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'Dr Shipman told you that…' The organising and synthesising power of quotation in judicial summing-up.

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Abstract

Judicial summing-up discourse is explored using a computer-assisted discourse studies approach (CADS) to investigate meaning in patterns of referring to and quoting the defendant. A small specialized corpus of 294,000 words, which forms the eleven days of summing-up in the Dr Harold Shipman murder trial, is created and used. Analysis focuses on the pragmatic effects of the metadiscursive and sensory verbs, REFER, REMIND, SUMMARISE, LOOK, READ, and the most frequent and 'key' reporting verbs *told* and *said*. Results show how the judge's recapitulation of the defendant's words organises and synthesises the evidence for the jury, using the authority of quotation and judicial (re)organisation to make the jury question the contrasted material and to stimulate meaning-making and decision-making.

Corpus, trial, summing-up, quoting, authority, CADS

1. Introduction

The start of this millennium saw an historic English trial: R v. Dr Harold Shipman (October 1999 – January 2000, HMSO 2001), where a doctor was tried and convicted of murdering 15 of his patients and forging the will of one of them. Following the trial, a public inquiry took place to investigate claims that he might have killed other patients. Dame Janet Smith concluded that 'Shipman killed about 250 patients between 1971 and 1998' (Smith 2005 online). In this paper I look at the end of the Shipman trial, the summing-up being the final act in the trial, before the jury go out of the public courtroom to deliberate in private. I examine who and what the judge quotes (particularly the defendant) and what use he makes of this quotation. Analysis focuses on the pragmatic effects of the metadiscursive and sensory verbs, REFER, REMIND, SUMMARISE, LOOK, READ, and the most frequent and 'key' (Scott and Tribble 2006) reporting verb forms *told* and *said*. Results show how the judge's recapitulation, particularly of the defendant's words, organises and synthesises the evidence for the jury, using the authority of quotation and judicial (re)organisation of the evidence to make the jury question the contrasted material and to stimulate meaning-making and decision-making.

Prior texts are brought into the criminal trial across time and space from the police investigation and pre-trial case preparation. They become spoken and written evidence in the courtroom and then that textual material 'travels over time and context' (Johnson 2013: 151) within the trial discourse of the prosecution and defence case, until it arrives at the judge's summing-up. This culminating speech event necessarily refers to the defendant's prior words and the evidence surrounding him and this is done through a range of metadiscursive verbs (e.g. SUMMARISE, REMIND) and through quoting speech, directly, indirectly, and performatively in the judge's re-enactment of questions and answers from the trial. Words spoken by the defendant in examination and cross-examination during the trial, are 'recontextualised' (Andrus 2011; Ehrlich 2007) in the judicial summing-up through the 'intertextual authority' (Matoesian 2000) of the judge's quotation. *In* The Criminal Justice and Public Order Act 1994 changes were made to the police caution in England and Wales, amending the absolute right to silence in police interviews, so that it now reads: 'You do not have to say anything, but it may harm your defence, if you fail to mention, when questioned, something which you may later rely on in court'. This means that juries have the right to draw adverse inferences from any defence that is given in the witness box that was not mentioned in police interviews. In his summing-up of the Harold Shipman murder trial the

judge points the jury to differences between what Shipman said or did not say in interview and what he says in his trial evidence, where they exist, as he reminds them of the evidence and directs them in their deliberations. In this paper I look at judicial patterns of referring to prior words and quotation practices in summing-up discourse, to examine the pragmatic work that is done in reminding the jury of the evidence. The act of reminding means that the judge selects, organises, and transforms the quoted words into a professional monologue inflected with a legal judicial perspective, a perspective that re-presents evidence in such a way that invites evaluation, opinion, and decision-making in the jury. A single example illustrates the concern of this paper with the judge's act of referring to prior talk and quoting from it (extract1).

> (1) Judge's summing-up, Day 52, Friday 21st January 2000.
> **In cross-examination** Dr. Shipman *was reminded* of Detective Constable Beard's evidence as to what Dr. Shipman *had said* **on the 14th August 1998 when interviewed** by Detective Constable Beard and the Home Office drugs inspector, Mr. Calder. Dr. Shipman *told you that* so far as he was concerned he *had told* them the truth.

Extract 1 shows first of all that summing-up discourse is multi-temporal, pointing the jury to two prior points in time (shown in bold): Shipman's cross-examination during the trial and one of his police interviews a year and a half earlier during the investigation of the alleged offences. It is spatially as well as temporally complex, since it blends police interview and courtroom spaces (also shown in bold). Along with the adverbials of place and time, a variety of speech representation and reporting verbs are used (shown in italics). The judge uses indirect speech and the reporting verb *told* in his quotation of what Shipman said on these two occasions. The inference is that Shipman said something like: 'So far as I am concerned I told them the truth'. It is this judicial work of synthesis that the jury will respond to. The Honourable Mr Justice Forbes frames the quotation as Shipman 'telling' the jury facts, using a quotation verb which is infrequent in other parts of the trial (*said* is most common in examination and cross-examination), but **more** frequent than *said* in the summing-up (see Table 2 in section 2). TELL therefore performs a specific role in the summing-up, making the defendant an active narrator telling his version of events, rather than simply responding to questions. The judge's presentation of Shipman's version of the facts is done through the reporting clause: 'Dr Shipman told you that...'. His telling is seen in contrast with an

alternative voice: that of the prosecution ('in cross-examination', 'when interviewed'), as Shipman's defensive responses at trial are retold from a judicial perspective and through the judicial voice. As Ehrlich (2007) notes, recontextualisation does not only bring about textual effects, but crucially affects the identities of participants. During his interviews and coutroom testimony the defendant, Harold Shipman, attempts to control his positive identity as a caring doctor in the face of the evidence against him, but, in the polyvocal monologue that is the summing-up, the judge uses the heterogeneous voices of defence and prosecution and Shipman's own contradictory voice to present inconsistency to the jury. The judicial perspective of the summing-up discourse therefore allows for identity de-/re-construction by the judge.

1.1 The case: R v. Harold Shipman (2000)

Harold Shipman was a doctor, a general practitioner, who faced 16 indictments: 15 counts of murder and one of forgery. Shipman spent twelve days in the witness box – five and a half days in examination-in-chief and six and a half days in cross-examination – and the judge's summing-up refers in detail to this evidence, as he reviews the whole 40 days of evidence. Shipman's attitudes to life and death, the most human of concerns, have been elicited in examination and cross-examination in the defence case. His answers in cross-examination reveal evasive and 'resistant' responses, as in his police interviews (Newbury and Johnson 2006). His lack of a satisfactory explanation, in cross-examination, as to how his computer records were inaccurate, produces inconsistencies when compared with what he said in police interviews, as it becomes clear that he murdered his patients by administering lethal injections of morphine. The summing up reviews all of the contradictory material for the jury to use in their decision-making, particularly on Day 52 (Table 1 in section 2). The jury found him guilty on all counts. Shipman's 'cold blooded perversion' in killing his victims is most starkly exposed in the sentencing comments delivered after the jury's verdicts, shown in extract 2 (emphasis added).

> *(2) Mr Justice Forbes' sentencing comment in the Shipman trial, Day 58.*
> Harold Frederick Shipman, stand up. *You* have finally been brought to *justice* by the verdicts of this jury. I have no doubt whatsoever but that these are *true verdicts*. The time has now come for me to pass sentence upon *you* for these *wicked, wicked crimes.*
>
> *Each of your victims was your patient. You murdered each and every one of your victims by a calculated and cold blooded perversion of your medical skills. For*

your own evil and wicked purposes you took advantage of and grossly abused the trust that each of your victims reposed in you. You were, after all, each victim's doctor. I have little doubt that each of your victims smiled and thanked you as she submitted to your deadly ministrations. None of your victims realised that yours was not a healing touch. None of them knew that in truth you had brought her death, death which was disguised as the caring attention of a good doctor. The sheer wickedness of what you have done defies description and is shocking beyond belief.

Justice Forbes singles Shipman out, deictically in multiple you- and your-pointing, no less than 19 times in this 175-word extract. In addition he creates patterns of opposition in nouns that collocate with your:

your victims ... your patient;
your victims ... your medical skills.

Other semantic clashes are created with surprising collocations:

you murdered ... by ... your medical skills;
your victims smiled and thanked you ... your deadly ministrations;
death disguised as the caring attention of a good doctor.

Rhetorical underlining of his abuse of doctor/patient trust is complemented by semantic underlining of the wickedness of his actions, which is achieved through positive and negative contrast:

Evil ... trust; *healing ... death;* *victims ... you.*

Contrast is also produced in repetitions of negative wicked, wickedness, death, and deadly, with the positive justice, true verdict, in trust. This powerful opening to Justice Forbes' chilling judgment confronts Shipman with his dishonour and disgrace, but most of all with the perversion of his medical skills in the crimes against his trusting patients.

1.2 Summing-up monologue in trial discourse

Summing-up (heareafter SUM) is a monologue addressed to a jury by the trial judge. Structurally, it is in two parts: directions and summing-up the evidence. In the Shipman trial, directions as to the law take one third of the first day (Day 43) and there follow ten days of SUM, whose purpose is to 'remind you [the jury] of the main features of the evidence you have heard' (Day 43). On the eleventh day (Day 53) Justice Forbes reminds the jury of his direction 'as to the burden of proof which remains on the prosecution' and also that the jury should 'be sure of ... guilt' and 'apply fair standards'. Monologue is somewhat of a misnomer. Summing-up *is* performed with a first person *I* and is directly addressed to the jury in the second person (*you*) and the third person (*Members of the Jury*), as the judge 'reminds' them of the evidence in the 15 cases. The *I/you* focus and lack of verbal response by the jury makes it monologic and authoritative. However, the monologue is multivoiced and 'heteroglossic' (Bakhtin 1981), containing many voices spoken through one, as the judge interweaves the multiple voices of the defendant and witnesses with his own, to 'replay the interaction' (Clift and Holt 2007:7) and to organise and embed spoken facts into his talk, aiding jurors' recognition and analysis of information on the way to making a legal judgement. Bennett and Feldman (1981: 58) found that 'how an attorney organizes his or her opening statements and closing arguments influences the information jurors rely on to make a decision'. I argue here that the sequential positioning of the SUM right at the end of the trial and the (re-)organisation of the evidence by the judge combines to have even more influence on the jury's decision-making. In the Shipman trial the judge goes through each of the 15 murder cases, following the trial order of indictments (Table 1), but he is able to interweave and oppose the inconsistent voices of the defendant, Shipman, with the powerful prosecution voices – expert doctors who have formed autopsies on the exhumed bodies of the victims, police officers, and lay witnesses – to juxtapose contradictory and supporting pieces of the evidence for maximum persuasive effect. The trial sequence of examination and cross-examination of sequential witnesses does not allow this interweaving; voices are separate. The monologue therefore constructs a whole from many fragments, as it shifts strategically between monologue and re-quoting, and Shipman, who listens, and the witnesses and many texts who are quoted are positioned as 'objects' in the SUM monologue (Hanks 2005). Heteroglossic and multivoiced material that Shipman has uttered in police interviews, in evidence, and in cross-examination, and that witnesses have reported, is repositioned and reframed in the SUM. The defendant's story is disrupted and recontextualised, as it becomes voiced by the judge, maintaining intertextual links with the jury's first hearing through quoting Shipman's voice and the witnesses' voices. As Tannen (2007: 62) says, the process

of repetition involves listeners in 'seeing [or hearing] the same item a second time' and in doing so they 'reinterpret its meaning'. Repetition is therefore a crucial part of interpretation and re-interpretation of the evidence, as it is replayed in the SUM, stimulating deliberation: the jury's response to the judge's monologue, which they will conduct in conversation in the jury room.

The trial genre is 'complex' (Heffer 2005: 70) by its very nature and requires of the jury a mammoth memory task. In his model of the jury trial as a complex genre Heffer (2005: 71) shows summing-up as part of the 'legal construction', contrasted with the 'story construction' of the opening and closing speeches and 'fact construction' of the prosecution and defence witness evidence. The words which the judge repeats in the SUM are separated from their previous production by many days and weeks, so he organises the discourse for the jury by preparing them (section 3.1) and uses rhetorical patterning to aid memory, whilst selecting particular details as salient. As the deictic centre shifts from the fact construction of evidence in the case to the legal construction of the SUM, speech from the witness evidence is brought into the SUM. Here, as it is repeated and performed by the judge, he simultaneously refers to these past fragments of speech and positions them in the new 'deictic field' (Hanks 2005: 193). The new field is one which powerfully objectifies and appropriates these speech events as objects in the SUM, as they are coloured by the judicial voice and perspective. The judge's words at the start of SUM warn the jury to reject his view of the facts (extract 3), but this is hard to do.

(3) SUM Day 43

> If I appear to have a view of the evidence or of the facts with which you do not agree, reject my view. If I mention evidence which you regard as unimportant, disregard that evidence. If I make no reference to evidence which you do regard as important, follow your own view and take that evidence into account as you consider appropriate. You must decide this case only on the evidence which you have heard, seen and read. You must not speculate or be drawn into speculation about matters as to which you have not heard any evidence.

In this paper, I argue that the judicial perspective is one that organises and synthesises the evidence from the witnesses, particularly from the defendant, in powerful ways. Reminding and quoting are key resources of judicial speech, which make for polyvocal monologue.

2. Method and approach

A corpus-based approach is used to conduct a case study of summing-up discourse in a single trial, an approach that accounts for meaning-making and patterns of judicial practice in a professional speech setting. The 'small' (Cameron and Deignan 2003) and 'specialized' (Flowerdew 2004) corpus of a single speech event within the larger trial genre consists of 293,861 words of summing-up monologue from the judge, Mr. Justice Forbes. The SUM lasts for ten days and ten minutes (on the eleventh day), before the judge sends the jury off to deliberate (Table 1). Each day of the SUM was collected from the Shipman Inquiry website's trial transcript (now held at The National Archives online <http://webarchive.nationalarchives.gov.uk/20090808154959/http://www.the-shipman-inquiry.org.uk/>) and was saved as a plain txt file for use with the computer program, *Wordsmith Tools* (Scott 2011). The method used is both qualitative and quantitative, using a computer-assisted approach, to display words in their context of use as concordances and to reveal patterns of meaning in relation to the referring and quoting phenomena in the corpus. In line with the 'corpus-driven' approach, 'the commitment of the linguist is to the integrity of the data as a whole, and descriptions aim to be comprehensive with respect to corpus evidence' (Tognini-Bonelli 2001: 84). Therefore all the data are used for statistical purposes and concordance lines are studied for pervasive patterns, from which qualitative examples and extracts are taken. For most of the statistical work in this paper the first ten days are used for calculations, since the eleventh day is merely a reminder of the directions, given at the start of the SUM and contains few words (Table 1). The SUM takes place on days 43-53 in the 58 day trial, with the jury deliberating for 6 days during days 53-58, finding Shipman guilty.

Day	Words per day	Indictment/matters dealt with
43	32,497	Mrs Grundy
44	27,953	Mrs Grundy, Mrs Pomfret
45	13,757	Mrs Pomfret, Mrs Mellor
46	37,129	Mrs Mellor, Mrs Melia, Mrs Lomas
47	27,817	Mrs Quinn, Mrs Turner
48	36,020	Mrs Lilley, Mrs Grimshaw, Mrs West
49	32,715	Mrs Adams, Mrs Wagstaffe, Mrs Nuttall
50	30,589	Mrs Nuttall, Mrs Hillier, Miss Ward
51	33,516	Miss Ward, Toxicology evidence
52	20,993	'Various assorted topics, including interviews with the

		police that were conducted with Dr Shipman'
53	875	Reminder of directions and sending the jury to deliberate.
Total words in corpus: 293,861		

Table 1: The SUM corpus by trial day, showing total words and indictments and matters dealt with on each day.

The dynamic corpus-assisted discourse studies (CADS) approach put forward by Partington et al (2013; Partington 2006) values combining the quantitative methods used in corpus linguistics with the qualitative methods of discourse studies, 'maintaining that elements of both paradigms can usefully be employed'. This research paradigm is therefore a multidimensional space where 'the researcher is free to shunt back and forth among hypotheses, data-collection, analysis, evaluation' (Partington 2006:4). The corpus linguistic approach allows for systematic searching and analysis of speech reporting verbs in the corpus. Using *Wordsmith Tools* (Scott 2011) and by comparing the SUM corpus with the British National Corpus (BNC), *told* and *said* are found to be the top 'key' verbs in the corpus. Keyness is a property of words which is calculated statistically by comparing the frequency of words in two wordlists, one made from the corpus of study (here the SUM corpus), and the other made from a large reference corpus (in this case the BNC), to find 'any word that is outstanding in its frequency' (Scott 2010). *Wordsmith* then creates a key word list, with the most frequent key words at the top of the list. Finding that *told* and *said* are the top key verbs and in the top 25 key words in this list for the SUM corpus (Table 2), drives the focus here and my concern with quotation.

Number	Key word	Raw frequency	%	Reference corpus frequency	Reference corpus %	Keyness
1	Shipman	2,756	0.94	53		31,607
2	Mrs	4,823	1.64	21,019	0.02	31,513
3	Dr	3,941	1.34	12,216	0.01	28,084
4	told	3,173	1.08	35,452	0.04	15,269
5	that	10,605	3.60	1,052,259	1.06	11,138
6	he	7,266	2.47	593,609	0.60	9,658
7	had	5,763	1.96	413,144	0.42	8,803
8	morphine	578	0.20	161		5,961
9	she	3,918	1.33	325,351	0.33	5,086
10	her	3,759	1.28	304,311	0.31	5,022
11	diamorphine	413	0.14	13		4,696
12	you	5,186	1.76	588,503	0.59	4,444

13	Grundy	414	0.14	66		4,440
14	death	1,106	0.38	19,844	0.02	4,347
15	surgery	576	0.20	2,636		3,705
16	entry	647	0.22	5,096		3,525
17	Grenville	299	0.10	39		3,242
18	Shipman's	716	0.10	70		3,170
19	Wagstaffe	266	0.09	4		3,057
20	evidence	886	0.30	21,173		3,017
21	entries	416	0.14	1,777	0.02	2,727
22	said	2,155	0.73	195,580		2,507
23	was	5,441	1.85	863,917	0.87	2,464
24	page	606	0.21	10,729	0.01	2,396
25	Mr	1,194	0.41	66,114	0.07	2,309

Table 2: Top 25 words in a *Wordsmith* key word list (SUM compared with BNC) and their key-ness.

The CADS-informed approach reveals patterns of institutional judicial talk which exploit the power of 'reported speech' (Clift and Holt 2007), 'recontextualisation' practices (Blackledge 2006; Iedema and Wodak 1999; Sarangi 1998; Wodak 2007), 'intertextuality' (e.g. Briggs and Bauman 2009; Tannen 2006) and 'embedding' (Bal 1981). Drawing on Bakhtin's (1981: 342) notions of 'authoritative' and univocal discourse and 'internally persuasive' polyvocal discourse, the analysis shows how the judge switches between speech styles, from where he is the authoritative speaker in his own voice, to where he embeds other voices (Shipman, the police interviewers, prosecuting and defending barristers), to be both authoritative and persuasive. Drawing on Vološinov (1986: 117) it is possible to see that the SUM, as a 'codified variety' of speech, 'pursues special aims' which affect the 'active reception' of the defendant's speech in the 'bound context'. Baynham (1996: 78), working within the Bakhtinian frame, urges discourse analysts to adopt 'accounts of speech reporting which are sensitive to discourse context' because of 'the active, shaping role of the embedding discourse' in institutional contexts. The active and shaping role of the SUM appropriates and reshapes prior talk, as it is replayed, with the jury activated and primed for meaning-making, inference-making, and decision-making.

3. Preparing for quotation, quoting with *told* and *said,* and re-enacting the defendant

The analysis that follows looks first at the preparatory work done by the judge through metadiscursive and sensory verbs, as he prepares to refer to prior evidence and then, since the speech reporting verbs *told* and *said* are the most frequent and key verbs, I investigate their

pragmatic effects in the SUM. The final focus is on quoting through re-enactment, which allows the judge to select longer passages for scrutiny by the jury.

3.1 Metadiscursive and sensory verbs in the SUM – preparing for quotation.

All forms of the stem, *sum* (*summary, summarise, -ed, -es, -ing*), are present in the SUM (45 occurrences), along with the nouns *summary* (37) and *summing-up* (31), indicating that summary is part of the function of the SUM (see example 2b), but it is also much more than that. Ten days allows for more than a mere summary and the summing-up is designed to do justice to the facts of the case, reminding the jury of exactly what was said. More frequent, though, than *summary* and *summarise* are the synonymous verbs: RECALL (78 occurrences), RECOLLECT (8), and REMEMBER (166, example 1) which are used by the judge to call on the jury to do their own recall of the evidence. Much more important than these three verbs is the verb REMIND (150), which is used with the first person voice of the judge (see examples 1, 2a, 3abc, and 4), and predominantly (in the concordance lines studied) both in the active past tense (example 3b) and in the passive voice (examples 2a, 3a and 3c) as a metadiscursive 'illocution marker' (Crismore et al 1993, cited in Hyland 2005: 34). It is also and more frequently used in the present, when it is used exclusively in relation to the judge's metadiscursive performative speech act: *I remind you* (example 4).

1. When I come to **remind** you of the evidence of Dr. Shipman as to how he still had 4 ampoules of diamorphine in his possession relating to Mr. James Arrandale, I think you will find it very helpful to **remember** where those 4 ampoules were actually found (Day 52).
2a. Dr. Shipman **was reminded** of his evidence-in-chief [2b] which **I have summarised** only 20 minutes or so earlier this afternoon (Day 46).
3a. **He was then reminded** of the formal admission relating to Leonard Fallows, that is page 3, and of course you will recall that Mr. Fallows gave evidence and [3b.] **I have reminded you** of it. [3c] Dr. Shipman **was reminded** that it was Mr. Fallows' evidence that he had never received any diamorphine (Day 52)
4. If you now look at the entries **as I remind you** of this evidence you will be able to follow it. (Day 46)

REMIND is much more frequent and more widely distributed over the days of the SUM than SUMMARISE, with a higher rate per thousand words: an average of 0.3 per thousand words versus 0.1, respectively, over the ten days of the SUM. Together with REMEMBER and its

synonyms, REMIND does more important work than merely summarising the facts. Nevertheless, the infrequent use of SUMMARISE is marked, making it a foregrounded use worthy of attention. On examination of concordance lines, it is seen to be a verb that collocates with *for you.* 31% of the right hand collocates in the 45 occurrences of this verb are accounted for by this collocation (extract 4). Note the two summarising phrases (in bold) and the conditions, consequences and questions which accompany them (signalled in italics), which I discuss below.

(4) *Summarised for you,* Day 43.

In the course of his evidence Dr. Shipman took issue with the evidence of many of the witnesses who had been called by the prosecution to prove the foregoing similarities, these various similarities that I have just been drawing to your attention. *If on a consideration* of all the evidence which you have seen, heard and read, including the evidence of Dr. Shipman himself, you are sure that these various facts, matters and events did take place, and have been proved to be as alleged by the prosecution, *then you must look* at the whole of this evidence and *ask yourselves* the following *question*: is the relationship between the factual circumstances of the various cases which give rise to the 15 charges of murder on this indictment, as demonstrated by **the similarities which I have just summarised for you**, so close that you are sure that they must be part of a serious [sic] of deaths caused in the same way by the same person. *If you to come the conclusion* that you are sure that such is the case, then so far as concerns the 15 counts of murder with which Dr. Shipman stands charged, *you should go on and ask yourself* this further *question*: is it possible that there is or may be an innocent explanation for the fact that the circumstances related to the deaths of the 15 alleged murder victims in this case are **so similar in the various ways which I have just summarised for you**, or is it the case that the only reasonable explanation is that Dr. Shipman killed each of those various women by injecting her with a lethal dose of morphine or diamorphine. *If, but only if, you are sure* that there is no credible innocent explanation, *you may* take the whole of this evidence into account *in deciding whether* in relation to each of the counts of murder in this case *you are sure* that Dr. Shipman killed the victim in question by injecting her with a lethal dose of morphine or diamorphine, and whether in relation to each of the counts of murder *you are sure* that Dr. Shipman had the necessary intent for the crime of murder, as to which aspect of the matter I shall be giving you further directions very shortly.

The dative case of the verbal complement, *for you,* marks SUMMARISE as a verb through which the judge gives the jury mental work to do, when they leave to deliberate on their verdicts. The 'similarities' which are referred to in extract 4 are, amongst other details, repeated from 'the prosecution' evidence by the judge (seen in extract 5, which precedes extract 4). In extract 5, though not referred to yet as 'similarities' the evidentially similar *modus operandi* for each murder is emphasised through anaphora and thematic patterning to make them memorable (in bold in 5).

> (5) Summarising the similar modus operandi of the alleged murders
> You have heard evidence called by the prosecution which suggests that **each of these 15 counts of murder** forms part of a series of very similar offences to all intents identical in execution, each one of which Dr. Shipman had both the opportunity and the means to commit. Thus, the evidence called by the prosecution suggests that **each victim** was a middle aged or elderly female patient of Dr. Shipman. **Each of the victims** was seen by Dr. Shipman on the day of and very shortly before her death. **Each of the victims** died suddenly and, in the circumstances then existing, unexpectedly. **In none of the cases** did Dr. Shipman or anybody else report the death of the victim to the coroner so that a postmortem could be carried out. **In each case** where the victim was buried and later exhumed, that to say [sic] counts 1, 3, 4, 5, 6, 7, 8, 9 and 10, the first 9 counts of murder, a high level of morphine sufficient to cause death was found in her body.

Looking at extract 4 and 5 together, the judge first describes all the similarities raised by the prosecution in the alleged murders (extract 5) and then engages the jury with 'these various similarities that I have just been drawing to your attention', by giving them conditions, consequences and questions (extract 4, in italics) to consider. All of this pragmatic work is related to the decision-making role of the jury, highlighted in the judge's use of 'in deciding whether [...] Shipman killed the victim [...] and had the necessary intent for the crime of murder'. The rationale for their decision-making is also underlined by the triple use of 'you are sure'.

From an examination of the judge's use of SUMMARISE and REMIND, it is clear that summarising is an important, but infrequent function of the judicial performance of the SUM,

while reminding is more frequent and arguably more important. In particular, rather than the jury having a passive role in relation to the judge's summarising, they are made active as they are presented with material to consider. The judge needs to mark and pattern the summary in order to make these episodes memorable. A corpus analysis of the verb REMIND shows that it is used to involve the jury in physically referring to documentary evidence in their jury bundles (as in example 4 as above: 4. If you now **look at the entries as I remind you** of this evidence **you will be able to follow it**. (Day 46)). The physical acts keep them involved in the judge's monologue, though they remain silent for its 11 days' duration. The jury bundles are the files of papers relating to the case, as in example 3a (above) where 'page 3' is referred to, and example 4 above, where the jury are invited to 'look at the entries'.

More frequent still than these mental metadiscursive verbs are the verbs that relate to the processes of reminding the jury of the materiality of the evidence across all the senses of sight, touch, and hearing: LOOK, (2.0/1000) READ (1.7/1000), REFER (2.3/1000), SAY (9.1/1000), SEE (3.7/1000), TELL (11.3/1000), as in extract 6 where several of these verbs are found in a single spoken section. The lexical items in the lemmas LOOK, READ AND SEE are clearly judicial verbal actions that steer the jury's attention to the material evidence, as they refer to their bundles, thereby reminding themselves of the facts. In extract 6 REFER is used to point to a witness's action in the trial and the jury are then implicitly directed to look at the 'drug record card' where they can 'see' the material evidence relating to morphine. SAY and TELL are used in the same way, though in the example of 'said' in extract 6, the jury are simply reminded of the words; they are not pointed to them in their bundles.

(6) SAY, REFER, SEE,

Mrs. Sunderland was asked to describe the procedure which is followed when controlled drugs are brought into a patient's home. She **said** this, 'When they are brought into the patient's home we check them, count them, and then add them to the total which we have got at the home so that we have an absolute total.' She then **referred** to Keith Harrison's drug record card and explained how the procedure worked by **referring** to the existing entries. You can **see** that the stock balance in the right-hand column consists of two figures, one representing the 100 milligram ampoules and one figure representing the 500 milligram ampoules. (Day 52).

The most frequent of the verbs relating to the senses are those that relate to hearing, in particular the verbs of speech: TELL and SAY, with a marked preference for past tense *said* and *told*, and those are the verbs to which section 4.2 turns. Reminding the jury about what was said, and, in particular, what the defendant has said in the trial and in police interviews prior to the trial, is a key act in the activity of reminding. Looking at the start of the SUM (extract 7), Justice Forbes explains the nature of summing-up ('two parts': 'the law' and 'the evidence') and its purpose for the jury (to 'decide this case/what actually happened' and 'render a true verdict') (extract 7, emphasis added).

> (7) Reminding and deciding at the start of the summing-up, Day 43.
> This summing up will be divided into **two parts which reflect our respective and very different functions in this trial. The first and the shorter part will deal with the law.** As the Judge it has been my duty to preside over this trial and to ensure that it has been conducted fairly according to the law. It is my duty now in the first part of my summing up to give you suitable directions as to the law which apply [sic] in this case. In the second part of my summing up **I will remind you of the main features of the evidence which you have heard and upon which you must decide this case.** As to the law, you must accept what I say and apply it to the facts as you find the facts to be. As to the facts, you and only **you are the judges** of the facts. **It is for you to decide** what evidence you accept and what evidence you reject or about which you are unsure. **When I have completed this summing up it will be for you to decide what actually happened.** To the extent that you are sure that this defendant was involved in the events with which this case is concerned, **it is for you to decide** what it is you are sure that he did and what his state of mind was when he did it. **If I appear to have a view of the evidence or of the facts with which you do not agree, reject my view. If I mention evidence which you regard as unimportant, disregard that evidence. If I make no reference to evidence which you do regard as important, follow your own view and take that evidence into account as you consider appropriate.** You must **decide** this case only on the evidence which you have heard, seen and read. You must not speculate or be drawn into speculation about matters as to which you have not heard any evidence. And there will be no more evidence in this case. **Remember the words of the oath** which each of you took at the beginning of this case, **to render a true verdict** according to the evidence.

Within the judge's explanation of the SUM the occurrence of *remind* and *remember* form part of the roles of the judge and jury, the *I* and the *you*. The most important jury role is repeatedly referred to in (7): *decide,* alongside *evidence* (and *facts*), a key word in the SUM (*evidence* is the 20th key word in the top 25 shown in Table 2 above). These words collocate to create semantic cohesion, contributing to meaningful communication between the judge and the jury as to the nature and purpose of the SUM. As the judge completes the first morning of the SUM, he draws the jury's attention to the task in hand – 'the first body of evidence to which I have referred, summarised for you [...] which you have to decide as to its accuracy' (extract 8) – using a visual metaphor to leave as an impression of the morning's evidence in relation to the death of Mrs Grundy. The judge describes the evidence of the witnesses as having 'recreated' and 'paint[ed] a picture [...] a clear picture [...] a vivid picture' of the victim. The use of metaphor brings out the rhetorical barrister in the judge, what Winter (2002: 343) calls 'judicial advocacy', and does the job of resurrecting the victim, as an image in the jury's minds.

> (8) Morning, Day 43
> Now we will come onto the evidence of Mrs. May Clarke after lunch, but the first body of evidence to which I have **referred, summarised** for you, I hope **recreated** for you the evidence of those witnesses that you **listened** to and had **read** to you so long ago, **paint a picture** of Mrs. Grundy's appearance and apparent *health* right to the day of her *death*. You have from that evidence **a clear picture**, which you have to decide as to its accuracy, of this lady going about her *active and busy life* in the way that they have described. They have also painted for you **a vivid picture** of her apparent state of *health*. This was the lady who less than 24 hours after Mrs. Mary Eaton and the O'Keefe's saw her **was said** to have *died* of old age [Break for lunch].

In his last utterance before the lunch break the judge capitalises on this rhetoric through contrastive antonymy. Having recreated Mrs Grundy's health and life, he replays her death, not only in respect to the contrast between 'health' and 'active and busy life' (emphasised with italics) and with her 'death', but also by contrasting the prosecution view of an active and healthy woman with the defendant's submission that she 'was said [by the defence] to have died of old age'.

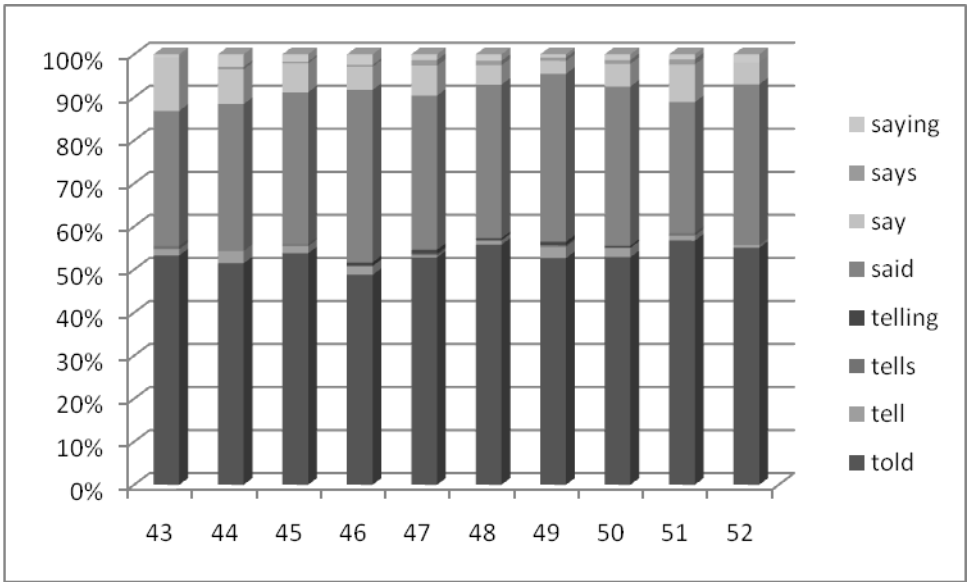
3.2 *Said* and *told* in the SUM – occurrence, use and effect

The metadiscursive verb, REMIND, is found throughout the SUM, and we have seen that it is used to refer backwards and forwards in the text and to refer to the places where the judge has 'recreated' the witness evidence for the jury. But, that evidence is most vividly recreated when the judge quotes the witnesses, using direct and indirect speech reporting. *Wordsmith* word frequency lists for the SUM show that after HAVE and BE, *told* (in 17th position) and *said* (at 24) are the most frequent verbs in the SUM corpus frequency list. For example, rates per thousand words of SAY and TELL on the third day of SUM are:

say/s/ing	2.1/1000	*said*	8.4/1000
tell/s/ing	0.4/1000	*told*	12.8/1000

Comparing these verbs with those examined in section 4.1, it is clear that SAY and TELL have a key role, particularly the past tense forms: *said* and *told* (The BNC has a rate of 1.95/1000 words for *said* and 0.35/1000 for *told*). This points to the important function of direct and indirect quotation in the SUM. TELL and SAY are also in the top ten most frequent content words in the SUM, with *told* coming top, the top ten being: *told, Shipman, said, death, evidence, time, entry, page, morphine,* and *surgery.* In the key word list, *told* jumps to the 4th most important key word (in Table 2) (after *Shipman, Mrs, Dr*), followed by *that* (the most frequent collocate of both *said* and *told*), indicating that indirect speech reporting is more frequent than direct speech reporting. *Said,* the second lexical verb in the key word list, is at 22nd place in over 1700 key words. *Said* and *told* account for 0.73 and 1.08% respectively of the words in the SUM and for only 0.20 and 0.04% of the words in BNC, further indicating their keyness. Looking at the lemmata for SAY and TELL (Figure 1), in all but day 46, TELL is more frequent than SAY, and the past tense forms *told* and *said* (the two largest parts of each stack in the chart in Figure 2) are more frequent than all the other forms. The quantitative evidence, then, for the importance of quotation in summing-up is strong.

Figure 2. SAY and TELL in the SUM. (Days 43 to 52).



Moving to the computational evidence, the reporting phrase in my paper's title – *Dr Shipman told you that* – is the most frequent 5-word *told* cluster (found using *Wordsmith's* cluster function) in the SUM (Table 3).

Cluster	*Told* Cluster	Freq	*Said* Cluster	Freq
1	Dr Shipman told you that	298	Dr Shipman said that he	159
2	he told you that he	253	Shipman said that he had	66
3	told you that he had	205	he said that he had	45
4	Shipman told you that he	156	Dr Shipman said that Mrs	36

Table 3: Top frequency (Freq) 5-word clusters for *told* and *said* in the SUM corpus

In Table 3 *Dr Shipman* is a prominent, frequent collocate of both *told* and *said,* the two verbs to which the next two sections turn.

3.2.1 *Said*

Extending the cluster search to seven words, the cluster: *in cross-examination Dr Shipman said that,* occurs 12 times, showing its use to contrast cross-examination evidence with examination-in-chief. There are no examples of *in examination-in-chief Dr Shipman said that,* showing that the *in cross-examination* collocation is a marked strategy by the judge. What the judge does in the SUM is to put together what Shipman said in evidence-in-chief with what he replied in answer to cross-examination questions. In the trial, these two activities are sequential (defence examination: Days 27-32; prosecution cross-examination:

Days 32-38) and cross-examination of a particular evidential point is therefore followed up five or six days later. The synthesising power of the SUM is therefore evident as the judge brings the two activities together in his monologue, for greater contrast, putting together corresponding and contradictory facts. Extract 9 shows this. It begins with what Shipman is asked and what he replies in examination-in-chief and then his cross-examination answers are contrasted (He was asked in examination by the defence the question: *Dr. Shipman, in respect of Mrs. Mellor did you on the 11th May 1998 administer to her morphine or diamorphine?* on Day 28, and Shipman's denials to questions in cross-examination come on Day 34.). The contrastive material is framed with the deictic time adverbial, *in cross-examination,* preceding the reporting clause, though the six day time compression is not drawn attention to. After giving the contrasting facts, the judge twice draws the jury's attention to the 'acute conflict of evidence' and leaves it as an issue 'which only [they] can resolve by [their] decision'.

(9) *In cross-examination Dr Shipman said that...* (Day 46)

When asked if he had administered morphine or diamorphine to Mrs. Mellor on the 11th May 1998 he replied, 'No, I did not.' When asked if he had murdered Winifred Mellor on the 11th May 1998 he replied, 'No I did not.'

In cross-examination Dr. Shipman said that he had not been in Corona Avenue between 3 pm and 3.20 pm on the afternoon of the 11th May 1998. He said that the person that Mrs. Ellis had seen through her window at 3 o'clock that afternoon had not been him. [...] Dr. Shipman said that he had not told the family, Nina Adamski, Susan Duggan and Sheila Mellor, that he had been to Mrs. Mellor's house at 3 o'clock that afternoon when he had spoken to them at the house shortly after 8 o'clock. He denied having said what each of them told you that he had said that evening about his having visited Mrs. Mellor at 3 o'clock that afternoon; *an acute conflict of evidence*. [...] Dr. Shipman said that he had not gone to Mrs. Mellor's house that afternoon in response to a telephone call from Mrs. Mellor, and he denied having told the family, Kathleen Adamski, Nina Adamski, Susan Duggan and Sheila Mellor, that he had done so. *As I have said, it is an acute conflict of evidence which only you can resolve by your decision.*

The ‘conflict of evidence’, remarked on by the judge, is an explicit evaluation of the facts for the jury, as well as an assumed fact. The judge marks his evaluative stance through ‘retrospective nominal group labelling’ (Francis 1994), *an acute conflict of evidence,* within an *it is* X evaluative frame (Hunston and Sinclair 2000) and the jury are then directly invited to ‘resolve’ the conflict in their decision-making. Indirect reporting with *said that* (in extract 9) allows the judge to emphasise Shipman’s denial in response to three of Mr Henriques’s cross-examination questions on Day 34:

> Q1: [...] between 3 o'clock and 3.20 you had visited her at her home in Corona Avenue and you had killed her between 3 o'clock and 3.20, and she lay dead in her chair at 4 o'clock. That is the truth of the matter, isn't it? **A: No**
> Q2: Were you never in Corona Avenue at 3 pm? **A: No, I was not in Corona Avenue.**
> Q3: And then she saw you, didn't she, go to the passenger door, get a bag out, go to Mrs. Ellis's gate. That was you, was it not? [Correction] Mrs Mellor’s gate? **A: No, it was not me.**

Comparing the three cross-examination questions and answers with the SUM (extract 9), of note is the judge’s foregrounding of the answers and their pattern of denial (e.g. In cross-examination Dr. Shipman said that he had not been in Corona Avenue between 3 pm and 3.20 pm on the afternoon of the 11th May 1998.). The use of the framing adverbial ‘in cross-examination’ removes the need to repeat the questions. The questions can also be fused with the negative replies and incorporated into the judge’s narrative of Shipman’s denial: ‘had not’... ‘had not’... ‘denied’. Indirect reporting emphasises what Bell (1999: 207) describes as one of the functions of quotation, which is to mark a particularly ‘reportable fact’ because it is ‘incontrovertible’, the reportable fact in this case being that Shipman systematically denies everything. This is also highlighted for the jury by the judge’s rhetorical patterning and repetition to impress these facts on the jury, but most importantly in the judge’s synthesis of the evidence from across six days of trial evidence to create the ‘conflict’ for their attention.

Indirect speech is very common in the SUM; *said that* accounts for 48% of all the *said* occurrences (and there are also more examples of indirect quotation with zero *that,* of course). However, *said* is also important for dealing with direct speech and in particular a marked form of direct speech: *Dr Shipman said this* (15 examples in 375 examples of *Dr*

Shipman said). The proximal deictic marker *this* brings a prior speech event into present time, making it particularly relevant (extract 10).

> (10) *Dr Shipman said this:*
> Mr. Henriques suggested to Dr. Shipman that his evidence that he had spent 20 to 25 minutes in a traffic jam going to Mrs. Quinn's house *was nonsense* and **Dr. Shipman said this**, **'I couldn't have spent that time in the traffic jam, no.'** He was then asked how had he come to being mistaken about that, and you will recall that I took trouble to point out to you that detailed account that Dr. Shipman had given about the circumstances prevailing at the surgery when he received the telephone call from Mrs. Quinn, locked up the surgery and went to visit her. **Dr. Shipman said this** when asked how he had come to be mistaken about the matter, he said, **'Because I wasn't having these documents put in front of me to make sure what time I left the surgery.'** He agreed that the evidence he had given to you that he had been on the road for 20 to 25 minutes *was false*.

In extract 10 there are two examples of *Dr Shipman said this*, the first coming in a sentence that marks it as a response to a cross-examination question which evaluates Shipman's claim as 'nonsense'. The second is contained in a sentence that refers to Shipman being 'asked how he had come to be mistaken about the matter'. So in both cases the judge presents the jury with problematic and inconsistent facts in Shipman's account and at the same time the judge present-tense-marks what Shipman says in response. As in extract 9, the cross-examination questions are not directly reported, though the answers are, because it is the response to which the judge is drawing the jury's attention. In extract 9 denial is emphasised in the judicial work and in 10 Shipman's falsehoods are emphasised first through the indirect questions and then through the marked and directly quoted answers. This is followed up by the power of indirect speech to blend question and answer: 'He agreed that the evidence ... was false'. In fact, Shipman is questioned over several pages of the transcript on day 35, before saying: *I would agree.* It is Mr Henriques' questions that use the words 'false statement' (in three questions), 'a completely false version' and even 'an outrageous lie'.

3.2.2 *Told*

The importance of TELL in this corpus is clear in its keyness, with the 4th key word being *told* and its keyness score being 15,269 (Table 2). We have seen the high frequency and power of

both direct and indirect speech with SAY (48% *said that* occurrences in the concordance of *said*), but indirect speech is even more frequent with *told,* with *told you that* accounting for 71% of all the *told* concordance lines and *Dr Shipman told you that* accounting for a minimum of 12% of the *told* concordance lines (there are many more occurrences with *he told you that*, but I have not disentangled these from other referents for *he*). The most frequent patterns of collocation with *Dr Shipman told you that,* which are found immediately to the right are:

he did not	22 occurrences
he had not	15 occurrences

These negation patterns, which were also seen in reporting with *said,* mark the judge's activity of collecting together the negative facts in relation to Shipman's behaviour (examples 5-8). Here the judge draws the jury's attention to what Shipman has not said, showing his version of events to be in opposition with the prosecution story. Example 6c is actually an account of Shipman's agreement with a witness, so is not an example of the same phenomenon. However the judge's couching of a positive fact (He agreed with Mrs, Hunter's evidence) by way of a negative construction ('He said that he did not take issue'), is important. It allows the construction to match the other negative ones, making Shipman appear to more consistently deny facts in example 6.

5. Dr. Shipman was reminded of Michael Woodruff's evidence that Dr. Shipman had said to him that there was no need to authorise a postmortem. **Dr. Shipman told you that he did not** say that. (Day 47)

6a. **Dr. Shipman told you that he did not** administer either morphine or diamorphine to Jean Lilley on the 25th April 1997, [6b] **nor did he** murder her on that date. In cross-examination Dr. Shipman said that he had taken Mrs. Lilley's Lloyd George records with him when he went to visit her on the 25th April 1997, the day of her death. [6c] **He said that he did not** take issue with Mrs. Hunter's evidence that he had arrived shortly after 12 noon. [6d] **He did not** think he was in Mrs. Lilley's flat for as long as 40 to 50 minutes. He repeated that he thought he had been there for 20 to 25 minutes.

7. **Dr. Shipman told you that he had not** made any backdated entries in any of the medical records in order to create a false medical history. (Day 51)

8. At the end of his evidence-in-chief, as he did in each of these cases, **Dr. Shipman told you that he had not** administered either morphine or diamorphine to Bianka Pomfret on the 10th December 1997, nor had he murdered her on that date. (Day 45)

Examples 5 to 8 show how the judge uses negative constructions to point to negative facts and in most cases Shipman's denials of prosecution evidence. In examples 6a and 6b Shipman's denials come directly before prosecution evidence which suggests the opposite and, in example 5, the denial comes directly after it. In this way the judge highlights Shipman's denial of witness evidence that is damaging for his case and implicitly invites the jury to evaluate that. In example 6d he puts Shipman's denial of the prosecution position before his defence position, in order to juxtapose the different versions of the same event and force them to consider which one is true. Examples 7 and 8 are denials of the key allegations in the prosecution case: falsifying records and murder. Example 8 is a recurrent sentence in the SUM; it is used in relation to the majority of the victims, with nine other examples of an almost identical clause in relation to the lethal injections he is alleged to have administered. Pagano (1994: 256) tells us that negation is always a 'pragmatic act' and that 'when denial is expressed, the producer is projecting a world in which what is denied is accepted' in order to move to a world where that view is rejected. In examples 5-8 the world in which the denial is accepted is the defence world, and this is contrasted with the prosecution world where the denials are rejected as false. Where there are consistent patterns of negation in summing-up, what is drawn attention to is the claim and disclaim positions in the trial evidence. Each of these on their own is important for jury evaluation, but when they are consistently repetitive over a discourse event (as the corpus clusters show), or patterned, as in particular discourse segments (as in example 6), they foreground denial in a systematic way, making the jury draw on inferencing strategies and ask: is the denial plausible or acceptable? Foregrounding is not neutral; it is a stylistic resource that is cognitively powerful, and in the face of the amount of denial that the jury is presented with, the answer to the questions they have will clearly be *no.*

3.3 Question and answer – the judge re-enacts Shipman

When the judge uses direct and indirect quotation with SAY, and emphasises Shipman's words with *Shipman said this* + direct quotation, he draws contrasts between what Shipman said in police interviews, examination and cross-examination, particularly when he uses the framing device: *in cross-examination Dr Shipman said.* With TELL, the collocates *you* and

did/had not, mark this as an activity that is directly addressed to the jury and one in which the judge emphasises negative facts in relation to Shipman and juxtaposes defence and prosecution worlds in an antithetical relationship. A third important way of referring to what Shipman has said in answer to questions is through re-enacting question and answer sequences. In these the judge re-enacts three kinds of question and answer sequence: police interview, cross-examination, and judicial question and answer with Shipman (that is his own questions to the defendant during the trial). In section 3.2 the analysis focused on how the judge uses quotes from the police interviews and cross-examination with SAY and TELL. When he re-enacts these activities he reads the interview and cross-examination transcripts for the jury, voicing both the prosecution voice of the questioner (the police officer or prosecuting barrister, Mr Henriques) and Shipman. In extract 11 the re-enactment (in italics) is introduced with the passive form of the verb ASK, a frequent way of doing this (48% of the uses of ASK are in the passive voice in the SUM).

(11) Re-enacting the police interviews in the SUM (Day 46)

Dr. Shipman was then asked to look at the answers which he had given about Mrs. Mellor when he was interviewed by the police. If you would like to turn to page 251 of the interviews bundle. [...] *'Now you have mentioned to us a number of dates,' this is the police officer, 'where you have seen this lady starting with chest pains and I think from the records you say that this lady came into your surgery to complain about that?' Answer: 'From the records that's what it appears.' Officer: 'Right. From what you told us earlier today then if she called in the surgery presumably, you treated her, you would have endorsed that on your computer at the time?' 'I am sorry, I don't understand the question. Do you mean would it be recorded on the machine that had been signed on to me?' Officer: 'No, what I am saying is that when this lady came in, presented with these, what I am trying to establish is that the dates we are looking at here is when this lady presented with this problem.'* [...] **Having been referred to those answers which he gave to the police officer during the course of his interviews it was suggested to Dr. Shipman that** during that interview he had been telling the police that each one of the backdated entries in Mrs. Mellor's medical record represented a visit by Mrs. Mellor to his surgery and **he said this**: 'At that time I was considerably mentally stressed by the actions of the police and I am not happy that this represents a true picture of how confused I was. So I have said, yes, yes.' **Dr. Shipman then went on to agree that** the transcript of the interviews did reflect what

he had actually said that day on the 5th October 1998, the day of the interview. **Dr. Shipman also said this**, 'I agree that the version in that witness statement,' as he called it, 'taken down in the police station is different from what I said today, yes.' He was asked why he had given a different version to the police and **he said this**: 'Because today I am more sane.' He denied that he had given a different version in his evidence to that which he had given to the police because by now he had had time to concoct a false story.

In extract 11, the judge's choices of re-enactment (italics) and direct and indirect quotation (reporting clauses marked with bold) are shown. Re-enactment allows the judge to quote longer passages of interview discourse and direct and indirect quotation allow him to select particular responses given in cross-examination, thus moving between the police interview and the trial answers. When it comes to the cross-examination, questions are backgrounded through use of the passive voice and indirect quotation with 'he was asked why he had given a different version to the police' and his responses doubly foregrounded through the switch to direct speech and the use of the proximal deictic in: 'he said this'. The contrast between what Shipman said in interview and what he then says in court is foregrounded in temporal deictics, as the judge marks the difference between 'that interview' and 'this' and 'now' and selects and introduces quotations with temporal markers, such as: 'that day on the 5th October 1998'.

In extract 12 the 'style-shift' (Hernandez-Campoy & Cutillas-Espinosa 2012) is clear: the re-enactment (in italics) and the indirect reporting (in bold) of questions and answers produced during cross-examination is powerful. Shipman is first made to speak at interview as he is voiced by the judge and then in the trial, making these two times close for comparison and evaluation. Denial equals falsehood and therefore guilt.

(12) Re-enacting cross-examination (Day 50)

Dr. Shipman agreed that it appeared that he had completed and signed that cause of death certificate on the 9th February 1998, the day that Mrs. Hillier had died, and of course he had just told you that he had finished his surgery before he went to visit Mrs. Hillier. **Dr. Shipman was then asked** when he had completed the cause of death certificate on the 9th February and **he said** he did not know. **He agreed that** the death certificate book lived at the surgery. **He agreed that** he was not going to go back to the surgery after his visit to Mrs. Hillier's house that evening. At that stage, of course,

he had not seen Mrs. Hillier's body. **It was suggested to him, therefore, that** Dr. Shipman must have completed and signed the cause of death certificate on the 9th February 1998 before he had gone to Mrs. Hillier's house that evening and **he said**, 'That's an option.' *He then answered Mr. Henriques' questions as follows: question: 'How could you possibly complete a death certificate before you had even seen the body?' Dr. Shipman: 'There is time after that. I'm on duty until 10 o'clock.' Question: 'But you told us that you did not go back to the surgery. You have got a problem here.' Dr. Shipman: 'I have said I didn't go back to the surgery to do the death certificate?' Question: 'No, you didn't go back to the surgery, you told us that.' Answer Dr. Shipman: 'At all?' Question: 'No, you have told us.' Dr. Shipman: 'There were no visits?' Question: 'No.' Dr. Shipman: 'Well then.' Question: 'Well then. How do we deal with this?' Dr. Shipman: 'I don't know.' In re-examination Dr. Shipman did refer to the circumstances in which he had come to fill in and sign the cause of death certificate for Mrs. Hillier that evening. And he said this in re-examination, 'Having thought about it, there are only two options. One is that I took the death certificate book along with me and filled it in at home after seeing Mrs. Hillier, who lived half a mile away from my house, or on the Saturday morning I filled it in and put the 9th instead of the 10th, not an uncommon occurrence as we have found.' [...]* The prosecution suggest that there is a third option which is that Dr. Shipman had murdered Mrs. Hillier, he knew that and he had filled in the death certificate in advance and that is the reason why it was filled in before he actually saw her dead body. You and only you must decide what the truth of the matter is.

Extracts 11 and 12 both use re-enactment (shown in italics) of question and answer discourse in preference to indirect or direct speech (shown in bold), extract 11 of the police interview and extract 12 of cross-examination. In both cases the effect of the re-enactment is a style-shift (between the background monologue and the direct and indirect reporting of speech) that draws attention to material on which the jury is invited to make decisions, by creating an affective emotional response. In both cases the decision is about 'the truth of the matter' and the vivid voicing makes the speech 'come alive' (Matoesian 1999: 74) again for re-evaluation. Style-shifting also has an important role in structuring and organising material in the SUM for the jury. In both extracts the contrasted material are presented in different styles and then there is a final sentence that focuses on the decision-making role. Both the vivid speech representation and the decision-making focus create a sense of 'involvement' in the

case (noted by Tannen 2007: 134 and Matoesian 1999: 75) that is important in stimulating the jury's decision-making response.

There is a third kind of re-enactment. Not only does the judge voice the police officers and prosecuting counsel, Mr Henriques, questioning Shipman, but he also re-voices himself (italics in extract 13).

> (13) The judge re-enacting himself asking questions and quoting verbatim (Day52)
> At the end of Mr. Henriques' cross-examination I asked Dr. Shipman a number of questions. [...] *Question: 'As I understand the answers which you gave to the questions put to you by Mr. Henriques, you accept that in cases of Mrs. Grundy, Mrs. Lomas and Mrs. Quinn death was caused by morphine toxicity?' Dr. Shipman: 'That's the pathologist's report. I must accept it, so.' Question: 'I understand you to accept it?' Dr. Shipman: 'Yes yes.' Question: 'What I would like to know if you can help me is what is position with regard to the other ladies. Do you accept that Mrs. Pomfret in the light of the pathologist's and the toxicology findings, do you accept that Mrs. Pomfret died of morphine toxicity?' Answer, Dr. Shipman: 'Yes, because there is no pathology with Mrs. Pomfret, no anatomical pathology.' Question: 'Yes there was.' Dr. Shipman: 'I am afraid I can't remember, my Lord.' Question: 'In each of the cases the pathologist's report, that is Dr. Rutherford, his opinion was that each of these ladies died of morphine toxicity.' Dr. Shipman: 'In a lot of them there are alternative causes of death.' Question: 'That is what I would like you to tell me if you would. Do you accept in the case of Mrs. Pomfret that she died of morphine toxicity?' Dr. Shipman: 'No.'* Thereafter in response to my questions **Dr. Shipman told you** he did not accept that Mrs. Mellor, Mrs. Melia, Mrs. Turner, Mrs. Lilley and Mrs. Grimshaw had died of morphine toxicity.

Following the lengthy re-enactment (in italics) of self the judge shifts to indirect speech reporting with 'Dr Shipman told you', signalling in the 'he did not accept' Shipman's denial of the facts as reported by Dr Rutherford in the judge's re-enacted questions. In all of these re-enactments the judge uses the 'intertextual authority of reported speech' (Matoesian 2000: 879) to voice the defendant, making him speak to the jury again in ways that highlight the contradictory, evasive, and untruthful things he has said, without directly evaluating them in these explicit ways. In doing so he presents the jury with a synthesised picture of Shipman's

speech, in a way that was not possible during the trial, since he spoke first in examination-in-chief in answer to questions from his barrister, Miss Davies, and then, starting 5 days later, in answer to cross-examination questions from Mr Henriques. In addition, the police interviews from another time and place are re-voiced by the judge, making Shipman speak from the more distant past, all in contradictory ways.

Intertextual authority is at its most powerful when the judge animates Shipman, since throughout his police interviews and in his 11 days in the witness box he denies all the murders and evades questioning. In the SUM, as the judge synthesises the facts and represents them for the jury, he uses his judicial authorial authority to shape his polyphonic monologue in the pursuit of a verdict. The ideological power wielded in this discourse is also clear. The SUM is a moral discourse that interweaves fact and comment, as is illustrated in the extracts. In extract 11 the judge juxtaposes Shipman's explanation of different versions of his story between police interview and cross-examination, first quoting Shipman's 'today I am more sane' and then the prosecution's 'by now he had had time to concoct a false story'. In extract 12, he also uses the phrase 'the prosecution suggest' to introduce 'a third option' for the jury to consider, the first two having been suggested by Shipman and rejected by the prosecution. And in extract 13 Shipman's multiple denials are invited to be seen as preposterous in the face of the pathologist's opinion. When the judge appropriates and 'animates' (Goffman 1979: 173) Shipman's voice, it simultaneously merges and is made incongruous by his own voice. Shipman's denials, spoken through the voice of the judge, and the change of 'footing' (Goffman 1979: 173) from author to animator which it embodies, work with the other style-shifting features I have noted to directly address the jury, whilst making them aware that the human Shipman (the silent defendant in the dock) is distanced by the judge's appropriation of his voice. The jury, not Shipman, are continually underlined as the addressees in this first person monologue, marked in the key use of second person 'you' (12th most significant key word in Table 2, with a keyness of 4,444). The judge's shifting between referring to Shipman in the third person as 'Shipman told you' and 'he said this' and voicing him in the first person animations shows the remarkable resources of intertextual power in the SUM, taking his voice from the prior texts and animating it, while he sits silent and unaddressed.

4. Premiminary conclusion

Summing-up is a powerful resource of recapitulation and reproduction in criminal trials. It reminds but, in the process, it organises, reorganises and synthesises, particularly, as we have

seen in the Shipman trial, in juxtaposing the oppositional worlds of the defence and the defendant, with the prosecution and its witnesses. Whereas in the trial the prosecution case comes first and the witness evidence is heard and cross-examined, then followed by the defence case with Shipman's examination and cross-examination, in the SUM the judge can put together what is said, or as the judge puts it, what Shipman *told* the jury at different times. He can also contrast what Shipman has said in cross-examination with what prosecution witnesses have said, even though these speech acts are separated in time in the trial. This juxtaposition and simultaneity foregrounds difference, making it easy for the jury to make decisions about the opposing facts. Only one version can be true and the decision they make will lead to an innocent or guilty verdict. The monologue is both authoritative and univocal, but this authority is most powerfully performed in its polyvocality, as multiple voices, times and contexts occur simultaneously through the one voice and time of the judge's SUM. Embedding prior talk in the SUM is highly selective. What is chosen 'favours the professional perspective' (Sarangi and Brookes-Howell 2006), a judicial perspective that foregrounds denial, juxtaposes opposing realities, uses judicial advocacy to persuade, and uses the selective power of embedded and recontextualised speech to create powerful institutional meaning for the jury to respond to.

5. Implications

The two purposes of SUM, to direct the jury on matters of law and to remind them of the evidence in the case, are important. However, summing-up is not consistently used in the Anglo-American jury trial system. Summing-up is forbidden in some US states and instead jury instructions are scripted and read out to avoid judicial comment and grounds for appeal, and summing-up is not used at all in Scotland. There have been recent proposals in Australia (Wood, 2007) and around the English-speaking world (Lord Justice Latham in England) for reform of summing-up in criminal trials. In the United States, as Wood (2007, online) notes, "work has been undertaken in rewriting model jury instructions using plain English techniques, while in other Australian jurisdictions work is underway in preparing or reformulating model directions [and] concerns in relation to the current approaches to summing up have been expressed by senior members of the judiciary and by jury research". Wood's paper begins with the historical position, one which holds in England, that the judge should not just give the jury the law and the facts, but also explain how the law applies to the facts and he further points out the judge's duty to point the jury to the pertinent issues in a particular case in relation to the law. But he also goes on to say that "while it is permissible

for trial judges to express an opinion on, or comment about, the facts, provided it is made clear that the ultimate decision on the facts is for the jury, a question still remains as to whether this is a helpful practice today". Wood (2007) points out the real "risk with this form of comment [...] that it will be seen by the jury as a binding direction of law, or even as a direction to convict". Justice Nic Madge (2006), writing in England, also calls for reform, but counsels us, drawing on research on memory and recall, that "if, as seems likely from the research of patients' recall of diagnoses, jurors do not recall everything first time round [i.e. through lawyers' closing arguments], the judge's summing up of the evidence may be more important than we think" (Madge, 2006). Nevertheless, Justice Madge's closing argument points to the risks inherent in summing-up and asks whether "*any* judicial comments on factual aspects of the evidence [are] now necessary, appropriate or fair?" He points out that "jurors now come from a wide variety of social and ethnic backgrounds [and...] are genuinely representative of society" so are able to interpret the facts without judicial comment. Both Wood and Madge advocate a future where more use is made of written directions and less judicial comment is made. Lord Justice Moses continues this conversation in his Annual Law Reform Lecture (2010) where he satirises summing-up: "I shall speak to you at length; I cannot even say how long it will be [...] There will be few visual aids; I shall expect throughout to capture your attention with the power of my voice, speaking faster during those parts of the process which I do not really understand and more slowly when it is really important". He forcefully calls for reform: putting into place, extending, and correcting the Auld Review of the Criminal Courts (2001). Lord Justice Moses says, "In a case of any length – more than a week – the judge should summarise in writing, with the help of the advocates, what has occurred thus far, a list of witnesses, a word or two as to what issue the evidence went to and any direction which has been given in relation to those witnesses". This proposal "to summarise during the trial" he argues "alters the tedious rhythm of passive observation" and "avoids the lengthy lecture at the end". Using the metaphor of a guide shining a lamp to the traveller, summing up during the journey rather than at the end, he suggests, is a reform that makes major changes.

What can a linguist add to this debate? Looking at the evidence gathered in this case study of the ten days of summing-up in the Shipman trial, it is clear that quotation is an important resource of the SUM. The most striking observation, however, is the way that Justice Forbes puts together and synthesises the defendant's words from different parts of the trial and the police investigation for immediate contrast and evaluation. These coincidences are not apparent during the trial, though some of these could be made so by summary as the

trial progresses. Not all could be pointed to during the journey of the evidence, though. For example, where the contrastive parts are separated by a long stretch of time (the police interviews become evidence in the prosecution case on Day 23, but Shipman is cross-examined in the defence case on Days 32 to 38) the summing-up seems the best place for this. Even during the course of the trial there is a huge time lag between Day 23 and Day 38, so the SUM is not much different. There *is* a risk that the jury will either see the SUM facts as more important than their recollection of the evidence and therefore feel the need to convict, or (as Madge 2006 points out) see the SUM as pro-prosecution and therefore acquit, leading to inexplicable verdicts. And the power of organisation and synthesis does contribute to this risk, but, before reform gives way to the abolition of the SUM in English and Welsh courts, let us reflect on what the SUM does and if there is anything that would be lost by reform. In a complex trial, such as Shipman, it is unlikely that the jury would be able to synthesise the evidence in the same way as the judge. They need assistance. We have seen the kind of work the judge does, not just in synthesising the different and inconsistent voices of the defendant, but also in reorganising the evidence to represent it to the jury. In the last 21,000 words of his 294,000 word SUM (Day 52), Justice Forbes sums up 'various assorted topics, including interviews with the police that were conducted with Dr Shipman' (Table 1). As we see in extract 13, this includes questions that he himself asked Shipman and the responses that Shipman made, drawing attention to the crucial evidence in the case: morphine toxicity and whether Shipman accepted the prosecution evidence. On the one hand this tactic seems to be exactly what Justice Moses warns against – the power of the judicial voice – but on the other can untrained juries working within a trial system with its specialised activities and unfamiliar structure be expected to do the job that the SUM models alone: weighing up the competing and contrasting details of evidence and coming to their verdict? In lengthy and complex trials this seems an impossible task.

References

Andrus, J., 2011. Beyond texts in context: Recontextualization and the co-production of texts and contexts in the legal discourse, excited utterance exception to hearsay. Discourse and Society 22 (2), 115-136.

Bakhtin, M. M., 1981. The Dialogic Imagination: Four Essays. Holquist, M. (Ed.)., Trans. Emerson, C., Holquist, M. Austin: University of Texas Press.

Bal, M., 1981. Notes on Narrative Embedding. Poetics Today 2, 41–59.

Baynham, M., 1996. Direct speech: What's it doing in non-narrative discourse? Journal of Pragmatics 25, 61-81.

Bell, A., 1991. The Language of News Media. Blackwell. Oxford

Bennett, W.L., Feldman, M.S. 1981. Reconstructing Reality in the Courtroom. London: Tavistock.

Blackledge, A. J., 2006. The racialization of language in British political discourse, Critical Discourse Studies 3 (1), 61-79.

Briggs, C.L. and Bauman, R., 2009. Genre, Intertextuality and Social Power. Linguistic Anthropology: A Reader 2nd Edition. In: Duranti, A. (Ed.), title. Oxford: Blackwell, pp. 214-244.

Cameron, L., Deignan, A. 2003. Combining large and small corpora to investigate tuning devices around metaphor in spoken discourse. Metaphor and Symbol 18 (3), 149-160.

Clift, R., Holt, E. 2007 Introduction. In: Holt, E., Clift, R. (Eds) Reporting Talk: Reported Speech in Interaction. Cambridge: Cambridge University Press, pp. 1-15.

Criminal Justice and Public Order Act 1994, available from URL: http://www.legislation.gov.uk/ukpga/1994/33/contents

Ehrlich, S., 2007. Legal discourse and the cultural intelligibility of gendered meanings. Journal of Sociolinguistics 11 (4), 452–477.

Flowerdew, L. 2004. The argument for using English specialized corpora to understand academic and professional language. In: Connor, U., Upton, T. (Eds) Discourse in the Professions. Amsterdam: John Benjamins, pp. 11-33.

Francis, G. 1994. Labelling discourse: an aspect of nominal-group lexical cohesion. In: Coulthard, M. (Ed), Advances in Written Text Analysis. London: Routledge, pp. 83-101.

Goffman, E. 1979. Forms of Talk. University of Pennsylvania Press, Philadelphia.

Hanks, W.F., 2005. Explorations in the deictic field. Current Anthropology 46 (2), 191-220.

Heffer, C., 2005. The Language of Jury Trial: A Corpus-aided Analysis of Legal-Lay Discourse. Basingstoke & New York: Palgrave Macmillan.

Hernandez-Campoy, J.M., Cutillas-Espinosa, J.A., 2012. Introduction: Style shifting revisited. In: Hernandez-Campoy, J.M., Cutillas-Espinosa, J.A., (Eds) Style-Shifting in Public. New Perspectives on Stylistic Variation. Amsterdam: John Benjamins, pp.1-18.

HMSO. 2001. Shipman Trial Transcript, R v. Dr Harold Shipman (October 1999 – January 2000). Online

http://webarchive.nationalarchives.gov.uk/20090619142823/http://www.shipman-inquiry.org.uk/trialtrans.asp [last accessed 1 April 2013].

Hunston, S., Sinclair, J. McH. 2000. A local grammar of evaluation. In: Hunston, S., Thompson, G. (Eds) Evaluation in Text. Authorial Stance and the Construction of Discourse. Oxford: Oxford University Press, pp. 74-101.

Hyland, K. 2005. Metadiscourse. Continuum, London.

Iedema, R., Wodak, R., (1999). Organisational Discourses and Practices. In: Iedema, R., Wodak, R., (Eds), special issue of Discourse and Society on organisational research 10 (1), pp.5-20.

Johnson, A. J., 2013. Embedding police interviews in the prosecution case in the Shipman trial. In: Heffer, C., Rock, F., Conley, J. (Eds) Legal-Lay Communication. Textual Travels in the Law. Oxford and New York: Oxford University Press, pp. 147-167.

Madge, N. 2006. Summing Up – a judge's perspective. Criminal Law Review, September, 817-827.

Matoesian, G., 2000. Intertextual authority in reported speech: Production media in the Kennedy Smith rape trial. Journal of Pragmatics 32, 879-914.

Matoesian, G. 1999. Intertextuality, affect, and ideology in legal discourse. Text 19 (1), 73-109.

Moses, Lord Justice. 2010. Annual law reform lecture: Summing down the summing-up. The Hall, Inner Temple, 23 November 2010, pp. 1-13. Online http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/speech-moses-lj-summing-down-summing-up.pdf [Last accessed 28 October 2013].

Newbury, P., Johnson, A. 2006. Suspects' resistance to constraining and coercive questioning strategies in the police interview. The International Journal of Speech Language and the Law 13 (2), 213-240.

Pagano, A. 1994. Negatives in written text. In: Coulthard, M. (Ed), Advances in Written Text Analysis. London: Routledge, pp. 250-265.

Partington, A. 2006. The Linguistics of Laughter. A Corpus-Assisted Study of Laughter-Talk. London: Routledge.

Partington, A., Duguid, A., Taylor, C. 2013. Patterns and Meanings in Discourse: Theory and Practice in Corpus-assisted Discourse Studies (CADS). (Studies in Corpus Linguistics). Amsterdam: John Benjamins.

Sarangi, S., 1998. Rethinking recontextualisation in professional discourse studies: An epilogue. In: Linell, P., Sarangi, S. (Eds), Discourse Across Professional Boundaries. Special issue of Text 18 (2), 301-318.

Sarangi, S., Brookes-Howell, L., (2006). Recontextualising the familial lifeworld in genetic counselling case notes. In: M. Gotti, M., Salagar-Meyer, F. (Eds), Advances in Medical Discourse Analysis: Oral and Written Contexts. Bern: Peter Lang, pp. 197-228.

Scott, M., 2011. WordSmith Tools version 6. Lexical Analysis Software, Liverpool.

Scott, M., Tribble, C. 2006. Textual Patterns: Key Words and Corpus Analysis in Language Education. Amsterdam: John Benjamins.

Smith 2005. Sixth Report – Shipman: The Final Report. Online http://webarchive.nationalarchives.gov.uk/20090808154959/http://www.the-shipman-inquiry.org.uk/finalreport.asp [last accessed 1 April 2013].

Tannen, D., 2006. Intertextuality in Interaction: Reframing Family Arguments in Public and Private. Text & Talk 26 (4), 597-617.

Tannen, D., 2007. Talking Voices: Repetition, Dialogue and Imagery in Conversational Discourse. 2nd Edition. Cambridge University Press, New York.

Tognini-Bonelli, E. 2001. Corpus Linguistics at Work (Studies in Corpus Linguistics). Amsterdam: John Benjamins.

Vološinov, V.N., 1986. Marxism and the Philosophy of Language. Trans. L. Matejka and I. R. Titunik. Harvard University Press, Cambridge, MA.

Winter, J., 2002. The truth will out? The role of judicial advocacy and gender in verdict construction. Social and Legal Studies 11(3), 343-367.

Wodak, R., 2007. Pragmatics and critical discourse analysis: A cross-disciplinary inquiry. Pragmatics and Cognition 15 (1), 203-225.

Wood, J. 2007. Summing up in criminal trials – a new direction? Conference on jury research, policy and practice, Sydney, NSW, 11 December 2007. Online http://www.lawreform.lawlink.nsw.gov.au/lrc/LRC_jrtw02.html [last accessed 28 October 2013].

Colour chart for online version of paper:

Figure 2. SAY and TELL in the SUM. (Days 43 to 52).