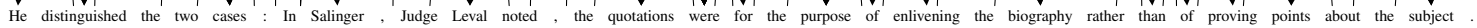
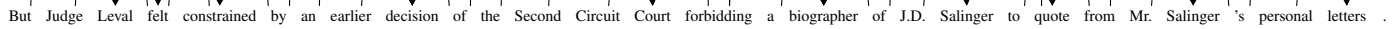
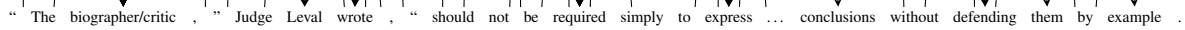
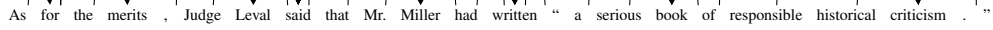
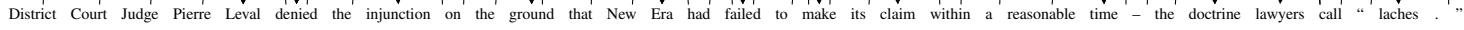
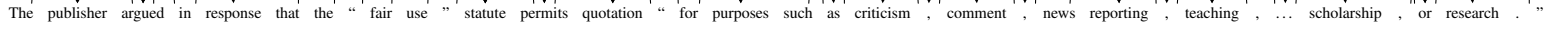
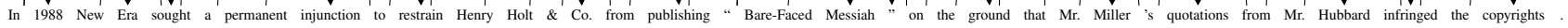
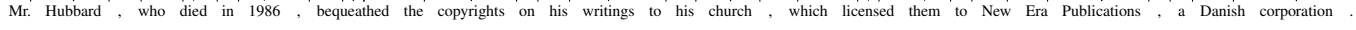
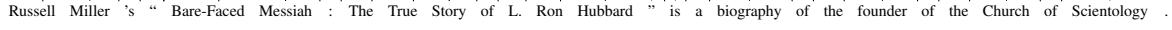
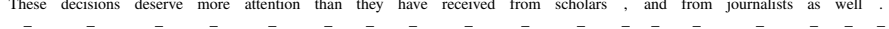


[20944002]



[20944014]

Still the Salinger decision created a strong presumption against fair use of unpublished materials .

[20944016]

But the proper remedy . Judge Leval said , lay in a suit for damages , not in an injunction .

[20944017]

The case went on appeal to the Second Circuit .

[20944020]

Had the suit been filed in time , they said , " Bare-Faced Messiah " would have been suppressed .

[20944021]

This was too much for James Oakes , the court 's chief judge .

[20944022]

In a powerful separate opinion , Judge Oakes further distinguished the Salinger case by pointing out that a living person , like Mr. Salinger , had privacy rights that did not apply to a dead man , like Mr. Hubbard .

[20944023]

" I thought that Salinger might by being taken in another factual context come back to haunt us .

[20944024]

This case realizes that concern . "

[20944025]

Decisions by the Second Circuit itself , Judge Oakes continued , had recognized that public interest in the subject matter and the indispensability in particular cases of verbatim quotations are vital components of fair use .

[20944026]

And the injunction Judges Miner and Altimari would so readily have granted had New Era sued in time ?

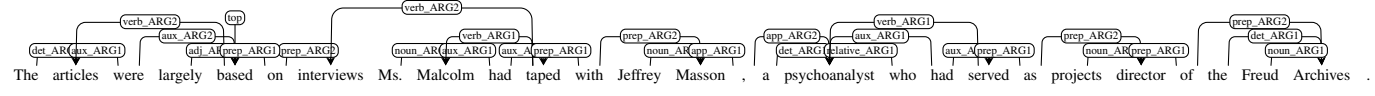
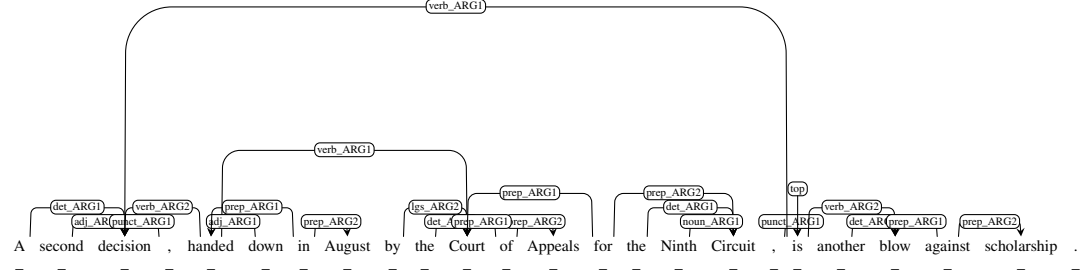
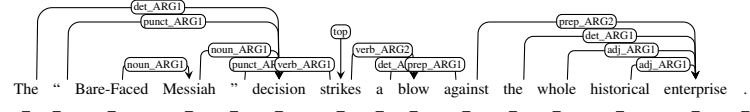
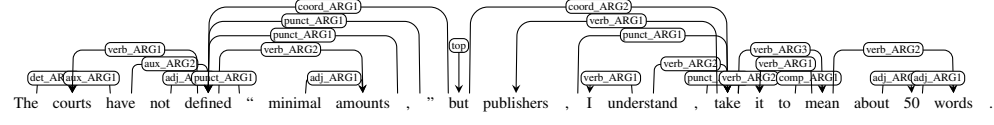
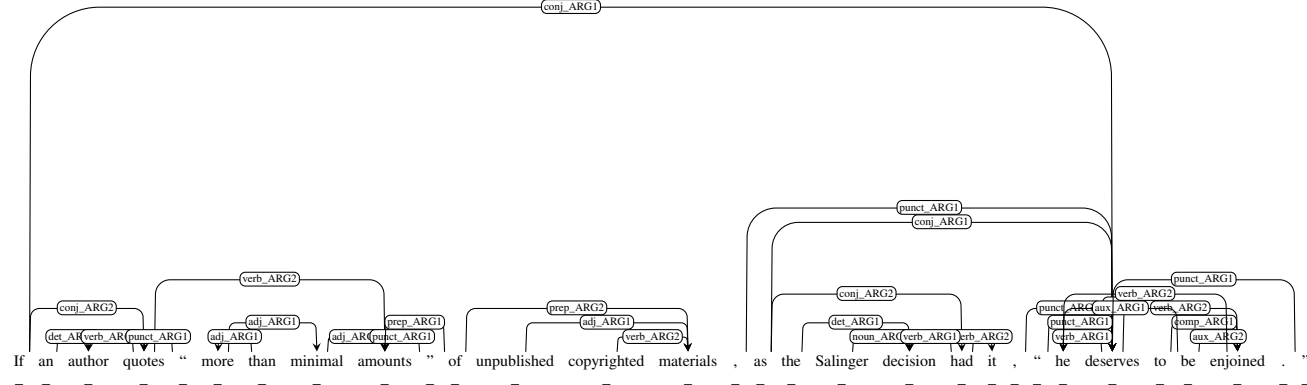
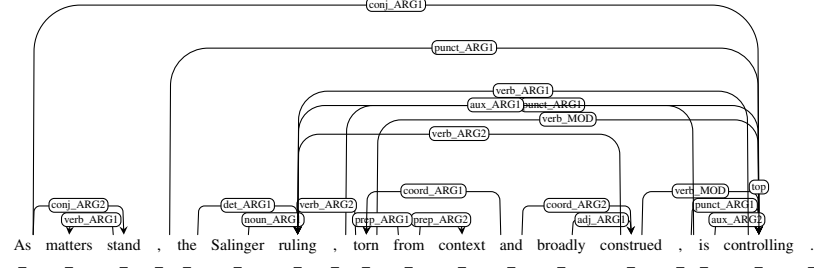
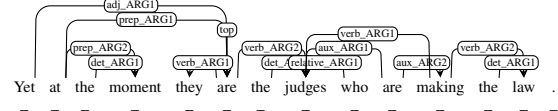
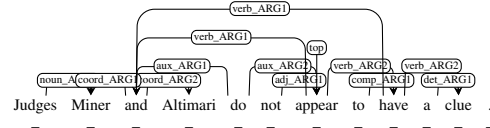
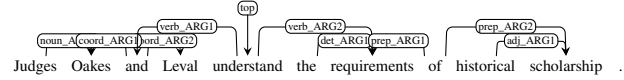
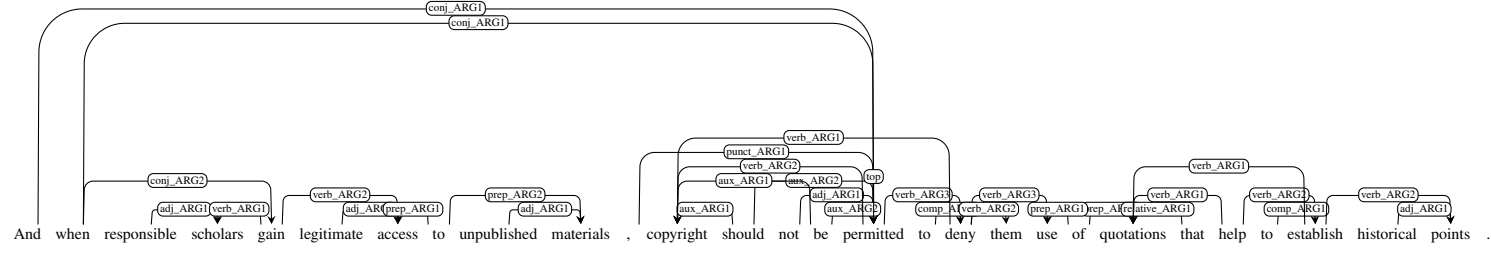
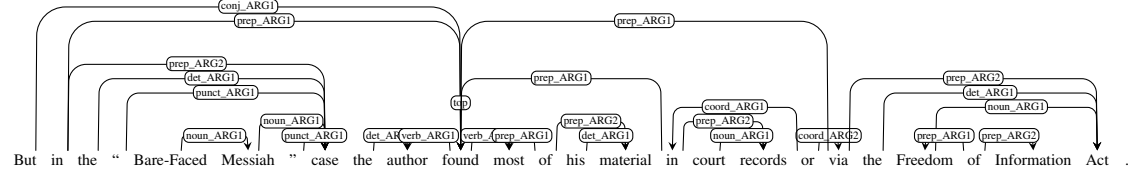
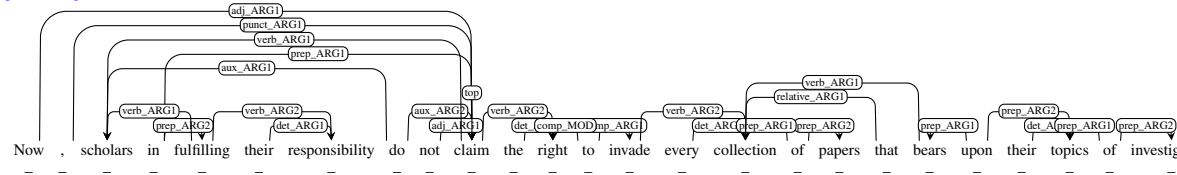
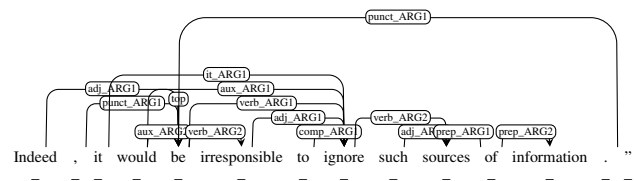
[20944027]

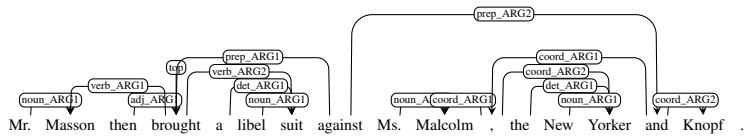
Suppression of the book , Judge Oakes observed , would operate as a prior restraint and thus involve the First Amendment .

[20944028]

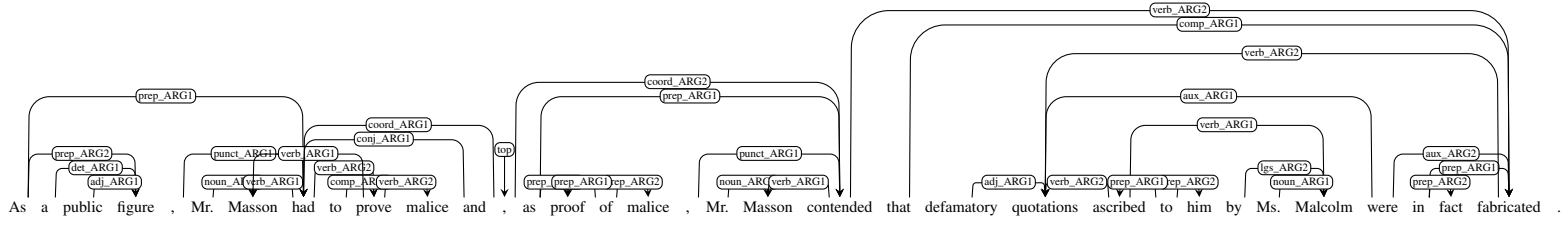
Moreover , and here Judge Oakes went to the heart of the question , " Responsible biographers and historians constantly use primary sources , letters , diaries , and memoranda .

[20944029]

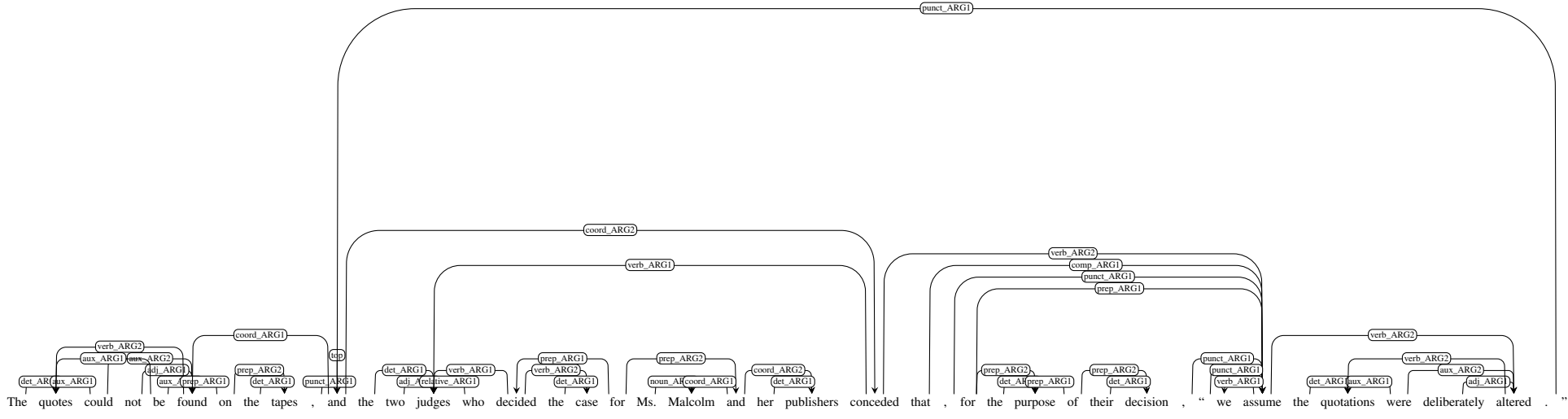




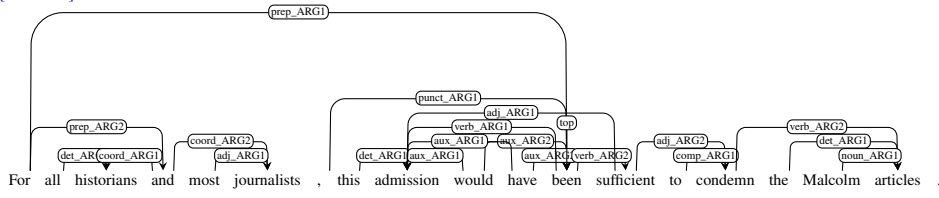
[20944045]



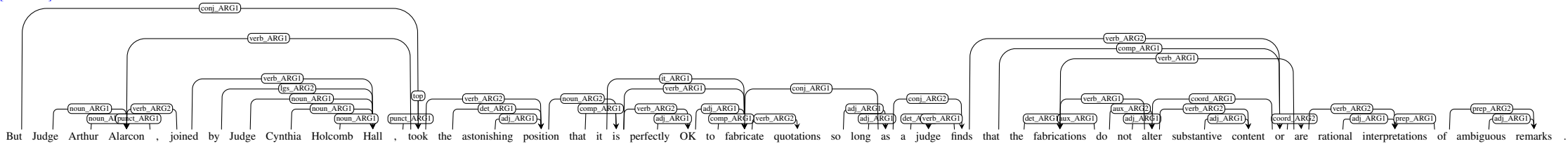
[20944046]



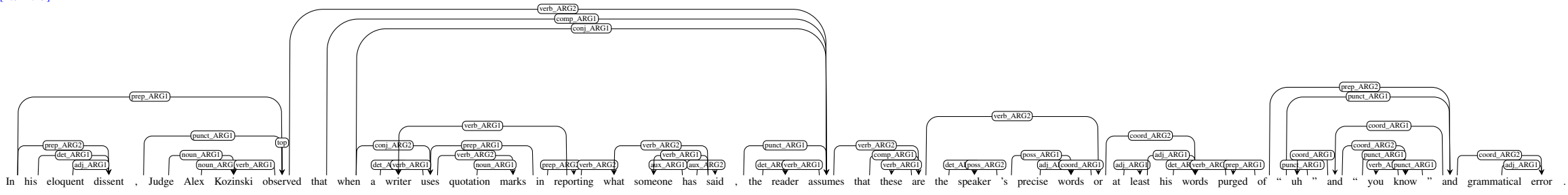
[20944047]



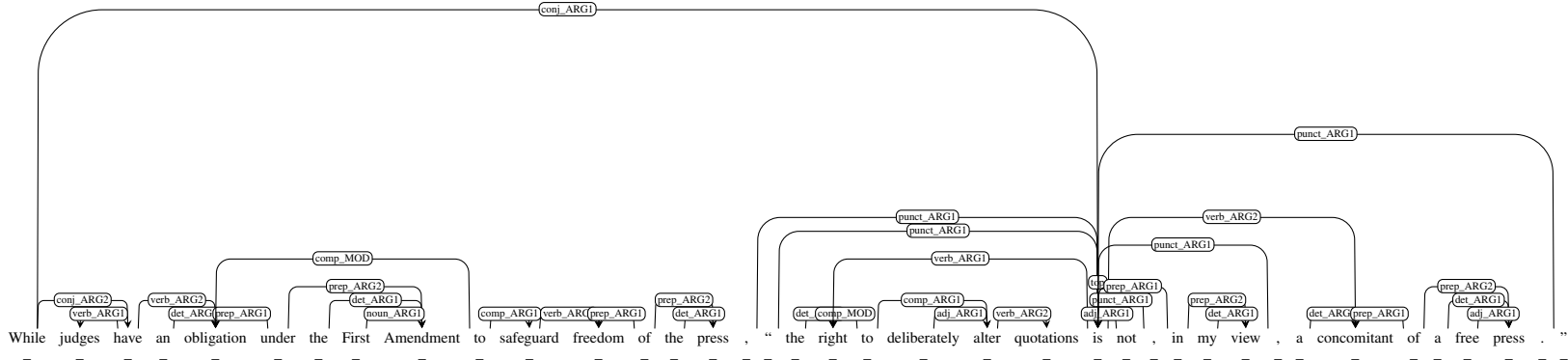
[20944048]



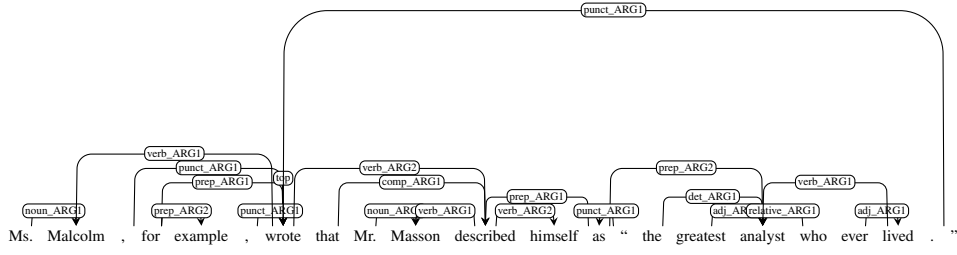
[20944049]



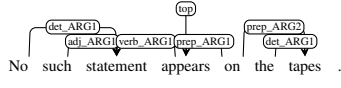
[20944050]



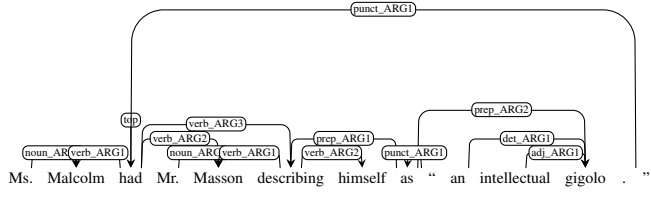
[20944051]



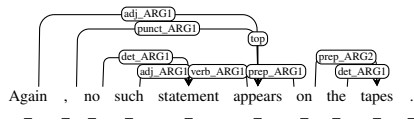
[20944052]



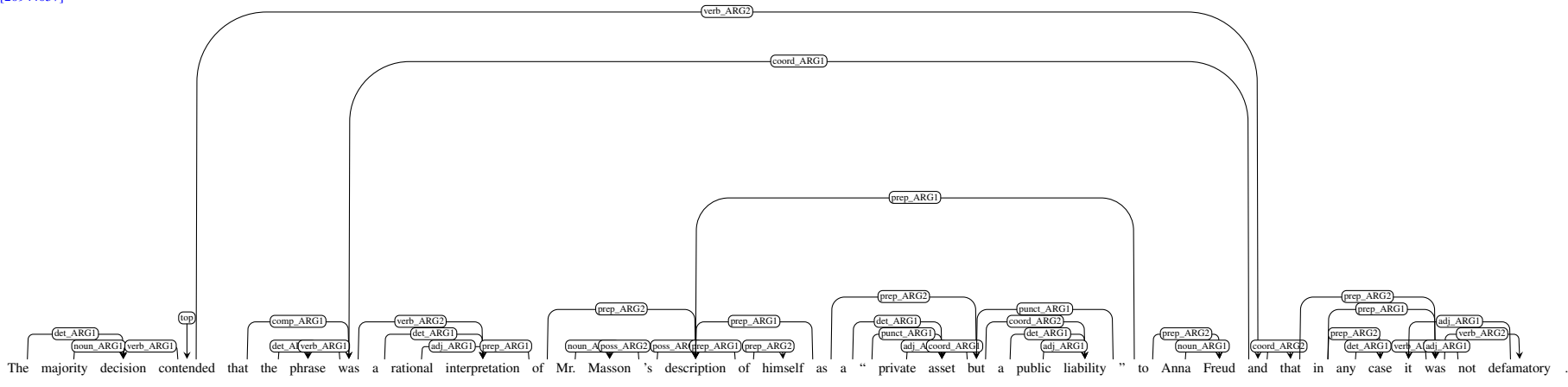
[20944055]



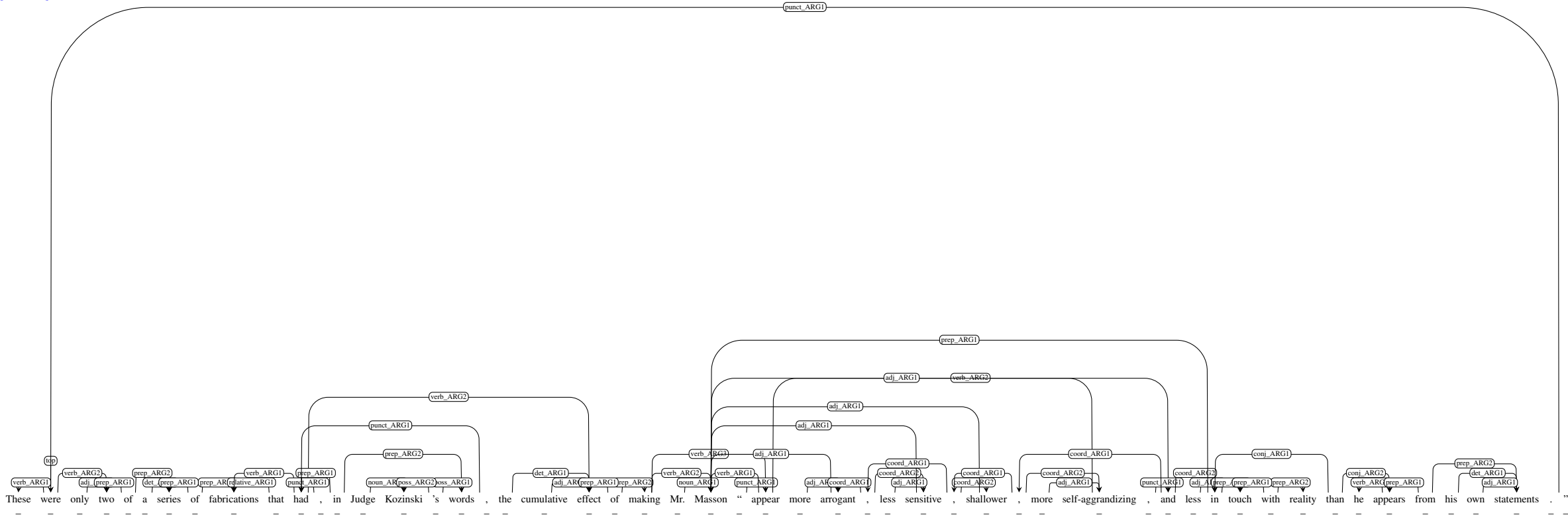
[20944056]



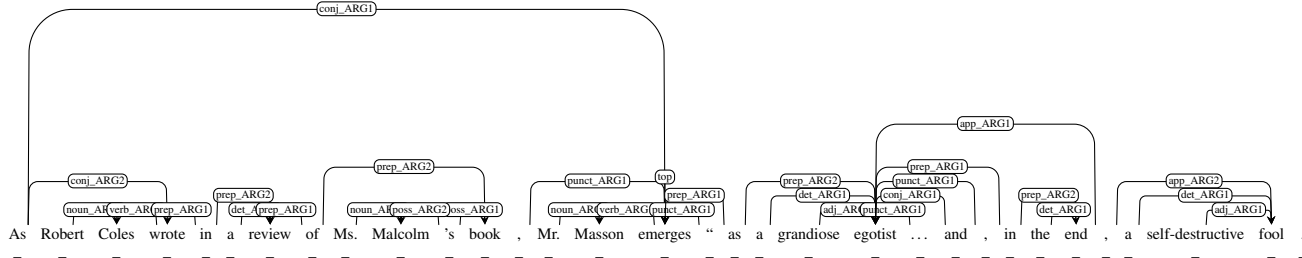
[20944057]



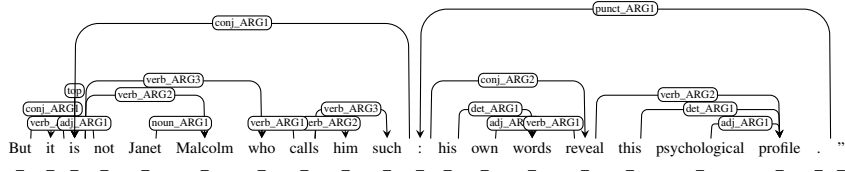
[20944059]



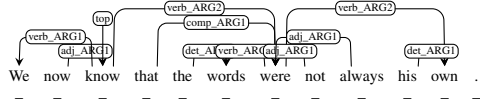
[20944060]



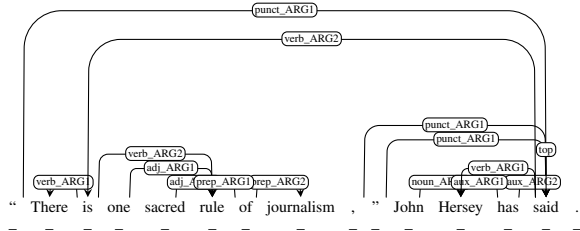
[20944061]



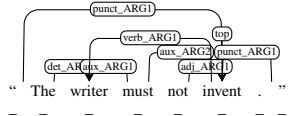
[20944062]



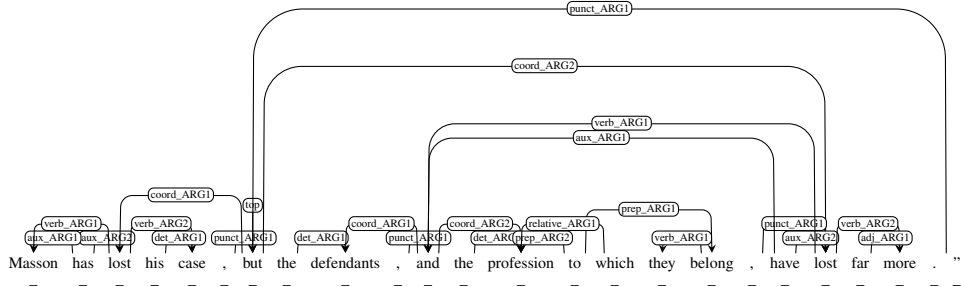
[20944063]



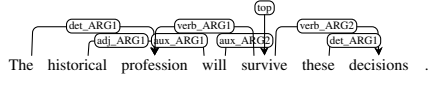
[20944064]



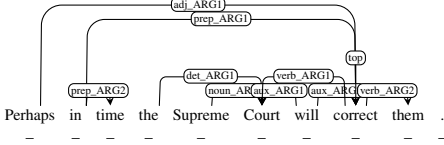
[20944067]



[20944068]



[20944069]



[20944070]

