuelna i kompjuterska analiza uzorka od 34 odluke koje je Odbor učinio dostupnim na internetu tokom 2012. godine pokazuje da fusnote predstavljaju oznake uključivanja stručnih i laičkih čitalaca u tekst i da obavljaju čitav niz funkcija. Ideaciono, one podupiru pravne argumente iznesene u glavnom tekstu, i to ili pružanjem dodatnih obaveštenja o prethodnim i tekućim žalbenim postupcima, ili uvođenjem podtema. Interpersonalno, fusnote označavaju subjektivni stav, predstavljaju glas različitih stručnih zajednica, funkcionišu kao sredstva strateške učtivosti i promovišu instituciju NOBS-a u skladu sa ideologijom Zakona o slobodi informisanja. Shodno predviđanjima, argumentovane žalbe sadrže najviše fusnota i citata, pri čemu su citati po pravilu neautorski i uglavnom neintegralni i nefaktivni. Njihov metadiskursni kvalitet kao sredstava digresije, prenosilaca opšteg znanja, direktiva, endoforika i glosa, kao i njihova vrednost kao znakova pripadništva, opravdavaju koncept fusnota kao konvergentnih prostora proksimiteta (povinovanje konvencijama stručne zajednice) i pozicioniranja (iskazivanje poštovanja prema laicima).

## Ključne reči

sudske odluke, paratekst, fusnote, citati, NOBS, interpersonalnost.

## 1. INTRODUCTION

Why study *paratexts*? Genette (1987) defines them as multiform, versatile and tentacular ‘thresholds’, ‘fringes’ or ‘undefined zones’ that extend and modulate the text to ensure its presence. Made up of heterogeneous practices and most often constituting texts themselves, they are fuzzy areas of *transition* and *transaction* between the text and the off-text (Genette, 1987: 2), whose distance (or proximity) they span with a wide array of functions. These include sheer information, authorial interpretation and comment, advice, commitment, directives, performativity, and in certain genres – such as historical and legal accounts, autobiographies and memoirs – a sort of contractual force that binds senders to tell the truth, thus boosting the Gricean cooperative maxim of quality. This rich multifunctionality, together with their paradoxical nature, turns paratexts into valuable objects of research.

The paradox consists in disrupting the narrative process while simultaneously nurturing it and keeping it flowing. For this reason, paratexts have been described as 'local detours' or 'momentary forks' (Genette, 1987: 328), or even as 'radical dislocations of readerly expectations' (Macksey, 1987) as much as 'instruments of adaptation' (Genette, 1987: 408). It is precisely this second paradoxical aspect, their engagement potential, that informs the present study, which deals with legal documents (eminently narrative and intertextual) of a distinctive kind due to their purpose, participants, medium of dissemination, and the process and social context they involve: the decisions on aviation-case appeals issued by the National Transportation Safety Board of the United States of America (henceforth NTSB). In what follows, my major claim will be that NTSB paratexts (i.e. here footnotes) should be considered flexible engagement devices. I specifically view them as *convergence spaces* for both expert and lay readers, in the service of corporate branding and a better reception of the message by their broad mixed audience.

## 2. LEGAL INTERPERSONALITY, NTSB PARATEXTS, AND THE FOIA SPIRIT

Our target genre, the judicial decision (also known as 'legal opinion', 'judgment', or 'case'), is key to legal contexts. In written form it explains how a particular dispute is resolved and, as Gewirtz (1996: 14) points out, may be considered a 'coercive narrative' that presents at least three different stories<sup>1</sup>:

- a) A 'core narrative' of facts (Breeze, 2013: 345) or 'facts of the case' (Kerr, 2005), which often includes competing versions and arguments from the parties involved and their witnesses;
- b) A 'framing narrative' (Breeze, 2013: 345), 'law of the case' (Kerr, 2005) or 'narrative of legal experience' (i.e. jurisprudence), with similar cases bearing more or less resemblance to the situation under judgment;
- c) A 'prevailing narrative' or 'narrative of authority' (Johnstone, 1987) conveying the judge's interpretation of the two former narratives. This third narrative chooses which of the competing stories within the narrative of facts should be regarded and what facts are relevant. Therefore, in

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<sup>1</sup> For practical purposes, in this paper I will take the terms 'narrative' and 'story' as synonymous. Let us not forget that from a more detailed perspective every story is a narrative but not the other way round (Sancho Guinda, 2013: 395), because narrative presupposes a chronological and causal sequence and stories demand in addition an 'emplotment' (i.e. the existence of a plot and characters/actors to unfold it).

pursuit of a plausible and coherent narrative – of an objective truth – it ‘creates the facts’ (Gewirtz, 1996: 11) through a selection of versions and details, bestowing coherence on the often fragmented accounts of actors and witnesses. It concludes with the compelling performative ‘It is so ordered’ before the verdict, as a final public declaration of authority and control.

The conjunction of these three narratives meets three main interpersonal purposes: it not only guides other judges and lawyers (and occasionally lay audiences) through the law of the case, but also disciplines the judge’s deliberative process by making it public to detect possible errors and corruption, and persuades audiences of the correctness of the decision. In other words, it convinces us that the court ‘did the right thing’ (Gewirtz, 1996: 10). This public exposure of judicial decisions/opinions counterbalances the judge’s imposing voice, constructed by means of direct simple sentences, certainty boosters (e.g. ‘shall’), and formulaic expressions that leave no place for ambiguity and assign him/her the role of adjudicator determining winners and losers (Vázquez & Giner, 2009). Examples of such expressions are ‘Hereby, the Tribunal orders that...’ or ‘The appeal is dismissed’. In light of all this, we may distinguish two materializations of ‘interpersonality’, an elusive concept that I will attempt to define next: one *social* or *global*, resulting from the aforementioned interrelationship of the three narratives and their dissemination, and the other *textual*, based on the use of rhetorical, (meta)discursive and lexico-grammatical resources contained in each of the narratives. Paratexts, as we will shortly see, mediate between both.

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## 2.1. Pinpointing interpersonality in Law

Under the umbrella metaphor of interpersonality (Molino, 2010), we linguists have subsumed the study of *stance* (i.e. the expression of objectivity/subjectivity and ideational opinion), and *engagement* (i.e. the attitudes of deference to or detachment from listeners/readers and the communicative circumstances). This conceptual tandem, coined by Hyland (2005a), finds more or less accurate equivalence in terms such as *footing* (Goffman, 1981), *point of view* (Simpson, 1993), *ideational, interpersonal and stylistic stance* (Biber & Finegan, 1989; Biber, 2006; Jaffe, 2009; Gray & Biber, 2012), *positioning* (Harré & van Langenhove, 1999), *evaluation* (Hunston & Thompson, 2000), and *appraisal* (Martin, 2000; Martin & White, 2005). They may vary according to national and disciplinary cultures, communicative situations and media, and private intentions.

Interestingly, interpersonality is *omnipresent, circular, open, multifunctional, multidimensional*, and may be *motivated* or *accidental* (Sancho Guinda, Gotti, & Breeze, 2014). In effect, there are no completely impersonal texts (Hafner, 2014;

Mazzi, 2014) because even opting for impersonality entails a certain interpersonal awareness and commitment. Likewise, stance and engagement relate circularly to each other, since reader/listener considerateness inevitably carries a stance on the addressee, deemed worthy of the deference, and on the interaction. And conversely, disclosing such posture explicitly, by contrast with involuntary 'give-offs' (Goffman, 1959), is an act of engagement. Added to this circularity is the issue of contingency: researchers tend to speak of 'potential features' (Hiltunen, 2010) because the inventory of interpersonal items remains open and grows with the affordances provided by new genres and channels, as well as with the phenomena of globalization, hybridization or interdiscursivity and manipulation or 'bending' (Bhatia, 2012). These foster the coexistence of a plurality of functions, informational and promotional, detectable at various levels or dimensions: topical, proxemic, kinesic, rhetorical, lexico-grammatical, phonological, phonetic, and typographic.

The legal register has traditionally been characterized as remarkably impersonal (Bhatia, 1982; Hiltunen, 1990) due to its frequently complex syntax, its excessive noun postmodification, its rare passive constructions (e.g. with the verb 'have' meaning possession), its scarce use of paragraphing, punctuation, anaphora and connectives, and its abundance of lexical repetition as an alternative to pronouns (although underlying this trait is a desire for referential clarity). A reaction against this peculiar style was the Plain English movement (Mellinkoff, 1963), which purports to simplify legal language by emphasizing brevity, clarity, and the avoidance of jargon. Nevertheless, legalese should not be conceived of as a monolithic use of language regarding interpersonality, because different branches of the field employ different strategies: for example, compared with Common Law, the shorter sentences of Civil Law make its syntax more understandable, but the lack of subordination and textual markers signalling it obscures the logical connection between sentences.

While the body of literature spawned by research into legal interpersonality is vast, recent, and it analyses diverse genres, it is confined to specific conventions, such as courtroom interactions during legal proceedings (Gibbons, 2003; Anesa, 2012), to the impact of metadiscourse (Buscetti, 2006; Pascual, 2006; Breeze, 2011), modality and performativity (Garzone, 2001; Charnock, 2009; Takahashi, 2009; Williams, 2009) and especially to the expression of vagueness (Endicott, 2000; Bhatia, Engberg, Gotti, & Heller, 2005; Arinas Pellón, 2012). Fewer authors focus on pragmatic resources – mostly on the observance of the Cooperative Principle and politeness maxims and the practice of implicatures and presuppositions (Frade, 2002; Pavličková, 2010), or on argumentation (Bowles, 2002; Mazzi, 2007), and lately there have been some incursions into matters of identity and power (Sala, 2010; Gotti, 2011a, 2011b; Hafner, 2013). With this paper I aim to enrich such flourishing interpersonal scope, by including paratexts as versatile features that agglutinate several dimensions (in writing reduced to topic, rhetorical organization, lexis, grammar and typography) across audiences

(expert and lay) and the three narratives composing the judicial decision genre: the facts of the case, its legal antecedents, and the opinion and verdict of the legal authority. A secondary goal is to inspire future studies, either diachronic or synchronic, on the cross-generic and cross-disciplinary use of paratexts in Law and other realms (e.g. academic, technical, and administrative communication, advertising, journalism, business, etc.), and evaluate the influence of digital technologies in their format and content.

## 2.2. Featuring NTSB case-appeal decisions

The primary mission of the NTSB is to determine the causes of civil aviation accidents and incidents, keep factual records, make and divulge ensuing safety recommendations, and assist the military and foreign boards with less resources in their investigations (on Congress' request).<sup>2</sup> However, it also has the prerogative to act as a 'court of appeals' for any airperson or mechanic whenever certificate action is taken by the FAA (Federal Aviation Administration). This special right is unique to the NTSB, as it is not shared by the rest of world transportation agencies, and means that the judicial decisions it issues on aviation-case appeals may confirm, modify, remand or even reverse those initially made by law judges. If the claimant/respondent appeals further, he/she must file a petition in the U.S. Court of Appeals or in the U.S. District Court closest to his/her residence. Normally, the NTSB's decision prevails, unless it is proved arbitrary, capricious, abusive, erroneous, inconclusive, or not in accordance with the law.

The legal framework encompassing NTSB judgments is of extreme importance. Like any other U.S. organism or institution, the NTSB is subject to a policy of informative transparency, warranted by the FOIA (Freedom of Information Act), in force since 1967 and a pillar of American democracy. Following its spirit, the Board conducts meetings and hearings in direct view of the public and has been proactively disseminating its decisions online since 2009, instead of merely releasing (i.e. declassifying) them. This option for a digital medium additionally enables audiences to navigate through the NTSB website and bridge knowledge gaps relative to norms and jurisprudence, having all those texts at hand. As for the document structure adopted by decision writers to

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<sup>2</sup> The NTSB investigates aviation accidents and incidents independently from the Department of Transportation (DOT), and sometimes in collaboration with the other domestic U.S. agency for regulating and monitoring aviation safety: the Federal Aviation Administration (FAA), dependent on the DOT and in charge of more applied aspects of flight. These joint investigations usually take place in aviation mishaps occurred outside the USA but involving American-registered or American-owned civil aircraft and U.S. manufactured components. Both agencies comply with the general aviation rules provided internationally by the ICAO (International Civil Aviation Organization), a specialized agency of the United Nations, and apart from their duties, the chief difference between them is that only the FAA has actual enforcement power: it can create regulations and invoke the administrative law to punish their violation.

accommodate the factual, procedural and authority narratives, it is clear and stable enough to be recognized by genre users but flexible to admit case particulars.<sup>3</sup> It comprises two large blocks, entitled 'Background' and 'Decision'. Within the first, prototypical headers are 'Facts', 'Procedural Background' or 'Evidence Presented at Hearing', 'Law Judge's Oral Initial Decision' (the judge's written initial decision may be included as well, with its corresponding heading) and '(Respondent's) Issues on Appeal'. In the decision block, headings are less fixed: they may introduce a comparison between cases (e.g. 'Comparison of This Case to X versus Y'), and miscellaneous types of findings that support the deliberation and justify the verdict (e.g. 'Credibility Findings', 'Reasonable Reliance', 'Scope of the Board's Review on Appeal', 'Substantial Justification') or spot errors in the former hearing (e.g. 'Incorrect Standard of Law', 'Prejudicial Errors', etc.). Preceding the final judgment, two recurrent heads are 'Due Process Violation' and 'Sanction', respectively analyzing the alleged infraction and, if there is one, specifying the penalty for noncompliance. The document concludes with the formulaic expression: accordingly, it is ordered that: [...], upper-cased and above a series of numbered points that form the verdict and refer to the courses of action to be taken as to the claimant's appeal (dismissed, denied, granted, or remanded), the law judge's order (to be upheld, overturned, or revised in a subsequent proceeding), and the punishment to be imposed (certificate revocation or suspension, for example). Next, a couple of lines giving the names and posts of the NTSB members that took part in this final decision act as closure. The adjacent appositive phrase 'concurred in the above opinion and order' unflinchingly shows there is no dissent, and contributes to project an NTSB image of collegial harmony and consistency.

### 2.3. Exploring paratextual roles

Having described the social scenario and genre moves of NTSB decisions, we may now wonder what interpersonal roles their paratexts may play. What leads NTSB decision writers to sometimes devote half a page to footnotes? Are they the only paratexts? What do they contain? To begin with, footnotes are not the only paratexts in judicial opinions/decisions: there is also a title for the document, centred and partially bolded to highlight the institution to which it belongs. It

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<sup>3</sup> In the decisions on aviation appeals from other countries' courts, internal titles are at times excessively long and hyper-specific. Some resemble newspaper headlines, such as 'The expert report emphasizes the hazards caused to a landing aircraft by bright light' (Citation: R. v. Khorfan, 2011 ABPC 84. In the Court of Queen's Bench of Alberta, Judicial District of Calgary. Docket: 100109263P10101). Others pose intricate questions: 'Was summary judgment correctly refused because there is a genuine issue of material fact requiring a trial?' (Citation: Airco Aircraft Charters Ltd. v. Edmonton Regional Airports Authority, 2010 ABCA 36. In the Court of Queen's Bench of Alberta, Judicial District of Edmonton. Docket: 1003-0226-AC).

appears right below two classifying data: its filing date and its assigned number of order, and goes in front of a left-hand side caption with the name of the case (revealing the surnames of the parties involved in the dispute) and a docket number on the right (example 1). Decisions may also append a copy of the law judge's initial decision and even a transcript of the previous hearing (and other documents as evidence). These appendages are always anticipated in a footnote on the title page (2).

(1) Served: January 9, 2012  
NTSB Order No. EA-5611

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 9<sup>th</sup> day of January, 2012

MICHAEL P. HUERTA,  
Acting Administrator,  
Federal Aviation Administration,  
  
Complainant,  
  
v.  
  
STEPHEN L. TAYLOR,  
Respondent.

Docket SE-19203

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(2) <sup>1</sup>A copy of the law judge's initial decision, an excerpt of the hearing transcript, is attached.

Being rigorous, we should refer to all these paratextual elements (i.e. classifying data, title, caption, docket number, the appended initial decision, the hearing transcript and the extra documents) as peritexts (Mackey, 1987: xviii): they are within the text in question but do not integrate its main body, whereas epitexts (Mackey, 1987: xviii) are extra-textual – they surround it socially. Curiously, the



peritexts of judicial decisions (title, filing data, caption, footnotes and appendages) build on epitexts, because their information comments on, explains, expands on or illustrates the case facts and the procedural history of the case (the previous hearing), its associated law, and the relationship between the parties and their performances at court and outside it.

Being yet more accurate, we should envisage paratexts as groups of heteronomous auxiliary practices rather than as 'places' (Genette, 1987: 12). And properly speaking, Genette (1987: 343) asserts, the paratext 'does not exist', although the importance of its location in the text is undeniable. In this sense, the page division made by the NTSB in its judicial decisions to host footnotes suggests an aside from the narrative path and room for dialogue and guidance, sometimes bigger than the text itself. This metadiscursive quality of the footnote is a powerful reason to consider it a multifunctional engagement device. It is a macro-aside planned by the writer to offer a digressing break, gloss content and guide through interpretation and reasoning to reach an egalitarian situation of shared knowledge. To this end, its bottom-page location readily functions as a stance marker of importance discriminating between central and peripheral information that should stay marginal. Besides, it is inherently directive, as we readers are transported to the footnote by means of an in-text callout/superscript, and once there we may in turn encounter other explicit directives such as 'see' or 'cf.', endophorics of the type 'In Table 1/the Appendix', 'The graph shows...', or crossed-references to other footnotes. Another capital nuance we should not forget is that, by definition, a paratext is such only if there is some authorial responsibility behind it (Genette, 1987: 9) to carry an intended illocutionary force. NTSB writers carefully devise footnotes to persuade readers of the NTSB's rightfulness and, through its didacticism, raise their commitment to the law, while building an institutional or corporate ethos representative of the whole nation.

Predictably, then, NTSB footnotes will nurture the authority narrative and make it accessible by democratizing legal knowledge and thus reduce asymmetries within their mixed readership, be they related to the narrative of facts or to the law of the case and its procedural mechanics.

### 3. METHODOLOGY

To find out how footnotes work as engagement devices helping articulate the three conjoined narratives of NTSB decisions, I compiled an electronic corpus (totaling 46,870 tokens) of the 34 judgments issued by the Board during 2012 and published online in its website. I scrutinized all samples manually and with the aid of the concordance program *AntConc 3.2.1w* (Anthony, 2007), attending to their number of footnotes, to whether they include citations and of what type, to citation functions, and to the most habitual reporting structures and 'presences' (individual

and collective alike) recreating the epitext. The metadiscoursal items mentioned have been drawn from Hyland's (2005a, 2005b) taxonomies.

I sorted out citations using Swales' (1990) division into 'integral' (subject/non-subject/noun phrase) and 'non-integral' for surface form, as well as Hyland's (2004) classification into (brief) quote and block quote, and his triad of process acts, which I apply to reporting structures: 'discourse', 'cognition', and 'research' acts. As to citation functions, I resorted to the categories 'factive'/'non-factive'/'counterfactive' (Hyland, 2004) for evaluative roles, and elaborated a list of ideational functions by blending findings from different studies: 'generality' and 'summary' (Hyland, 2004), 'detail' (Shaw, 1992), subtopics (Malcolm, 1987), and gloss (through my own observation of the NTSB's citing behavior in the corpus). I also paid attention to the existence of directives, which enhance the dialogic nature of paratextual citation and have not been contemplated in previous research.

My working hypothesis was that footnotes, and specifically those containing citations, will increase with contestation, so I expected to find more in appeals denied and granted, given their greater likelihood to generate face-threatening acts than dismissed and remanded petitions and, therefore, their stronger need for explanation and justification. Granted appeals invalidate a previous decision taken by a law judge, which somehow implies defying the authority and experience of a law expert.

#### 4. FINDINGS

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A first approach to the corpus (see Table 1) shows that footnotes in general and citations in particular are more numerous in those documents verbalizing disagreement, a rejection, or a negative evaluation of any of the actors' behaviors or opinions (i.e. the appellant's or the law judge's in remanded, granted and denied petitions). This fact corroborates the working hypothesis and indicates that NTSB's citations, which are found in most footnotes (cf. the low amount of non-citing footnotes in Table 7), seem then to work concurrently as devices of *normative/conventional* and *strategic politeness* (Bravo, 2001). On the one hand, *normative politeness* dictates a 'disciplinary' or 'ritualized' use of references, established by the community of practice: as in academic writing, legal citations mark a double stance (Hyland, 2004) because they position the author as to the ideational content and the interpersonal distance with his/her audience. The ideational positioning is accomplished by delimiting the field of expertise and/or signalling a knowledge gap; by crafting, in sum, a disciplinary 'intertext'. The interpersonal positioning is achieved by persuading of the argument being unfolded, displaying collegial allegiance (through shared knowledge), authority (through new knowledge), and guidance (through basic and glossing references), all of which contribute to building a professional ethos. On the other hand, *strategic politeness* preserves the face of the interlocutors: suffice it to think that

dismissals and rejections would be more abrupt and even less efficacious messages without citing the legal sources that cause, encourage or explain them. Legal citations, in consequence, can mitigate conflict or, more accurately, they preempt face-threatening acts.

TYPE OF DECISION	DOCUMENTS WITH FOOTNOTES	FOOTNOTES	FOOTNOTES PER DOCUMENT	CITATIONS	CITATIONS PER DOCUMENT
Dismissed (17)	9 (53%)	14	0.8	13	0.8
Remanded (2)	2 (100%)	25	12.5	31	15.5
Granted (4)	3 (75%)	39	9.7	56	14
Denied (11)	11 (100%)	205	18.6	310	28.1

Table 1. Overview of the NTSB corpus footnotes (raw counts and %)

As can be seen in Table 1, NTSB citations outnumber footnotes (with the exception of dismissed appeals, where their respective counts are very close). This profusion suggests that the functionality of NTSB citations may transcend reference (to laws, rules and former proceedings) and affect discourse in ways other than providing background and detail. Actually, of the 11 citation functions listed by Harwood (2009), NTSB citations perform six: *signposting* (to interest and instruct less informed readers and keep the argument on track saving space), *ethos-building*, *support of controversial claims*, *display of competence*, and *topical currency* (that is, the writer’s concern about the ‘state-of-the-art’ in his/her field), and *positioning* (the writer’s explication of his/her own position, optionally tracing the evolution of the discipline by citing the contributions of others). Another obvious finding is that the denial verdict arouses the highest number of footnotes and citations, perhaps because it is more definitive and hence more face-threatening than questioning the decision of a legal authority in a remand, in principle open to the confirmation of the initial judgment. It is difficult, though, to quantify the face threat of denials and remands in comparison with granted appeals which rank third in the number of footnotes and citations per document while they would be expected to lead the count owing to their outright challenge to authority.

Legal and academic citations alike mediate between the writer and the community, and their motivations are complex and diverse (Harwood, 2009; Hewings, Lillis, & Vladimirov, 2010; Swales, 2014), but differ in some aspects, one of them being their very nature. The first big difference is that legal citations are *actorial* rather than *authorial*, since cases are named by mentioning the parties in the dispute (example 3) instead of the judge or authority making the final decision – therefore, they ‘camouflage’ authorship. This camouflage of agency is reinforced

by the frequent impersonal phrasing of legal footnotes, non-citations included (example 4, summarizing a previous proceeding):

(3) <sup>20</sup> See, e.g. Administrator v. Brasher, 5NTSB 2116 (1987). (NTSB Order No. EA-5615, p.18)

(4) <sup>2</sup> The Acting Administrator's motion to dismiss was granted without prejudice. (NTSB Order No. EA-5621, p.2)

Agency emerges in 'integral' citation constructions (Swales, 1990), i.e. in those citations which are constituents of the reporting sentence, either as subjects, objects, or adverbials. As subjects (labelled 'S' in Table 2), citations consist of laws, rules and regulations prohibiting, restricting or providing (example 5), or may be passive subjects undergoing modifications, rectifications and implementations (example 6). As non-subjects (NS), citations reflect the actions of the actors involved in the case (e.g. respondent, judge, Administrator) (example 7a) or the legal framework sustaining the interpretation of facts (example 7b). Bolds are mine in all instances.

(5) <sup>2</sup>**Section 91.13(a) prohibits** careless or reckless aircraft operations so as to endanger the life or property of another. (NTSB Order No. EA-5625, p.2)

(6) <sup>11</sup>**Appendix I, section III of title 14, Code of Federal Regulations, was recodified** without substantive change at §120.105. (...) (NTSB Order No. EA-5615, p.10)

(7) a) <sup>12</sup> Tr. 145. **Inspector Schafer cited 49 C.F.R. part 43, appendix D**, for the inspection checklist applicable to both 100-hour and annual inspections. (...) (NTSB Order No. EA-5641, p.5)

b) <sup>5</sup> This amended order withdrew an allegation that respondent failed to appear for testing within a reasonable time after receiving notification of the test **under 49C.F.R. §40.191 (a) (1)**. (NTSB Order No. EA-5615, p.6)

We can observe that granted and remanded appeals, which question the former decision of a law judge, yield higher proportions of integral subject citations. This result is not surprising, since the face threat they incur is hedged by transferring agency to the law of the case. As sentence subjects, citations 'prohibit', 'state', or 'provide', arguing for a revision or an overturn of the previous verdict. Non-subject integral citations are more evenly distributed because they may follow an imperative illustrating, giving details or guiding the reader (e.g. 'See...'), and can be cited by the judge, the respondent, the Administrator, the witnesses, and other documents in any appeal developing an argument (whether for remand, granting,

or denial). Some non-subject integral citations may be part of a noun phrase (NP in Table 2), but this is extremely infrequent in the present legal context. Unlike in academic prose, in NTSB appeals noun-phrase integral citations do not appear after a possessive adjective or a genitive case (e.g. of the type ‘Watson and Crick’s DNA helix’), but as noun qualifiers (example 8, my emphasis):

- (8) <sup>14</sup> (...) Since **the § 91.13(a) violation** was charged as a residual violation, the Administrator properly did not seek to compound the sanction. (NTSB Order No. EA-5619, p.12)

The reasons behind the even distribution of non-subject integral citations in the three argumentative appeals also explain that their trend for non-integral citations does not diverge very much among them either. Yet dismissals, shorter and non-argumentative, resort massively to a telegraphic variant (example 9) that mentions only the legal source and its textual location (i.e. law, rule or case, section and subsection, paragraph, page, and year).

- (9) <sup>149</sup> C.F.R. § 821.48 8(a). (NTSB Order No. EA-5644)

It must be noted that all paratextual notes are by definition non-integral, as they are apart from the sentences that make the narrative and argumentative ‘thread’ of the body of text. Consequently, what I have here called ‘integral citations’ is to be understood as ‘*integral among the non-integral*’. But regardless of their syntactic structure, as shown in Table 2, citations in NTSB appeals may quote content in direct speech: norms from legal excerpts and hearing transcripts. Depending on their extension, these quotations may be arranged in block style (often transcripts) or take up a couple of sentences between inverted commas (examples 10 and 11). Granted appeals make use of both block and brief quotes (see Table 2) as mitigating devices (and in the same proportion) to add detail, vividness, emphasis and credibility. We may compare the force of (11) with the neutrality of its paraphrased version in (5).

- (10) <sup>21</sup> In his brief, respondent asserts “here is what [r]espondent would have seen.” Appeal Br. At 9. (NTSB Order No. EA-5611, p.9)

- (11) <sup>4</sup> Section 91.13(a) provides, “No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property or another.” (NTSB Order No. EA-5635, p. 2)

Detail is not only provided through quotations but also by means of directives, whose frequencies are shown in Table 3. ‘See’ is the verb used in every case except in one, where the Latin abbreviation ‘cf.’ urges the reader to compare references.

CITATIONS						
TYPE OF DECISION	INTEGRAL (S)	INTEGRAL (NS)	INTEGRAL (NP)	NON INTEGRAL	BLOCK QUOTES	BRIEF QUOTES
Dismissed	—	—	—	13 (100%)	1 (7.7%)	2 (15.4%)
Remanded	7 (22.6%)	10 (32.2%)	—	14 (45.1%)	1 (3.2%)	3 (9.7%)
Granted	7 (12.5%)	24 (42.8%)	—	25 (44.6%)	6 (10.7%)	6 (10.7%)
Denied	20 (6.4%)	143 (46.1%)	1 (0.3%)	146 (47%)	14 (4.5%)	21 (6.8%)

Table 2. Surface form of citations (raw counts and %)

These unmitigated imperatives might be functioning as attention getters or ‘source beacons’ (the NTSB, besides, does underline them), and as intentional imprints of authority, given that referencing could be done perfectly well without them. Directive pairs (‘See’ + ‘see also’) are relatively abundant to divide dense referencing into two and thus facilitate information processing, and raise an expectation for further or striking details (12, boldface mine):

- (12) <sup>10</sup> **See** 5 U.S.C. § 706(2)(A); 49 U.S.C. § 46110(c); Garvey v. NTSB, 190F.3d 571, 577 (D.C. Cir. 1999). **See also** Casino Airlines, Inc. v. NTSB (...) (NTSB Order No. EA-5615, p.9)

TYPE OF DECISION	DIRECTIVES	DIRECTIVES PER DOCUMENT
Dismissed	2	0.1
Remanded	4	2
Granted	11	2.7
Denied	53	4.8

Table 3. Distribution of directives

A second difference between academic and legal citations is that the latter are less prone than academic ones to bear an *occluded relationship* with their referent (Pecorari, 2006). In academic writing it is not always easy to know whether citations are introduced out of mimesis or trendy fads in ‘name dropping’, whether

the writer has thoroughly read the source (or read it at all), and how much accuracy and writer subjectivity is in a paraphrased/summarized citation. Legal citations point to very specific references and contingencies to establish parallels between previous cases and the present decision, so the reasons for citing in law are always powerfully pertinent to the exposition of the argument and demand sound knowledge of the source cited.

REPORTING STRUCTURES (106)			
TYPE OF DECISION	DISCOURSE (85.1%)	COGNITION (8.4%)	RESEARCH (6.5%)
Dismissed	0.04 (2) (1.9%)	—	—
Remanded	0.23 (11) (10.4%)	—	0.04 (2) (1.9%)
Granted	0.38 (18) (16.9%)	0.10 (5) (4.7%)	0.02 (1) (0.9%)
Denied	1.25 (59) (55.9%)	0.08 (4) (3.7%)	0.08 (4) (3.7%)

Table 4. Types of acts in reporting structures (per 1000 tokens, raw counts, and %)

With regard to citation structures (Table 4), the incidence of reporting verbs of cognition (e.g. ‘consider’, ‘conclude’, ‘acknowledge’) and research (e.g. ‘show’, ‘find’, ‘determine’, ‘prove’) is minimal compared to that of discursive verbs (e.g. ‘discuss’, ‘assert’, ‘argue’, ‘state’, ‘respond’, etc.). As has already happened with other interpersonal resources, reporting structures cluster in the argumentative appeals and are extensively employed in denials, with a predominance of the verbs ‘state’, ‘provide’, ‘cite’, ‘assert’, ‘testify’ and ‘tell’.

Another predictable trend is the higher percentage of evaluation in argumentative appeals, especially of counter-factivity or negative criticism questioning the validity or truth of the source cited. Logically, this feature is salient in granted appeals, as revealed by Table 5 showing that most other citations are neutral, non-factive references which neither support nor reject the information reported or its source.

CITATIONS			
TYPE OF DECISION	FACTIVE	COUNTER FACTIVE	NON-FACTIVE
Dismissed	—	—	13 (100%)
Remanded	—	7 (22.6%)	24 (77.4%)
Granted	1 (1.8%)	32 (57.1%)	23 (41%)
Denied	13 (4.2%)	9 (2.9%)	288 (92.9%)

Table 5. Evaluative function of citations (raw counts and %)

Factivity is one more distinguishing trait between legal and academic citation: its expression tends to be *discontinuous* in legal documents – with the loaded evaluative verbs (e.g. ‘[do not] fail to’, ‘[do not] misinterpret’, etc.) in the in-text and the supporting citation in the paratext, often in block style (example 13), whereas in the academia evaluation is encoded in the citation itself (e.g. ‘As Smith [2014] rightly states...’, ‘Smith [2014] fails to establish...’). Self-citation/quotation is factive *per se*, but not detrimental to the writer’s credibility or taken as opportunistic or overtly promotional as in academic prose. Rather, it is a signal of coherence and consistency of criteria (example 14, my bolds).

(13) INTEXT

In reaching these conclusions, the law judge made credibility determinations unfavorable to respondent, even though respondent did not testify.<sup>7</sup>

PARATEXT

<sup>7</sup>The law judge stated,

“I attach more significance to the statements contained in respondent’s July 6, 2010 statement] than to the subsequent statement that he made and is attached to the response, that statement made on October 31<sup>st</sup> of this year. (...)”

(NTSB Order No. EA-56-38, p.4)



- (14) INTEXT  
Since the record before us fails to contain the very document the Administrator alleges respondent falsified, we will not affirm the Administrator's order. (...)<sup>6</sup>

PARATEXT

See 49 C.F.R. §821.38; see also, e.g. Administrator v. Creighton, NTSB Order No. EA-5561 at 22 (2010); (...). **We historically have recognized our practice of refraining from strict adherence to the Federal Rules of Evidence to be beneficial to the parties: "Questions regarding the admissibility of evidence are considered in the light of what is necessary to achieve a fair and just result for the parties, without slavish adherence to the intricate and often cumbersome rules of jury trial evidence. (...)"**  
**Administrator v. Donart, 2 NTSB 1, 2-3 (1973) (...)**

So far we have examined the overall frequencies, surface forms, reporting structures and directive and evaluative power in the citations of NTSB aviation-case appeals. A last prominent feature is their ideational function (Table 6), in which all the foregoing characteristics are enmeshed. Swales (2014) has underlined the difficulty in discriminating citation functions, which frequently overlap. With this caveat in mind, I have oriented my count to what I perceived to be the predominant function of each citation. Again, details and summaries of previous proceedings are mostly used in argumentative documents (example 15), while citations of general rules and norms are overwhelmingly present in dismissals, as they suffice to justify the decision without arguing. Very few citations serve to introduce a subtopic, and a negligible proportion clarify and explain concepts or actions (i.e. gloss content).

- (15) <sup>22</sup> We issued Dillmon in response to a remand from the Court of Appeals for the D.C. Circuit. Dillmon v. NTSB, 588 F.3d 1085, 1094 (D.C. Cir. 2009). (NTSB Order No. EA-5641, p.8)

CITATIONS					
TYPE OF DECISION	GENERALITY	DETAIL	SUMMARY	SUBTOPIC	GLOSS
Dismissed	11 (84.6%)	2 (15.4%)	—	—	—
Remanded	15 (48.4%)	7 (22.6%)	9 (29%)	—	—
Granted	10 (17.8%)	37 (66%)	5 (8.9%)	4 (7.1%)	—
Denied	47 (15.2%)	177 (57%)	63 (20.3%)	20 (6.4%)	3 (1%)

Table 6. Ideational function of citations (raw counts and %)

The same pattern (i.e. a concentration of devices and functions in argumentative appeals) may be noticed with non-citing footnotes (Table 7), where glosses rise considerably (example 16) and even a dismissal summarizes the bureaucratic process, something unusual to find because of its highly formalized routine and its lack of prolonged argument (example 17).

- (16) <sup>3</sup>An uncontrolled airport is one without a control tower or air traffic control (ATC) unit. Thus, the pilots are responsible for safe aircraft movement around the airport. (NTSB Order No. EA-5625, p. 2)
- (17) <sup>2</sup>The Acting Administrator’s motion was granted without prejudice. (NTSB Order No. EA-5621, p. 2)

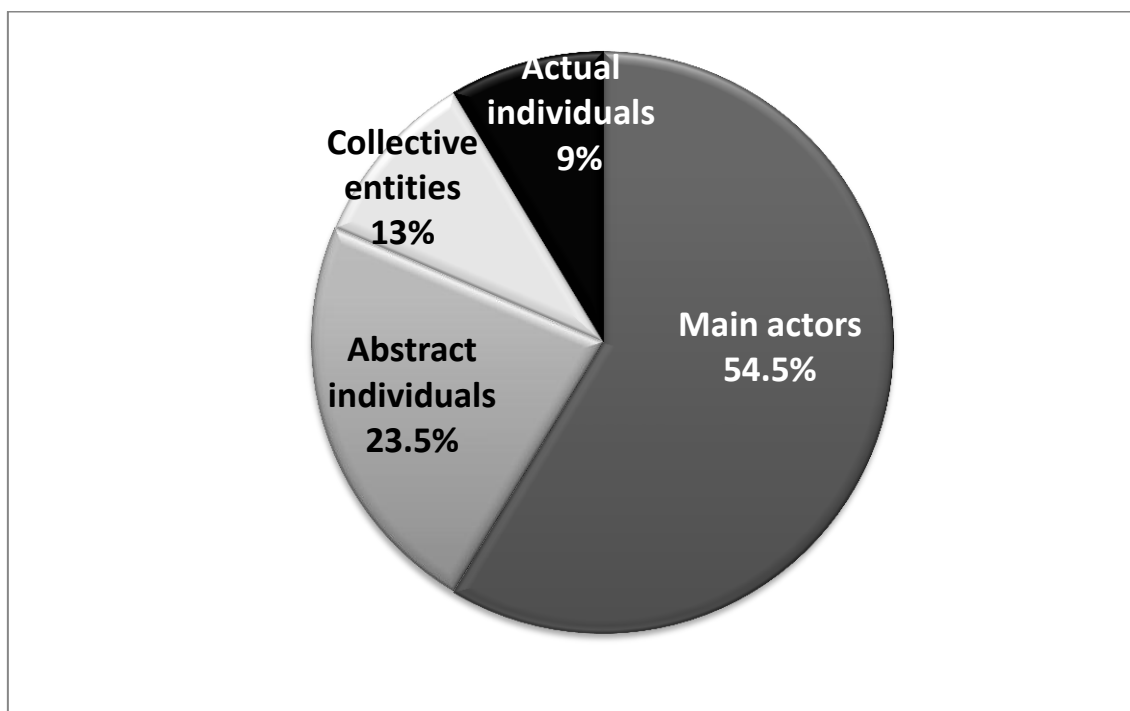
Non-citations may advance the attachment of hearing transcripts and other texts, such as medical certificates, to the document (example 2), or function as endophorics, sending the reader to other footnotes that complete the reference (example 18). This is more frequent in denials and granted appeals, where various sub-arguments, with their respective interrelated citation back-ups, may converge.

- (18) <sup>15</sup>See footnote 13, *supra*. (NTSB order No. EA-5638, p. 7)

NON-CITATIONS (48)				
TYPE OF DECISION	CONTENT ANTICIPATION	ENDOPHORIC REFERENCE	SUMMARY	GLOSS
Dismissed	—	—	1 (2%)	—
Remanded	2 (4.2%)	—	2 (4.2%)	1 (2%)
Granted	3 (6.2%)	1 (2%)	3 (6.2%)	1 (2%)
Denied	10 (20.8%)	6 (12.5%)	12 (25%)	6 (12.5%)

**Table 7.** Functions of non-citing footnotes (raw counts and %)

This study opened with the claim that NTSB paratexts in aviation-case appeals are *convergence sites* for experts and lay readers, who across the fact, law and authority narratives of the case can access information quickly and efficiently thanks to the ideology of institutional transparency underlying the FOIA and branding the NTSB as a democratic, all-American organism. Its paratexts are nonetheless plural in a literal sense, because they merge the voices of different communities of practice (Wenger, 1998), represented in Figure 1.



**Figure 1.** Paratextual voices in NTSB aviation-case appeals

More than half of the NTSB paratextual presences correspond to the case's main actors: the writers (visible through the plural pronouns 'we/our')<sup>4</sup>, the appellant, the Administrator, the law judge, the Board, and the disputing parties. The next largest presence is that of 'abstract individuals' (e.g. a/the respondent/applicant, certificate holders, pilots, flight/ground instructors, airmen, a/any/no person, etc.), mentioned to remind them of their duties, obligations, rights, and ways to proceed during the appeal. It is followed by collective entities directly or indirectly involved in the case: the FAA, the DOT, the NASA, the Court, The Congress, the Government, the General Counsel, etc. With the smallest percentage, actual individuals mentioned by their surnames and positions (e.g. FAA investigators and inspectors, witnesses, the respondent's lawyer, forensic specialists and company owners) join this heteroglossic chorus.

## 5. CONCLUDING COMMENTS

We have seen that footnotes may become productive interpersonal and textual resources beyond their customary referential role. Those contrived by the NTSB in its aviation-case appeals are *trans-narrative subjectivity markers* whose *strategic*

<sup>4</sup> Although verdicts are reached by several Board members in consensus, the writer is one, so pronominal self-references in the first-person plural might be taken as instances of 'majestic plural'.

*use* depends on the pragmatic function or overall attitude expressed by the document (i.e. dubiousness towards a verdict, agreement, or disagreement with the law judge or the petitioner), the medium, and the communicative situation. Online dissemination, for example, permits the inclusion of whole texts with attached files of previous proceedings and extra documents, and the situational context, which fuses the cultural and legal frameworks of American democracy and the FOIA, paratextually alters the disciplinary genre conventions of the judicial decision to meet their ideals.

We have also seen that argumentative appeals (especially if they can perform face-threatening acts such as challenge or rejection) use footnotes in a larger measure to preserve the face of judges and claimants, and that the majority of those footnotes contain citations, always non-authorial and in the main non-integral, non-factive, and reporting information with verbs of discourse like 'state' or 'discuss'. Furthermore, we have reviewed the most significant differences between academic and legal citation; namely, agency visibility, the proportion of noun-phrase forms and directives, the more or less occluded relationship with the cited content, their (dis)continuous factivity, and the effects of self-citation. And last but not least, we have looked at the *multifunctional*, *multivocal*, and *promotional nature* of NTSB footnotes, whose versatility and interpersonal dimension lead us to hold a fresher conception of paratexts and envision their incorporation to the current taxonomies of engagement devices.

Taken all together, these findings shed light on the *transition* and *transaction* features alluded by Genette (1987) in his definition of paratextual spaces. In the context-sensitive approach of this study, on a highly-specialized and reader-oriented type of document, NTSB footnotes point up that paratexts may not only mediate between the in-text and the off-text within the same one interaction (i.e. between ideational and typographical centers and peripheries) but also between expert and lay audiences, both engaged in it and outside it, and between the different interactions that compose the social projection of an institution, corporation or organism such as the NTSB. The intertext built by its footnotes – explaining, glossing and foregrounding certain procedures and legal cases – is recurrently employed by the Board in its judgments and turned into a distinctive stamp of authority and transparency to back up future actions. It might as well be followed and imitated by other world transportation agencies and courts, which would expand its area of influence. Thus, to the question 'where do paratextual transitions lead to?' the answer is *across and beyond the text* (to the 'epitext'). And what is exactly transacted? Knowledge, of course, is always negotiated to improve reception, but through it the NTSB strategically *transacts with images* in its footnotes, by saving its readership's expert and lay faces and branding itself institutionally.

In view of this interpretation, a pair of mutually related questions inescapably arises: If some paratexts can be so influential, should all of them be lumped into the category of 'fringe, liminar textual accessories'? Certainly not. And

what can paratextual analysis contribute to the ESP classroom? Discerning pragmatically- and socially-impacting paratexts (e.g. footnotes or endnotes) from merely informative ones across genres, disciplines and national cultures (this third aspect embracing political and legal constraints) may illuminate how a given community of practice engages in multiple communicative situations and with dissimilar audiences, along continua of specificity and interpersonality, or why and how the behaviour of separate communities of practice may diverge or converge. What is being glossed or added and for whom? Under what circumstances and ideologies? How much margin is there left to genre users for reader/listener considerateness? Where is the boundary between expert communication and popularization? What quota of tacit and explicit knowledge defines each, in these times of globalization, multidisciplinary and extreme informativeness? These further questions may arouse students' curiosity about their future professional community and others, lead to fruitful hands-on examinations of authentic materials, and to small-scale ethnographic and discourse-based research within their own educational centers and other workplaces. But, most importantly, they may infuse the class with sensitivity towards lay audiences and with a sense of professional community in the making.

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**Text samples:**

Citation: Airco Aircraft Charters Ltd. v. Edmonton Regional Airports Authority, 2010 ABCA 36. In the Court of Queen's Bench of Alberta, Judicial District of Edmonton. Docket: 1003-0226-AC.

Citation: R. v. Khorfan, 2011 ABPC 84. In the Court of Queen's Bench of Alberta, Judicial District of Calgary. Docket: 100109263P10101.

NTSB Case Decisions Database. [http://www.nts.gov/legal/o\\_n\\_o/query.aspx](http://www.nts.gov/legal/o_n_o/query.aspx)

NTSB Website. <http://www.nts.gov/>

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