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Alison Johnson

15 Haunting Evidence: Quoting the Prisoner in 19th Century Old Bailey Trial Discourse. The Defences of Cooper (1842) and McNaughten (1843)

Abstract: This paper focuses on the representation of quoted speech in a corpus of Old Bailey trials from Victorian London, with detailed examination of two of them: Cooper (1842) and McNaughten (1843). These trials involve an insanity defence. As the trials were recorded by hand, they entail scribal choices about whether to record and how to represent quotation, making choices about direct and indirect quotation pragmatically interesting, since the illocutionary force of the recorded utterances is selected as important by the scribe. My corpus, the *Monomania Corpus*, is collected from the larger *Proceedings of the Old Bailey, 1674–1913* [available online: http://www.oldbaileyonline.org/], which contains 197,745 criminal trials over more than two centuries. Criminal trial hearings are communicative events which are densely intertextually structured. Prior questioning of witnesses and records of what they say are extensively quoted, requoted, and recontextualized in the course of the trial and quotation is used to demonstrate the defendant's criminal liability or his incapacity to commit a criminal offence. The establishment of a binding legal reality crucially hinges on the differential weights of prosecution and defence evidence, so the selective power of quotation is an important resource for defending the prisoner. In the case of Cooper, the prosecution's use of direct and indirect quotation is incriminating for the defendant and the witnesses seem well 'rehearsed' in supporting the prosecution case, whereas the defence picture, drawn out through family members, presents the defendant's insane utterances from childhood to early manhood, with the miserable, poor, young man being seen as easy prey by a constabulary looking for results. In McNaughten's case, we see the two institutions of the law and medicine fighting over culpability and insanity, as the defence quotes from medical interviews with the accused. The analysis shows the powerful use of hypothetical quotation and establishes a new category of quotation: metatalk for suppressing quotation. The "haunting evidence" (Eigen 1995: 160) of prisoner testimony is given voice through the powerful alliance of advocate and witness (lay, and medical), as they tell the court, through the prisoner's words, what he is incapable of putting together himself. The prisoner is prosecuted in his own words. What he says on arrest, in gaol, and before the magistrate, is recorded and replayed to self-incriminate, as he is ventriloquized by the prosecution, and it is

therefore a masterful adversarial reversal to defend with the same voice, but from a different perspective.

Keywords: quotation, reported speech, insanity, Victorian trial, defence, corpus

1 Introduction

At 120 million words the *Old Bailey Proceedings 1674–1913* (Hitchcock et al. 2012) (hereafter *OBP*), containing 197,000 trials, is a seemingly homogenous, large corpus. For forensic discourse analysts, the two and a half centuries of the *OBP* is too wide a period to examine as a whole, since statutes, trial practice and lawyer and witness involvement in trials change substantially over this time (Hostettler 2009) and, as Hunston (2011) points out, "a corpus, unlike a text, cannot be analysed". I therefore focus on two complete trials from the Victorian period (1837–1901), a period which could be described as a crucible of legal change, since the Old Bailey Sessions House sees the growth and rise of three professions within its walls. Police officers from the newly-formed Metropolitan Police force (from 1829), barristers from a "newly emerging advocacy bar whose ambitious efforts to fashion a defense and prosecution 'case' would have profound consequences for the tone and texture of witness examination", and the "first forensic-psychiatric witnesses" (Eigen 1995: 133), though these medics did not call themselves 'psychiatrists' until the 20th century,[1] form a new cast of participants in the trial courtroom. Prior to the Prisoners' Counsel Act (1836), defendants had not been entitled to a full defence by counsel and defendants largely defended themselves (Cairns 1998; Archer 2013). Outside the courtroom the Industrial Revolution had seen the expansion of "urban areas where poverty and crime were growing" (Hostettler 2009: 167) and "the invisible plague", an "epidemic of insanity [...] haunted the age" (Torrey/Miller 2001: 3).

The *OBP* website's statistics function shows a sharp rise in *non compos mentis* (a post-classical Latin legal term, meaning 'not of sound mind' or insane) verdicts at the end of the 18th and beginning of the 19th century, which continued throughout the 1900s. This is reflected in the broader international picture provided by Torrey/Miller (2001) across England and Wales, Ireland, Canadian and Atlantic Provinces, and the United States, rising from less than 1 to over 3 insane persons per 1,000 in England and Wales between 1807 and 1907.

1 There are no occurrences of *psychiatr -ist -y -ic* in the *OBP* and the lemmata *psychology -y -ical -ist -ists* only exist after 1882.

There was a uniquely Victorian word for insanity, *viz*. *monomania* (today diagnosed as "psychosis or paranoid schizophrenia" (Bewley 2008), which, according to the *Oxford English Dictionary* (*OED* Online 2012), spans the period 1815 to 1883. Jean Étienne Esquirol's treatise on insanity, which introduced the concept of *monomania*, is described in Taylor/Shuttleworth (1998: 256) as "a 'disease of the sensibility', which changes in accordance with the prevailing forms of society", or as Esquirol (1838/1845) put it "a disease of civilization" where, following the decline of religion,

> governments, in order to maintain authority over men, have had recourse to a *police*. Since that period, it is the police that troubles feeble imaginations, and establishments for the insane are peopled with monomaniacs who, fearing this authority, are delirious respecting the influence which it exercises, and by which they think themselves pursued. This monomaniac, who would formerly have been delirious with respect to magic, sorcery and the infernal regions; is now delirious, thinking himself threatened, pursued, and ready to be incarcerated by agents of the police.
>
> (Esquirol [1838, trans Hunt 1845] Taylor/Shuttleworth 1998: 257)

The condition and circumstances described by Esquirol of feeble people feeling threatened and pursued fit both of the cases we examine here. The trials occur within twelve months: Cooper (June 1842) and McNaughten (February 1843). In Cooper's case he is literally pursued by the police, as well as fearing and threatening them. When cornered and arrested after a chase, he is recorded as saying "don't ill-use me" (Testimony of Stephen Turnbull), and McNaughten is quoted as saying he is "pursued" by "Tories" when he is before the Magistrate after his arrest for shooting the Prime Minister, Sir Robert Peel's private secretary:

> The Tories in my native city have driven me to this, and have followed me to France, Scotland, and other parts; I can get no sleep from the system they pursue towards me; I believe I am driven into a consumption by them; they wish to murder me.
>
> (Testimony of Inspector Tierney)

This paper investigates the Victorian insanity defence in what I have called the *Monomania Corpus*, since all trials contain the word. This deliberate bias allows us to examine the role of medical evidence of insanity. The corpus contains 15 trials from 1833 to 1907, almost identically coinciding with Queen Victoria's reign (1837–1901), with the final two trials containing references to the disappearance of the diagnosis ("monomania is not much believed in now", trial of Sando 1898; "the old idea of monomania is not now accepted", trial of Church 1907).

My focus here is on two of the largest trials and, in particular, on the way the prisoner is prosecuted and defended through quoting his own words. Quotation by each side creates very different views of the offender and the offence, the pros-

ecution presenting a picture of a rational and sane individual, and the defence one of a mentally incapacitated person incapable of knowing right from wrong. We examine the advocacy work of the defence barristers, Mr Horry (for Thomas Cooper) and Mr Cockburn (for Daniel McNaughten). As they cross-examine prosecution witnesses and quote their client's conversations with prosecution and defence witnesses over the course of the trial, they demonstrate the power of advocacy. The prisoner is thus made to speak, while being ventriloquized (Tannen 2007: 21; Johnson 2013: 152) by the professional (lawyer and medic), as he sits silently in the court.

The detailed record in the *OBP* and in the newspapers of the day makes use of direct quotation, indirect quotation (with *that* and zero *that*), and narrative reports of speech acts (henceforth NRSA, Leech/Short 2007) (examples i, ii, and iii, from the Cooper trial), which all contribute to a representation of the prisoner's miserable position. In addition, we have hypothetical speech (example iv), since not all quotation is reporting of speech said on an earlier occasion, and this can be used "to suggest what someone might say/have said on some (often hypothetical) occasion" (Holt 2007: 47). In this paper I look at who quotes and who is quoted, where it is in the trial, and when it occurs in relation to the offence and its alleged commission.

i. The prisoner said, "The first one who dares to attack me shall have the contents" [of a pistol]
ii. I accompanied him to the station, and he gave his name as Thomas Cooper, and that he was a bricklayer.
iii. he did not offer to get out while I was looking at him
iv. Supposing an individual in apparent health exhibited great sleeplessness, was excessively ravenous in his appetite, very dirty in his habits, said he was converted and a child of God, called himself Dick Turpin and King Richard, and wanted to dig his father out of his grave, because it was no use he should lie there, would you be prepared to say he was in a sound state of mind?

2 The *Old Bailey Proceedings Online* and the *Monomania Corpus*

The *OBP* consists almost entirely of trial discourse. However, it is underexplored by (forensic) linguists and used much more by historians (including medical and legal historians e.g. Eigen 1995), a gap which is identified and exploited in the present research. *OBP* trial discourse consists of "spoken interaction (re)cast as writing" (Culpeper/Kytö 2000: 175), since the oral mode of lawyer, witness and

judicial talk is rendered into writing to produce a monthly publication for sale: *The Proceedings*. The methods, skills, and scribes vary across the two-and-a-half centuries of the *OBP* and across individual trial records. By the 19th century Pitman shorthand had been invented and the adversarial trial started to resemble modern trial discourse more closely. Defence lawyers were present in the Crown Court (Archer 2010) and advocacy, rather than individuals prosecuting their own cases, was the norm (Archer 2005). By the 19th century, the defendant rarely speaks in the trial. Individual trials contain two structural parts – prosecution and defence cases – and both professional and lay voices: barristers, police, medical and lay witnesses.

The 19th century *Monomania Corpus* is a "small corpus" (Cameron/Deignan 2003) downloaded from the *OBP* website. It contains 15 trials of between 300 and 32,000 words (a total corpus of around 133,000 words). The trials of Cooper (19,200 words) and McNaughten (31,744 words) are two of the three largest records in the *Monomania Corpus*. Quotation is a central activity in trial discourse, seen in the frequency of reporting verbs in the whole *Monomania Corpus*.

Quotation can be introduced by a range of verbs, but in my corpus SAY is the most frequent verb (*said* is 22nd in a frequency list of 6,239 types) and therefore quoting with SAY is focused on in this paper. There are 1,258 occurrences of the lemma SAY, accounting for nearly 1 % (0.95 %) of the vocabulary, making speech reporting a central activity of trial discourse. The most frequent form is the past tense: *said* (0.68 %); then *say* (0.23 %), *saying* (0.03) and *says* (less than 0.01, only 7 occurrences), making uses of *says* 'marked' (Jakobson 1972), so that they stand out against a background of non-use when they occur. *Say* is not always used for quotation, of course. A frequent pattern is *I cannot say X,* indicating a common use to indicate a witness's reluctance to agree with a lawyer question. It is also used for self-quotation by physicians in the corpus, as in *I made a report – I say "Having to-day seen the above…"* and by witnesses, as in *I heard mother say to father on Thursday night, "I am…"*. Note that the word *that* is the 11th most frequent word in the corpus, its prominent position stemming from the large proportion of indirect speech reporting, as we shall see.

The inclusion of *OBP* trial discourse in news reports of the day highlights the relative incompleteness of the *OBP* (lawyers' opening speeches and judges' sentencing remarks are omitted from the *OBP*, but can be found in news reports) and points to the advantages of using additional sources. News reporting from both trials is used where it adds details absent from the trial data.

3 Quotation and Quoting in Prosecutions and Insanity Defences

Bell (1991: 207–209) outlines the functions of direct quotation in news discourse: to produce "reportable facts" that are "valued as particularly incontrovertible", to "distance and disown", and to produce "soundbites" which add "the flavour of the newsmaker's own words". And Clift/Holt (2007: 6) point out the "dramaturgical quality of DRS [direct reported speech]". These are all important factors to consider, alongside the Labovian insight of the evaluative aspect of quotation in storytelling sources. Quotation produces what Bublitz/Hoffmann (2011: 434) describe as an evaluative surplus (cf. also Bublitz, this volume). In quoting, the quoter

> identifies both a text and its context and relocates T[ext]1-in-C[ontext]1 as T2-in-C2 in order to reflect upon it [...] in an evaluative manner [...] Quoting as a speech act yields an evaluating surplus. (Bublitz/Hoffmann 2011: 434)

Clift/Holt (2007: 6) also note this phenomenon, drawing our attention to the simultaneous "replay" of an interaction with the opportunity for the quoter to "convey his or her attitude towards the reported utterance" (Clift/Holt 2007: 6). Quoting in the criminal trial context, where the interaction is replayed for a jury as primary audience, provides an occasion for these listeners to accept or reject the meanings produced as they weigh the evidence and come to their decision about the innocence or guilt of the defendant. Embedding reported speech is therefore a "highly selective and thus powerful resource of institutional meaning-making", both legal and medical, and of reproduction, in the historical courtroom (Johnson 2013: 148) and in the contemporary one, constructing "intertextual authority" (Matoesian 2000: 879). Since legal discourse is conservative (Tiersma 1999: 95–97), rather than varying widely in lexis and structure over time, it is appropriate to consider Reisigl/Wodak's (2009) discourse-historical approach, which suggests that discursive practices are embedded in history. Using this approach, we can test to what extent current defence advocacy and attitudes towards the police, expert witnesses and defendants are evident in 19th century trials. In the case of Cooper, the prosecution's use of direct and indirect quotation is damning and incriminating for the defendant, since the witnesses seem well 'rehearsed' in supporting the prosecution case, whereas the defence picture, drawn out through family members, presents the working-class misery of the time and a young man seen as easy prey by a constabulary looking for results. In McNaughten's case, we see the two institutions of the law and medicine fighting over culpability and insanity, as the defence quotes from medical interviews with the accused.

4 The Cases of Cooper and McNaughten

Cooper is on trial for the murder of a policeman in Islington and McNaughten is on trial for the murder of Prime Minister Sir Robert Peel's private secretary, Edward Drummond. Both occasions involve a literal smoking gun; each accused is armed with two pistols, seen to fire at and kill the murdered man, and in both cases the accused was arrested at the scene of the crime by police witnesses. In both trials insanity defences are offered. However, the McNaughten trial is replete with medical testimony, unlike in the case of Cooper, where medical evidence of his sanity or insanity is limited to direct observations from those who came into contact with the case in the course of the investigation, with the judge refusing to admit direct medical experts for the prosecution. In Cooper's case, *The Morning Chronicle* (18 June 1842) reports:

> Dr Sutherland was then called; but Mr. Justice Pattison objected to Mr. Bodkin [for the prosecution] that calling medical gentlemen to prove sanity or insanity was not at all a desirable course. It was, in fact, placing the medical witnesses in the position which belonged solely to the jury. Mr Bodkin is said to have "acquiesced in [sic] the learned judge's opinion".
>
> *The Morning Chronicle* (18 June 1842)

The McNaughten trial (one year later) makes history, as no fewer than seven medical experts are called in a trial that contains 47 participants.

In order to look at what the defence achieves through quotation in each case, we will first look at how the prosecution presents what the prisoner says.

4.1 Cooper's Prosecution (13th/18th June 1842 *OBP* Trial Reference: t18420613–1766)[2]

Thomas Cooper, aged 23, an unemployed bricklayer of 1 Rawnstorne Street, Clerkenwell (in the London Borough of Islington), lived about a mile north of the Old Bailey, just off the A1, the "Great North Road" out of London, the haunt of notorious 17th and 18th century highwaymen. He was charged with the "wilful murder of Timothy Daly" (a policeman, also spelled Daley) in the district of Highbury and Islington (Metropolitan Police N Division), London. The prosecution case, conducted by Messrs. Bodkin and Chambers, presents him as a notorious petty criminal of the sort described by Harper (1908: 4) as a "footpad", a nineteenth century foot version of the mounted highwayman, but without "the slightest inkling of

2 The *OBP* records 13th June 1842 as the date of Thomas Cooper's trial, but the microfiche of newspapers of the time records 18th June 1842 as the date of the trial.

romance" of his legendary predecessors, "a miserable, muddy, cowardly figure, for whom no one ever had a good word", as reflected in the newspaper headlines of time, from his arrest, 5th May 1842, to his trial and conviction, 18th June 1842 (for example: 1 and 2).

(1) Horrible murder by a highwayman. *The Standard* (London, England), Friday May 6 1842.

(2) Murder of a policeman, and two other persons shot, by a foot-pad. *The Essex Standard, and General Advertiser for the Eastern Counties* (Colchester, England), Friday May 13 1842.

On the afternoon of 5th May 1842, Cooper was arrested for three offences: the shooting and wounding of Police Constable Moss, the shooting and wounding of a baker, and the fatal shooting of a second policeman: PC Timothy Daly. The crimes were the result of an unfortunate set of coincidences: a uniformed police constable on patrol, a well-to-do gentleman out for a walk and Cooper, an unemployed and disenchanted young bricklayer, out on his own, carrying a couple of pistols and powder, probably under the influence of arsenic and laudanum,[3] which he took in six penny amounts ("he said he had taken sixpenny worth of laudanum and sixpenny worth of arsenic," Figure 1, line 48). PC Moss was on patrol in the rural and affluent area of Hornsey, having "previously [...] received information of robberies having been committed in that neighbourhood and a description of the man suspected had been read at the station" (testimony of Moss). He encountered "a gentleman" walking in the area and had "observed that he had a large bunch of seals" (*OED*: "an ornamental appendage to a watch chain"). In saying this Moss's testimony self-constructs a policeman alert to potential criminality by the unruly, poor, criminal class preying upon the rich gentleman. The coincidence of Cooper arriving on the scene makes PC Moss suspicious. The well-to-do gentleman does not figure any more in the story and no attempt is made to rob him. Moss testifies: "when he [Cooper] saw me he ran to the opposite side of the road, and went down a little bank, into the adjoining field by the road-side". When Moss asked Cooper "what he did there" and when he responded "nothing particular", Moss "then told him if he did not give a better account of himself than that" he would "take him into custody". He does not say what for, but the Vagrancy Act of 1824 (Legislation.gov.uk) had created the offence of "loitering

3 Arsenic and laudanum were both easily obtainable at the time from an apothecary. Arsenic was considered by early Victorians as something of "a panacea" (Doyle 2009: 311)

with intent to commit an indictable offence" and "wandering abroad [...] and not giving a good account of himself".

The story unravels sadly but not entirely unpredictably, given the coincidences reported and Cooper's past history with the police. Cooper "sprang from the hedge [...] aimed the pistol in his right hand [...] fired [...] and something from it went into my arm, and came out just above the elbow" (testimony of Moss). A two mile chase ended with Cooper cornered "in Highbury Park south" and "against the paling" (testimony of Mott, the baker). A stand-off ensued with the still-armed Cooper facing a collection of his pursuers, variously armed with a gun, a broomstick and a brick, and Daly, the policeman, who had joined the chase after being summoned by Young the waiter. Cross-examination questions, as we will see, suggest a defence of provocation, which resulted in him firing the two pistols at Daly, fatally shooting him, with a large number of eye witnesses ready to give evidence in court. His actions and direct and indirect speech are recorded in detail as evidence against him (Figure 1). We see his speech and conversation at all the stages of the story: the chase and the shooting (lines 1–8 and 12–23); the arrest (lines 9, 24, and 25); on the way to the station (lines 25 and 26); to the Magistrate (line 11); whilst in the custody of Waddington, the gaoler at the Police Court (lines 27–32).

None of the examples in Figure 1 shows Cooper to be contrite, making what was said and recorded a powerful indictment against him in the prosecution case. The witnesses seem to be well versed in their 'lines', each confirming the incriminating words Cooper uses (lines 4, 16 and 20) and the police investigation interviews have produced a seemingly watertight case in respect of their murdered colleague. Two previous robberies are unproblematically assigned to him at the end of the trial (lines 33–34), with the identification corroborated in part by his apparently using the same *modus operandi* on both occasions: the notorious highwaymen's threat (Harper 1908: 49) made famous by Dick Turpin:[4] "Your money, or your life" (lines 33–34). Even while in custody, Waddington, gaoler at Clerkenwell Police Court, reports a threat to his life (lines 31–32). The prosecution presents a case strengthened by direct and indirect quotation of incriminating

4 Dick Turpin was a notorious highwayman who robbed rich travellers and mail coaches on the roads out of London in the 18th century. He frequented the Great North Road, the A1 north out of London and is described by Harper (1908: 246) as "the greatest of all the rascals who made the name of the Great North Road a name of dread". He was executed for his crimes in 1739 (Seal 2011: 128), after being imprisoned in York castle. His crimes were romanticised after his death in "penny lives of Turpin", popular publications of the early 19th century, sold by pedlars and street-sellers (Harper 1908: 128–9). Thomas Cooper seems to be a young man 'haunted' by this notorious highwayman.

1	Moss	and he said if I attempted to follow him, or make any alarm, he certainly would shoot me dead
2	Moss	when he drew that knife out, he said if I followed him any further, he certainly would do for me
3	Young	not think those pistols are loaded" – the prisoner said they were, and he would shoot two more
4	Young	Daly said, "Surrender, I don't think those pistols are loaded" – then he said they were, and he
5	Young	hat to me at the station – I showed it to the prisoner, and asked him if it was his – he said, yes
6	Howard	the pistols – on their being taken he said, "I am done" – I said, "It is pretty near time you had"
7	Turnbull	are loaded" the prisoner said, "The first one who dares to attack me shall have the contents"
8	Turnbull	ting the knife from him, he said, "I am done, you have got all my weapons, but don't ill-use me"
9	Turnbull	asked him how he could do such a thing as this – he said, "I would have served you the same"
10	Turnbull	I am certain the prisoner said, "I would serve you the same," not "I will serve you the same"
11	Turnbull	eenwood, the Magistrate, asked me which he said – I was never in hesitation about his words
12	Smith	I was coming up towards him – he said, "What do you want with me? I have done nothing"
13	Smith	I went after him – I said, "The people are hallooing after you and, and saying you have shot a
14	Smith	man in Hornsey-wood" - he said he had done nothing – he pulled out two pistols and presented
15	Smith	said no more, but sidled down the field – I saw him go through a motion as if loading a pistol
16	Smith	Daly said he thought the pistols were not loaded – the prisoner said, "You may take my word
17	Smith	they are" – he was holding them out, one in each hand, at the time
18	Smith	hand, and said, "You ought to have this" – he presented a pistol, and said, "You shall have this"
19	Smith	knife were taken from him, and he said he was done then, they had got all his weapons from

20	Mott	prisoner told him to keep off, he said he did not believe the pistols were loaded – before that
21	Mott	Daly asked him what he had been doing – he said he had been cutting turf – I asked him what
22	Grover	after the weapons were taken from the Prisoner, he said, "I will surrender, don't ill-use me"
23	Simmonds	I heard Daly ask him to surrender, and to give the pistols up – he said something in reply
24	Wheeler	knife was taken from him, he said, "It is all done now, I will surrender, I have got nothing more"
25	Wheeler	as he was being conveyed to the station, one of the by standers said, "How could you do such
26	Wheeler	a thing? – he said he gave them notice, he gave them all warning, and told them if they attempt
27	Wadding	when I told him it was a bad job, he said, yes it was, but he should have shot any man that
28	Wadding	he said he wished Penny had been there instead […], he should have shot him more freely
29	Wadding	in my custody that some grass was issuing from Mott's wound, and I said to the prisoner, "Tom,
30	Wadding	how came the grass to be in your pistol?" – he said he had no paper, and he wadded the pistol
31	Wadding	towards where my cutlass hung – he did not get off the box – I said, "Mr Tom, what are you
32	Wadding	about there?" – he said, "If I could have got hold of it, I meant to have done away with myself
33	Roach	he turned round, presented a pistol in Mrs. Cooks' face, and said, "Your money, or your life"
34	Swears	presented a pistol at me, and said, "Your money, or your life" – I told him I had got very little

Figure 1: Concordance of *he/the prisoner said* in the trial of Cooper, produced using *Wordsmith* (Scott 2011), showing a range of events leading up to and after arrest and whilst in custody.

words from the prisoner and the news coverage adds to the prosecution view the negative public threat of the highwayman or foot-pad.

4.2 McNaughten's Prosecution (27–28 February 1843 *OBP* Trial Reference t18430227-874)

McNaughten's murder trial is the largest monomania trial in the corpus and is famous for creating the McNaughten rules,[5] the rules on insanity in criminal cases in England and Wales (and in a number of US states, New Zealand etc.), and for the successful, but highly controversial, defence that saw McNaughten acquitted of murder by reason of his insanity at the time. The prosecution was conducted by The Solicitor General and Messrs. Aldolphus, Waddington and Gurney. Following his arrest on 20 January 1843 and between McNaughten's Magistrate's Court appearance (21 January 1843) and his trial (27–28 February 1843), there was widespread reporting of the case in the news, an examination of which adds details to the *OBP*.

As in the Cooper case, the first prosecution witness is the police officer who encountered him. In the McNaughten case, Police Constable James Silver witnesses McNaughten shooting his victim, as a passer-by in Whitehall. He intervenes and arrests McNaughten, and is recorded as giving evidence saying:

> "I heard the report of a pistol on the opposite side, which attracted my attention – I saw a gentleman reeling, with his left hand under his left side – I saw his coat on fire – he was near Mr. Tatham, the gunsmith's, on the opposite side of the street to where I was" (Testimony of PC Silver).

The only words PC Silver reports as uttered by McNaughten are insignificant: "the prisoner gave his name and address, 'Daniel M'Naughten, 7, Poplar-row, Newington'". But Police Inspector Tierney, the Inspector in charge of the police station where McNaughten was held overnight before going before the magistrate, gives evidence that is densely filled with quotation, and his testimony is the focus of detailed cross-examination as part of the defence work, to which we now turn.

5 There are many spellings of McNaughten's name: M'Naghten, M'Naughten, McNaughtan, across the documents I have consulted. I have adopted McNaughten here throughout, being the most frequent.

4.3 Defending Cooper (1842) and McNaughten (1843) – Mr Horry and Mr Cockburn

Mr Horry (18–071881) was an experienced barrister by the time he acted as Cooper's counsel in 1842, having acted in over 100 Old Bailey trials by that time. He is present in a total of 1,010 *OBP* trial records over 36 years, his first trial in 1837, two years after being called to the bar, after being admitted to Gray's Inn in 1831, aged 24 (Foster 1889: 441), and his final trial in 1875, six years before his death. Cooper's case was his 127th at the Old Bailey. All of his cases (he most often acted for the defendant) gave him intimate knowledge of the Victorian poor, with the majority of trials (816 out of 1,010) for theft, including: simple larceny (255 cases), robbery (53), stealing from a master (142), and pocketpicking (126).

Sir Alexander Cockburn (1802–1880) of the Middle Temple, McNaughten's counsel, is described as "highly courteous, witty and eloquent in company, and keen to share anecdotes with his friends, who included Charles Dickens". He had a "taste for high-profile cases", both as a barrister and later as a judge (Lobban 2004 online). McNaughten's case was certainly high profile, because, as the newspapers said, he had attempted to assassinate the Prime Minister, Sir Robert Peel, and had shot his private secretary, Mr Edward Drummond instead. For both defence barristers, as is the case in the contemporary adversarial trial, the first primary mode of defending is during the prosecution case as they cross-examine prosecution witnesses. What they suggest to the jury in cross-examination questions and what is elicited in answers attempts to undermine the prosecution case and starts to form the defence case. In the next section we examine the defence work that is done in this cross-examination of prosecution witnesses. As we saw in Cooper's prosecution, the testimony of witnesses, strengthened by direct evidence in Cooper's own threatening words throughout the course of events, from his encounter with PC Moss to shooting PC Daly dead, presents a convincing prosecution case. And McNaughten, too, is quoted as self-incriminating. How then were Mr Cockburn and Mr Horry to defend these men seemingly already incriminated by their own words?

4.3.1 Defending in Cross-examination of Prosecution Witnesses – Direct and Indirect Speech, and Narrative Report of Speech Act (NRSA)

Mr Horry adopts three strategies in his cross-examination of prosecution witnesses: to attack the police evidence, suggesting that the police were on the lookout for any suitable suspect for a spate of recent robberies; to attack the pursuers' evidence, suggesting that they hounded and intimidated Cooper leading him to fire the pistol killing PC Daly; and, using the opportunity of the prosecu-

tion calling Mr Drewry, the doctor who certified PC Daly's death, to elicit from him a lesson on insanity for the jury.

He begins his cross-examination of the first prosecution witness, PC Moss, with the suggestion that he was under "instruction", a particularly indirect form of indirect speech (Example 3), described by Leech and Short (2007: 259) as "narrative report of speech acts" (NRSA), where sentences "merely report that a speech act (or a number of speech acts) has occurred, but where the narrator does not have to commit himself entirely to giving the sense of what was said, let alone the form of words in which they were uttered" (Leech/Short 2007: 259–260). The unreported speech act is implied to have gone something like: "Apprehend someone for these robberies in the area."

(3) Horry to PC Moss
Q. I believe you had instruction to apprehend somebody, not anybody by name?
A. No.

His opening argument is therefore one that suggests that Cooper might have been a likely person to take into the station for questioning. He then moves to his second argument: one of intimidation, made by inference. His questioning (Examples 4–7) contributes to a narrative of blame on the pursuers, not on the pursued, and presents a counter-narrative to the prosecution account. In (4) the use in indirect speech within the "when you say"-question forms the first part of a two-clause question that contrasts a prosecution view (looking from right to left) with a defence view (throwing his head backward and forward as fast as he could). One is rational and vigilant and the other is desperate. In (5) Horry draws attention to the enclosed space that Cooper is trapped in. We do not have his next question (the dashes indicate where questions have been asked but not recorded), but from Howard's answer we can suggest that Horry used a NRSA within a question such as: "Did he not offer to get out?", implying Cooper's willingness to surrender.

(4) Horry to Young (a waiter at Hornsey-wood-house tavern who found PC Moss lying shot)
Q. When you say he was looking from right to left, was not he throwing his head backward and forward as fast as he could?
A. No.
Q. Was it not just about that time that he fired when he saw the gun in your hands?
A. Yes.

(5) Horry to Howard (a baker in his cart on Hornsey Road, spoken to by Young)
Q. The wooden enclosure is spiked, I believe?
A. No, it goes up sharp – it is not six or eight feet high [...] – he did not offer to get out while I was looking at him

(6) Horry to Turnbull (a gardener at work in his master's garden in Highbury)
Q. You had a brick in your hand?
A. Yes – I was not at the enclosure – Mott had a stick in his hand – I did not hear him offer to strike the prisoner, nor know of a stick being broken over the paling [...] I am certain the prisoner said, "I would serve You the same," not "I will serve you the same" – Mr. Greenwood, the Magistrate, asked me which he said – I was never in hesitation about his words [...] Daly did not call the people to come up and help – all he said was, "I don't believe those pistols are loaded."

(7) Horry to Smith (a gardener on his way home near Highbury-park west)
Q. Try and recollect whether the stick Mott had was not broken over a paling?
A. I do not know – [...] I heard the prisoner say he did not mean to shoot any one, but the first who came near him should have it

Turnbull, a gardener, is most carefully questioned, his epistemic certainty (Huddleston and Pullum 2002) marked by "I am certain" in the reporting clause, followed by direct speech in the record ("I am certain the prisoner said, 'I would serve you the same'") (6). Though Turnbull provides negative answers ("I did not hear him [Mott] offer to strike the prisoner"; "Daly [the policeman] did not call the people to come up and help"), the suggestion that Cooper was threatened by the policeman and goaded and intimidated by the crowd is, nevertheless, successfully planted in the jury's mind. In (7) Smith gives evidence via indirect speech representation (underlined) that adds weight to a defence argument that emerges out of the questions and answers: Cooper only shot after provocation from the crowd.

The most careful cross-examination is reserved for the medical witness, Edward Drewry, who appears at the end of the prosecution case. His testimony consists of 68 words, in which he describes attending and examining PC Daly's dead body, finding a pistol shot and confirming that as the cause of death. There follow, however, 1,100 words of cross-examination question and answer record on the nature of Cooper's sanity or insanity. Given that Drewry has appeared as a prosecution witness to establish the cause of death of a serving police officer and has "heard the evidence in this case, and the conduct and demeanor of the pris-

oner deposed to throughout the transaction" (question by Mr Bodkin, prosecution barrister, to Drewry), it is unsurprising that he resists the cross-examination questions that might undermine the prosecution case, although he has a duty to the court to give his opinion. Example (8a) is a particularly striking cross-examination question, which includes hypothetical indirect quotation (underlined).

(8a) Horry to Drewry
Q. Supposing an individual in apparent health exhibited great sleeplessness, was excessively ravenous in his appetite, very dirty in his habits, said he was converted and a child of God, called himself Dick Turpin and King Richard, and wanted to dig his father out of his grave, because it was no use he should lie there, would you be prepared to say he was in a sound state of mind?

Drewry's answer is not the preferred one, built into the controlling, closed *yes/no* question's design (Archer 2005). Horry has filled the question with a hypothesis that contains no less than six symptoms of insanity, including the defendant calling "himself Dick Turpin", making his question vivid with behavioural and indirect speech details (Tannen 2007) that make it difficult for Drewry not to say "no". What Drewry replies, however, is:

(8b) continued from 8a
A. It would depend very much on the circumstances

And, as Horry continues to press him, Drewry replies as in (8c) (dashes indicate further cross-examination questions that are not transcribed by the short-hand notetaker).

(8c) continued from 8b
1 if satisfied those things existed, I should say there might be some
2 peculiarity about him – he might have some of those symptoms without
3 having the mind affected at all – if they all existed, I should say he was not
4 in a sound state of mind – an alienation of the natural affections, a person
5 fond of his relatives at one time, and subsequently exhibiting great violence
6 to them, is one symptom of insanity – [...] – an acute state of fever generally

affects the brain, as putrid fever, and a malignant form of typhus – the brain
is peculiarly liable to be acted on in that disease.
Q. And sometimes the effects of the disease do not pass rapidly away?
A. No, they last for a considerable time – I have known that disease, and disorders of that character, affect the brain for some years.
Q. Supposing a person affected in that way, and a year or two after wards had another severe illness of an inflammatory kind, that might increase the effect produced by the fever?
A. Certainly [...] – in a person of unsound mind it is quite uncertain at what time the disease will reach the period of mania – any circumstance may bring it forth.
Q. It may come out at any time, and particularly when acts of violence are threatened?
A. Yes – a great many individuals only exhibit unsound ness of mind on certain subjects, that is monomania.

From Drewry's answers, we can see that Horry tenaciously pursues an acknowledgement that the hypothetical actions of "a person" do amount to insanity. The epistemic modality in the uncertain "might" (line 1) and conditional "if" (line 1) show that Drewry is not to be persuaded, as he continues to resist in cross-examination, preserving his professional opinion, though it is made to look increasingly untenable. When Horry introduces a similar level of weak epistemic certainty into his last three recorded questions ("sometimes" line 9, "might" line 13, and "may" line 18) Drewry is eventually forced to concede (line 19). Crucially the concession comes in relation to the likelihood of mania occurring "when acts of violence are threatened" (lines 18–19), this being important in the case of Cooper, since Horry's cross-examination of the prosecution witnesses has established that, when Cooper was cornered, Turnbull the gardener had a brick in his hand, and Mott the baker had a broomstick. Horry's persistent questioning continues to ask about a theoretical case, refusing to apply the symptoms to Cooper, making Drewry confirm theory, before Horry deals with Cooper's case in his defence. The force of the initial question, "Supposing an individual in apparent health exhibited great sleeplessness, was excessively ravenous [...] said he was converted [...] called himself Dick Turpin [...] would you be prepared to say he was in a sound state of mind?" (8a), with the hypothetical indirect speech report, signalled by the

verb "supposing" and followed by indirect quotation, forces the jury to consider a medical theory of insanity in advance of hearing from the defence witnesses. The cross-examination work that is engaged in is therefore damaging for the prosecution, because, despite Drewry's strength of resistance to cross-examination on the subject of monomania, and his insistence on his opinion in the face of overwhelming symptoms in the hypothetical case, his eventual concession will not be lost on the jury. This makes hypothetical indirect quotation a powerful defence strategy, as it anticipates the defence witness testimony.

In the McNaughten case, Mr Cockburn, like Mr Horry for Cooper, has a difficult advocacy job to do for his client, given the weight of prosecution evidence. As well as being arrested in possession of two pistols, after being seen to shoot the Prime Minister's Private Secretary in broad daylight in the public thoroughfare of Whitehall, the prosecution has a number of incriminating statements made by McNaughten in the cells after caution to add weight to their case. Figure 2 shows Police Inspector Tierney's (the inspector in charge of the police station where McNaughten was held after arrest) evidence-in-chief (in the left hand column) and his answers in cross-examination (on the right). Uses of direct and indirect speech are underlined. The Figure puts the two activities side-by-side, showing them simultaneously, though the cross-examination was of course later in the trial record than the examination.

During examination-in-chief, Tierney is recorded as having given detailed accounts of his own and McNaughten's speech (Figure 2, left-hand column). Tierney uses direct speech to indicate verbatim accuracy (Leech and Short 2007) and indirect speech (underlined in left-hand column), though, when cross-examined, he claims that he "cannot give the whole conversation" (Figure 2, lines 23–24, right). As the activity changes from examination to cross-examination, the mode of reporting changes from direct and indirect speech (underlined in column 1) to the metalanguage of speaking (underlined in column 2). Metatalk is used for excuses.

Defence barrister Mr Cockburn's tough cross-examination of Tierney amounts to an accusation of the policeman abusing his duty (Q: "Is it part of your duty to visit the prisoner in his cell?", lines 1–2; "What was your motive…?", lines 16–17; "Do you mean you had no motive…?", lines 25–27) and interfering with the course of justice. The cross-examination questions "assert a version of events which conflicts" with Tierney's prosecution evidence version (Heffer 2005: 137). In preparing his case, Mr Cockburn was probably aware of adverse reporting on police behaviour in the case by the press. The excerpt in (9) appeared in the newspaper *John Bull* on Monday 13 February, two weeks before the trial. It consists of a letter to the editor, signed "a lawyer", and quotes verbatim and at length from the earlier Magistrates' Court hearing. In the *John Bull* news text, phrases and sen-

	Police Inspector Tierney's testimony for the Prosecution	Police Inspector Tierney cross-examined by Mr. Horry
1	when the constable left the cell, I	Q. Is it part of your duty to visit the prisoner in his
2	remarked to him [McNaughten], "I	cell?
3	suppose you will assign some reason	A. Yes — if I put interrogatories to the prisoners
4	this morning to the Magistrate for the	under my care as long as I do not interfere with
5	act you have committed?"	the case in point I do not see any harm in it — I
6	he said he would, a short one	was not directed by any one to put questions to
7	I said, "For that matter, you might have	this man — when I visited him I had my uniform
8	stated anything you chose last night	on — I cautioned him more than once not to say
9	after the caution I have given you"	anything that might criminate himself [...] I put
10	he then said he was the object of a per-	the question to him because I wanted to get some
11	secution by the Tories, or Tory persecu-	information relative to the man himself, his former
12	tion, or something of that sort – that	life, not to make use of in the course of any inves-
13	they followed him from place to place	tigation that might take place — I had no intention
14	with their persecution – he seemed	of bringing this forward as evidence, until he
15	inclined to go on	mentioned the name of Sir Robert Peel [...]
16	I said, (merely to turn the conversation,	Q. What was your motive in wanting to get infor-
17	I did not want to hear the confession,)	mation relative to his past life?
18	"I suppose you are aware of the gentle-	A. I suppose nothing but the anxiety of human
19	man you have shot at?"	nature to know, under such revolting circum-
20	he said, "It is Sir Robert Peel, is it not?"	stances, who and what the man was — I cannot
21	I said, for the moment, "No," and then	give a verbatim account of the whole conversa-
22	retracted, and said, "We don't exactly	tion — the first conversation was the caution and
23	know who it is yet, but recollect the	where he came from — I cannot give the whole
24	caution I gave you last night, not to	conversation [...]
25	say anything that might be used in	Q. Do you mean you had no motive for asking him
26	evidence against you"	whether he wanted to make a statement to the
27	he replied, "But you won't use this	Magistrate?
28	against me?"	A. I will tell you my motive — I wished him to
29	I said, "I will make no promise, I gave	understand that I was quite at liberty to hear
30	you a caution" – I then left the cell – I	anything he wished to say voluntarily — I thought
31	took him up to Bow-street [Magistrates'	the responsibility was removed from my shoulders
32	Court]	after giving him the caution the night before

Figure 2: Quoting the prisoner in Police Inspector Tierney's testimony: examination (left) and cross-examination (right).

tences are highlighted through the use of italics, drawing attention to them (and its formatting is reproduced here). Having drawn attention to these phrases (9a), the lawyer writing to the newspaper performs a critical analysis of the reported testimony (9b).

(9) a. 'The Police Inspector and M'Naughten' – letter to the editor in *John Bull*.
Police Inspector Murphy [sic] examined – I saw the prisoner on the evening he was apprehended, at Gardiner's-lane station-house; it was in the outer room. *I afterwards visited him four or five times in his cell about six o'clock. I had a communication with him.* [...] I *gave him a strict caution not to say anything to criminate himself, as anything that might pass between us would be made evidence against him.* [...] *I saw the prisoner again the next morning* about a quarter past nine o'clock. He asked me for some water to wash with [...] *When the constable was gone out of the cell,* I said to the prisoner, "*I suppose you will assign some reason to the Magistrates this morning for the act you have committed;"* he answered, "*I will, but it will be a short one."* I then told him *after the caution I had given him, he might say anything he pleased to me.* He then said that the Tories had adopted a system of persecution against him; they followed him from place to place with that persecution. *I then said, "I suppose you are aware who the gentleman is that you shot at?"* He replied, *"It is Sir Robert Peel, is it not?" I said, "No;" but immediately retracted the word,* and said, *"We are not exactly aware who the gentleman is."*

b. Now, Sir, we have here a cunning, busy, meddling police-inspector, in contravention of the law, and in violation of his duty, visiting the prisoner at intervals, six or seven times, affecting to give him "a strict caution" at each interview "not to say anything that may criminate himself," at the very time that he is artfully putting questions that assume his guilt, and that manifestly intended to worm out an admission of it.
Mark the conduct of this police-inspector, as exhibited in his own statement. "I suppose you are aware who the gentleman was that you shot at?" What answer did he expect? What answer was he fishing for, but one by which, if given, the accused must criminate himself? The prisoner replies, "It is Sir Robert Peel, is it not." The question was successful – it brings an admission that he fired the pistol, but has shot the wrong person. [...]
There is something dark and treacherous in all this.

The material here provides a rich cross-examination resource. We do not know whether Cockburn saw this letter (he might even have been the anonymous lawyer), but this critical approach to the Inspector's actions was the one he took

in the trial. After such damaging cross-examination, the Solicitor General, for the prosecution, re-examines Tierney and gets him to read out McNaughten's confession to the Magistrate (10).

(10) Solicitor General re-examines Inspector Tierney
1 Tierney: I was present when the prisoner was asked what he had to say by
2 Mr. Hall [the Magistrate], at Bow-street – I heard the statement he made – it
3 was read over to him afterwards, and I saw him sign it – this is the state-
4 ment he made on the 21st – it is the exact words – (read) – "The prisoner
5 after being cautioned as to his statement, says, 'The Tories in my native city
6 have driven me to this, and have followed me to France, Scotland, and other
7 parts; I can get no sleep from the system they pursue towards me; I believe
8 I am driven into a consumption by them; they wish to murder me. That is
9 all I wish to say at present; they have completely disordered me, and I am
10 quite a different man before they commenced this annoyance towards me.'"

Here the prisoner speaks through the Police inspector. The Inspector ventriloquizes him (Tannen 2007) while the accused stands silent in the court. These words are appropriated by the prosecution ("I heard" line 2; "I saw" line 3) as evidence of his guilt and it is particularly notable that the record marks McNaughten's words with the metadiscursive frame (Hyland 2005: 51) "it is the exact words – (read)"(line 4), and then directly quotes from the written statement, marking the quoted words with the infrequent present tense form "says", rhetorically appealing to the jury's *logos* or reason (Ramage and Bean 1998: 81). The defence case follows and here history is made.

4.3.2 Defending through Defence Witness Examination – the Vividness and Power of Direct and Indirect Speech Representation

Allocating the McNaughten trial data to 47 different files by witness name, we find that the prosecution and defence have different vocabularies. This is starkly seen in the concordance line examples for "insane" and "insanity" (Figures 3 and 4), all of which come from the medical witnesses for the defence, apart from one, which is Mr. Solicitor General's cross-examination of the defence witness Jane Drummond Patterson, McNaughten's landlady for two years before the trial (Figure 3, line 7). On the right hand side of each concordance the eminent defence medical witnesses are lined up: Hutchinson, Morrison, Monroe, Winslow, Key. "Insane" and "insanity" are defence words; they are not in the prosecution lexicon or in their witness accounts.

1	heard to-day I suppose that he was insane at Glasgow eighteen months ago	William Hutchinson, Esq
2	Commissioner of police I think he was insane at that time I do not think that	William Hutchinson, Esq
3	act with which he is charged, he was of insane mind in my judgment,	Sir Alexander Morrison
4	certainly thought at the time that he was insane my impression was such	Rev. Alexander Turner
5	gay, that you considered the prisoner insane, to be labouring under delusion	Edward Thomas Monroe
6	insane.	Not guilty.
7	Allison's to speak to the prisoner being insane, were you not?	Mr. Solicitor-General
8	I can testify myself that the man is insane," and he urged me to take him	Jane Drummond Patterson
9	he knew quite well the young man was insane I would not let him go and he	Jane Drummond Patterson
10	led me to the conclusion that he was insane coupling that with the history of	Edward Thomas Monroe

Figure 3: Concordance of "insane" by participant in the McNaughten trial.

Looking at the trial record, we can see that a combination of indirect speech quotation and the work of defence advocacy produces a powerful language of defence (11). In (11) Mr Cockburn's elicited evidence of the medical questioning allows Monroe, who was physician to Bethlem asylum, according to Eigen (1995: 201), to tell "the substance" of his "notes" taken "in gaol" (testimony of Edward Monroe). The multiple indirect speech *that*-clauses (plus zero-*that*, signalled by *and*) and small number of "I asked" and "he said" reporting clauses, produce a ventriloquized (Tannen 2007: 22) testimony, animating McNaughten's voice in his presence, through the professional voices of advocate and expert doctor. In court,

1	were persecuting him that is a symptom of insanity which we see frequently	William Hutchinson, Esq
2	mind in my judgment, the nature of his insanity is a morbid delusion on the	Sir Alexander Morrison
3	labouring under different descriptions of insanity. Q. Do you consider the	Sir Alexander Morrison
4	for his actions, exciting a partial insanity only, although the rest of the	Edward Thomas Monroe
5	an established principle in the pathology of insanity that there may exist a	Edward Thomas Monroe
6	to avoid persecution? Q. Do you consider insanity may exist without the	Edward Thomas Monroe
7	Marcs? Q. Making a nice definition of insanity, which he calls “moral mania”	Edward Thomas Monroe
8	are some recent theories on the subject of insanity, are there not? Have you	Edward Thomas Monroe
9	doubt of the existence of the prisoner’s insanity, and that the act with which	Forbes Winslow, Esq
10	and am author of a work on the subject of insanity. I have been in Court	Forbes Winslow, Esq
11	not at all impair my conviction as to his insanity I have known many lunatics	Edward Thomas Monroe
12	self control I have no doubt that this partial insanity may exist, and the facul	Edward Thomas Monroe
13	his life, I have not the remotest doubt of his insanity I am quite satisfied of it	Edward Thomas Monroe
14	to say whether I thought he was assuming insanity or not, and I came to the	Edward Thomas Monroe
15	I understand what is intended my moral insanity, a perversion of the passion	Edward Thomas Monroe
16	terra “moral insanity” I have heard of an insanity which irresistibly compels	Edward Thomas Monroe
17	may exist in various minor forms I think insanity involves delusion generally	Edward Thomas Monroe
18	turned my attention particularly to cases of insanity, but I have been occasio	Aston Key, Esq

Figure 4: Concordance of “insanity” by participant in the McNaughten trial.

as a result of a series of unrecorded, but clearly enabling *wh*-questions, lawyer and expert witness work together to produce elegant and eloquent evidence of the prisoner’s speech: his narrative of delusion.

(11) Medical testimony for the defence
EDWARD THOMAS MONROE [also spelt Monro]: it was on the 18th of Feb. – he commenced by stating that he was persecuted by a system, by a crew at Glasgow, Edinburgh, Liverpool, London, and Boulogne – that they pursued or followed him wherever he went, that he had no peace – he said

> it would kill him – that it was a grinding of the mind – I asked him if he had taken any medical advice – he said physicians would be of no use – that tons of drugs could not benefit him – that in Glasgow he had observed people in the street speaking of him – they said, "That is the man," that he was considered a murderer, and the worst of characters [22 *that* clauses and 3 *and* + zero *that* clauses follow] – that he imagined the person at whom he fired at Charing-cross to be one of the crew – one of the system destroying his health.

Eigen (1995: 133) notes that lawyers and physicians formed, at this time, a "mutual admiration society," and their combined forces, here, bring the science of asylum medicine and the rationality of law together, to produce a persuasive professional discourse in which to present the multiplicity of McNaughten's insane delusions to the court. An array of people and places, fears and delusions, plague McNaughten's life and his story is told with the eloquence of a learned doctor using powerful pairs of nouns (*a murderer, and the worst of characters*), verbs (*pursued or followed him*), adjectives and the rhetoric of binomials (*watched, and followed* 12a; *beastly and atrocious; untrue, and insufferable* 12b), figurative similes (*tossed like a cork on the sea* 12a), and contrastive, patterned speech (*whether in town or country, or by the sea shore* 12a).

(12) a. that he was tossed like a cork on the sea, that wherever he went, whether in town or country, or by the sea shore, he was perpetually watched, and followed

b. that he had seen things in the Glasgow Herald, beastly and atrocious, insinuating things untrue, and insufferable.

The transformative power of indirect quoting organises and professionalises the possibly incoherent and definitely fragmented narrative, which was elicited by the five doctors "in turns" in their interviews with McNaughten in prison and "the notes" made to record these interviews (reported in Monroe's testimony). Cockburn's "melodious voice", as defence barrister, was no doubt exuding the "warm charm", "distinguished air", and courteousness and eloquence that his biographers describe (Lobban 2004 online), and Monroe, "fourth generation of his illustrious family to find himself in 'the mad business'" (Eigen 1995: 145), was one of the eminent band of "mad-doctors" who combined the professional roles of asylum keeper, author, and witness, giving him expertise in speaking for the insane.

These "early forensic-psychiatric witnesses" who "were attempting to become more than mere custodians, to become scientific observers and chroniclers of

the essence of insanity" (Eigen 1995: 132), Monroe in McNaughten, and Drewry in Cooper, made powerful spokesmen for or against the prisoner. Sir Alexander Morrison, M.D., corroborates Monroe's evidence as he "concur[s] with him in the conclusions to which he has come": that the "nature of his insanity is a morbid delusion on the subject of persecution" that "acted on his mind so as to deprive him of the exercise of all restraint against the act" (Evidence of Morrison). The prosecution and defence views are, as in the case of Cooper, entirely different, as seen in the way the words of the prisoner do different work in the mouths of the prosecution and defence witnesses as elicited by the skilful advocacy of the barristers.

As the first, key, medical defence witness, Edward Monroe, states in his testimony, two doctors interviewed McNaughten at Newgate prison on "the part of the Crown" (Dr. Bright and Dr. Sutherland junior), and three doctors on behalf of the prisoner's friends (Monroe with Sir Alexander Morrison and Mr M'Clewer). Once the medical experts had given testimony concerning their conversations with McNaughten in gaol, and based on their own interviews, the prosecution doctors agreed with the defence experts and the prosecution, in the voice of Mr. Solicitor General, as reported in the newspaper, *John Bull*, but not recorded in the trial record, conceded that

> after the strong intimation received from their Lordships (Lord Chief Justice Tindal said both himself and his Learned Brothers felt that a very strong case of insanity had been made out), he could not think of asking them [the jury] for a verdict against the prisoner. [...] he [Mr. Solicitor General] felt bound to admit that a most powerful defence had been made on behalf of the prisoner. (*John Bull* February 13 1843)

Cooper's defence, though rigorous, did not fare so well. Even after the masterful strategy of exploiting the prosecution physician, Mr Drewry, for defence work and though Mr Horry mounts a vigorous defence, his advocacy is unsuccessful in presenting Cooper to the jury as insane. The trial record does not contain Mr Horry's defence speech to the jury, but the newspapers do, saying that he delivered it "in a quiet voice" and "addressed the jury [at] great length, and after dwelling upon the difficulties the prisoner's mother had to contend against in procuring witnesses with her limited means, called upon the jury to return a verdict in accordance with the evidence he should lay before them" (*Leeds Times*, Saturday 25 June 1843). When he then calls witnesses for the defence, he designs his defence around Cooper's life and speech, as recalled by his mother, brothers, and various lodgers with the family: people who knew his habits well from intimate observation over a lifetime.

These people and their evidence are presented by Horry as 'experts' (in the absence of funds to procure medical experts) on Cooper's state of mind. Most

compelling of that evidence was the testimony of Isabella Cooper, Cooper's mother. Horry elicits multiple 'he said' quotations which establish detailed evidence of insane speech and behaviour for the court, as well as NRSA (13 and 14). The hypothetical speech of an insane "person" in Horry's question to the doctor, Mr Drewry (8a above) in the prosecution case becomes real in his/the mother's voicing of the prisoner's speech. Although "the resources of his [Cooper's] relatives [...] were unfortunately very limited" (*The Morning Chronicle* 18 June 1842), the mother's evidence makes real and vivid the hypothetical speech of an insane person, used in Horry's cross-examination of Drewry, and thereby presents a compelling picture of the prisoner as having periods of mania.

(13) Isabella Cooper – Indirect speech quotation

a. frequently after I have been to bed, I have been disturbed by the prisoner's getting up, and walking about the room – he has many times said that there has been something lifting his bed up and down, and he could not sleep in it, and I have frequently made him up a bed in my back parlour where I sleep now

b. he has often jumped up, and said he was King Richard, and Dick Turpin, when he was sitting in a chair – at that time he had no weapons – some times he had a pistol in his hand – that has happened more than once – he would often say he was King Richard when he had nothing in his hand

(14) NRSA

a. he has threatened me with violence when I have put him out, when I made him angry, when I wished to have any control over him

b. he has always expressed an indifference to life, always wishing to make away with himself – he was always tired of his life, from being quite a boy – he has said so many times, more than 100 times

The vividness of the re-enacted speech in the defence case, coupled with a defence opening speech "of nearly two hours' duration" (*The Morning Chronicle* 18 June 1842) makes the defendant speak in his defence in the trial, though he is not invited to speak until the verdict has been delivered and he is "asked by the clerk of the arraigns [...] what he had to say why sentence of death should not be passed upon him according to law" (*The Morning Chronicle* 18 June 1842). After the defence witness evidence, Horry makes a closing speech (again not reported in the *OBP,* but in the news), which is reported using indirect speech and NRSA forms (15).

(15) He compared the case set up by him for the defence with that endeavoured to be set up by the prosecution. All that had been proved was, that instead of being quiet he had been outrageous; there was not a circumstance that was inconsistent with the idea of insanity. The question was not whether he was insane after the act, but at the very moment the murder was committed. With regard to the means of knowledge of the medical men, they were deficient in the point of examining those who had been in the habit of knowing the man for years" (*The York Herald, and General Advertiser,* Saturday June 25 1842).

This comparative method, used by Horry in (15) has also been our approach here. Comparing what each prisoner is quoted as saying within the prosecution case with what he says, through his advocate, in his defence, we see two very different views: one rational, evil, murderous, defiant, threatening and the other manic, insane, ill, suicidal, incapacitated, feeble. At the end of each case, medical experts are brought in from the gaol, to add their observations on the prisoner's behaviour there, while awaiting trial. In Cooper's case the medical expert, Dr Fisher, surgeon at Newgate gaol (Eigen 1995: 195), contradicts the defence witnesses. Here we see a different kind of speech representation.

Even though he has had a lengthy interview with the defendant, the speech reporting is metadiscursive (Hyland 2005): *conversation(s), questions, answered*, using the metalanguage of quotation, rather than quotation itself. After one "hour's conversation" between Fisher and Cooper, Fisher "consider[s] [him] self capable of pronouncing an opinion of the prisoner's sanity" (testimony of Fisher). Isabella Cooper's compelling evidence of her son's lifelong behaviour, made vivid by dense quotation of his speech (in nearly 10 % of her testimony), is contrasted with Fisher's suppression of quotation through metadiscursive speech report (*conversation, the conversation, the hour's conversation*). Cooper is found guilty and sentenced to death, the insanity defence failing due to Drewry and Fisher's strong opinions of sanity. In McNaughten's case, after the five medical experts for the prosecution and defence have agreed, a further doctor adds to the medical evidence. The record shows that Forbes Winslow (who went on to own two private asylums and was perhaps in court researching for his 1843 book *The Plea of Insanity in Criminal Cases* (Andrews 2004 online)), was present "during the two days of this trial". He stands up and gives an opinion on McNaughten's "insanity" though he "was not summoned on either side":

> I have not the least doubt of the existence of the prisoner's insanity, and that the act with which he is charged was intimately connected with the delusion of mind under which he appears to have been labouring for some considerable length of time.

Advocacy and medical testimony can work together or in opposition, using quotation, to present alternative perspectives and different versions of the story from the defendant's perspective. Hypothetical quotation by Mr Horry with the prosecution doctor in the Cooper trial anticipates the insanity defence. In relation to police witnesses, quotation is vividly deployed by the prosecution to portray the self-incrimination in Cooper's words and McNaughten's conversation with Inspector Tierney, but in cross-examination in the McNaughten trial metatalk is used for excuses and lack of recall about what was said, undermining the prosecution case.

5 Conclusion

The paper offers a number of conclusions relating to methodological and analytical concerns. A large and complex "specialized corpus" (Flowerdew 2004) of professional discourse, such as the *OBP* requires informed and discipline-specific thinking in order to extract and develop sub-corpora of use to discourse analysts. There are almost unlimited possibilities, and this paper offers a discussion of what can be done with a small sub-corpus of the whole Proceedings and two specific trials, while suggesting that there is a wealth to explore.

In addition to the *modus operandi* for doing socio-legal discourse studies within the *OBP* that is illustrated, there are a number of benefits revealed. Through extraction of small and specialized corpora from the larger whole, the linguistic researcher is able to produce new socio-legal and socio-historical linguistic knowledge. The quotation phenomenon can be seen in the context of practices of text-production (Fairclough 2001: 20), and, in doing so, we can see that the record selects this vivid representation mode, capable of speaking for and through the prisoner. The fact that the record includes such rich verbatim and indirect reported speech gives us unique access to the words and worlds of speakers in trials across time. We see that what, who, and where words are quoted are matters for record, and the result is the production of a powerful record, suggesting that the trials embodied evidentially powerful testimony for the prosecution and defence and for the jury's decision-making. In particular, at this point in legal history when defence advocacy was just beginning and when expert medical witnesses first entered the courtroom to testify to defendants' insanity, these combined forces acutely affected the tone of criminal trials. Advocacy and medical voices worked in concert to speak for the insane defendant in words more eloquent and powerful than they could manage themselves, altering juries' perceptions of the crime and creating a richly textured trial, with prosecu-

tion and defence voices intertwined in examination and cross-examination. For the first time in history, following the introduction of the Prisoners' Defence Act (1836), the defence voice was more equally and fairly matched with the prosecution, creating the conditions for change. Defence strategies of quoting the defendant's voice, rather than getting him to speak became key.

Quotation is used in the record to demonstrate the defendant's criminal liability or his incapacity to commit a criminal offence and the establishment of a binding legal reality crucially hinges on the differential weights of prosecution and defence evidence. We have seen that prosecution and defence cases select different words from the same person and the same story, making quotation a highly selective and powerful advocacy resource. We have seen particularly how vivid direct quotation is contrasted with suppression of speech to favour the prosecution case in McNaughten, and then how the defence uses the power of indirect speech in the mouth of the medical expert to speak more eloquently for the defendant than he can for himself. In the Cooper case we have seen how the density of quoted speech in the testimony of Cooper's mother represents his whole life as one of insane utterances, but, even so, this lay witness does not have the power of medical witnesses to convince the jury. The analysis shows the power of hypothetical quotation and establishes a new category that operates alongside quotation: metatalk for suppressing quotation.

The "haunting evidence" (Eigen 1995: 160) of prisoner testimony is given voice through the powerful alliance of defence advocate and witness (in Cooper's trial through his advocate and the prisoner's mother and in McNaughten's through the advocate and the medical experts), as they tell the court, through the prisoner's words, what he is incapable of putting together himself. The prisoner is also prosecuted through his own words. What he says on arrest, in gaol, and before the magistrate, is recorded and replayed to self-incriminate, as he is ventriloquized by the prosecution, and it is therefore a masterful adversarial reversal to defend with the same voice, but from a different perspective. These trials suggest that the Victorian policeman, medic and barrister knew a great deal about the power of quotation, and, whether it was effective in persuading the jury or not, the advocate's skill in eliciting these voices of the insane gives us a unique insight into the Victorian courtroom's interest in medicine and the gradual development of what we now call (forensic) psychiatry. The voices of Cooper, who was haunted by Dick Turpin, and McNaughten, who was "haunted by devils" (testimony of Patterson), are replayed to the jury for evaluative work, by the new cast of characters in the courtroom, particularly the defence advocate and the medical witness. The crucible of change that was the early 19th century courtroom is seen in these residues of talk from the Old Bailey, thus providing lasting testimony, from the dead, to the lives of the Victorian poor.

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