CERLIS Series

Series Editor: Maurizio Gotti

Each volume of the series is subjected to a double peer-reviewing process.

CERLIS Series
Volume 5

Maurizio Gotti, Stefania M. Maci, Michele Sala (eds)

The Language of Medicine: Science, Practice and Academia

CELSB
Bergamo

CERLIS SERIES Vol. 5

CERLIS
Centro di Ricerca sui Linguaggi Specialistici
Research Centre on Languages for Specific Purposes
University of Bergamo
www.unibg.it/cerlis

THE LANGUAGE OF MEDICINE:
SCIENCE, PRACTICE AND ACADEMIA
Maurizio Gotti, Stefania Maci, Michele Sala (eds)
ISBN 978-88-89804-28-5
URL: http://hdl.handle.net/10446/35418

Published in Italy by CELSB Libreria Universitaria
Via Pignolo, 113 - 24121, Bergamo, Italy

Contents

Focus on medical communication

MICHELA GIORDANO

The Old Bailey Proceedings: Medical Discourse in Criminal Cases

1. Introduction

Although medical evidence has always been critical in legal and administrative proceedings, proper medical expert witnesses have only appeared in criminal courts relatively recently. As Stygall (2001: 331) explains, "[m]any observers of the rise of the professions tend to treat expertise as a modern phenomenon, associated with the rise of the professions and the academic disciplines in the 19th century". Since then, as professionals with a specialized knowledge, doctors and physicians have had an obligation to assist and provide their expertise in the administration of justice. Through their education and experience, expert witnesses can provide the court with an assessment or opinion within their area of competence, which is not considered to be the domain of other professionals in court, such as the lawyers and the judge. Nor is it knowledge available to the jury and the public in general.

The aim of this study is to investigate medical discourse in historical criminal trials in order to ascertain whether specific discursive practices were employed. Fourteen trial accounts from 1902 to 1913 drawn from the Old Bailey Proceedings website constitute the corpus for the investigation. The offence considered is infanticide and the narratives, cross-examinations and re-examinations involving doctors, physicians, pathologists, practitioners and 'masters in surgery' are investigated both quantitatively and qualitatively, providing examples of medical testimony which give a specialist and authoritative account of the physical examination of both victims and murderers.

What the study focuses on in particular is the recourse to and embedding of specific medical jargon in courtroom discourse. It has been observed that specific discursive practices account for the search for "balance between credibility and comprehensibility" (Cotterill 2003: 196) in a context where the discourse is to be considered both professional/lay and inter-professional (Linell 1998: 143). Medical experts find themselves simultaneously engaged in these two types of discourse: their testimonies are in fact for the benefit of a lay jury and lay people in general who lack understanding of and experience with both the legal and the medical genres and jargon. Additionally, the interactional dyad lawyer/medical expert can be considered to be an inter-professional type of discourse inasmuch as two competing modes of reasoning represent profession-specific approaches to the particular case in hand.

Nowadays, expert witnesses occupy a unique position in court trials: unlike lay witnesses, they have more privileges and prerogatives, such as the right to give lengthier answers, to contradict their interlocutors, as well as to draw conclusions and express opinions on the strength of their experience and expertise. Outside the courtroom setting, they enjoy the same professional status and social standing of lawyers and judges, thanks to their competence and domain knowledge. However, since the witness box is a place outside their professional context, the experts are subject to the rule and role constraints which characterize the courtroom trial (2003: 168). Medical discourse in court is thus subject to recontextualization, i.e. the transfer and transformation of some part or aspect of a text or discourse and the fitting of this part or aspect into another context, text or discourse. As Linell (1998: 144) points out, this is because human beings wander between situations, just as discourse and discursive content travel across situations.

The present chapter starts from an investigation of the position of expert witnesses in the historical courtroom, since it seems that in the past they did not enjoy the same social status and professional standing as their present-day colleagues. Additionally, as one might expect when dealing with historical data, especially spoken texts such as trial proceedings and witness testimonies, other questions such as

source validity and accuracy may arise and these too merit close scrutiny.

2. Materials and methodology

The present study has drawn upon various studies which have dealt with courtroom discourse from wide-ranging, though often complementary, perspectives. A certain number of investigations looked at the socio-pragmatic aspects of courtroom discourse and are sometimes based on the description and exploration of actual courtroom proceedings, such as those in Atkinson and Drew (1979), Cotterill (2003), and Heffer (2005). Other works have dealt with the discursive implications of the merging of voices in professional and institutional discourse (Linell 1998). Among these, some are conversationally-oriented studies looking at language in interaction in various institutional contexts and focus on the interactional dynamics of the courtroom, such as turn-taking and the sequential organization of discourse, for instance Heritage (2004), and Thornborrow (2002).

Furthermore, the particular role of expert witnesses in the court-room and the fundamental matters of identity, credibility, power and social relationships therein, together with the ways these are negotiated through discourse, are discussed in depth by Chaemsaithong (2012), Maley (2000), and Stygall (2001). For the purpose of this chapter, useful insights were also gained from works about historical courtroom discourse such as those by Archer (2005) Chaemsaithong, (2011), Kryk-Kastovsky (2000; 2006), and those on historical data based on spoken interaction, e.g. Culpeper/Kytö (2000; 2010) and Jucker (2008).

The data for the present investigation are drawn from the Old Bailey Proceedings website which contains the proceedings of English criminal trial sessions from 1674 to 1913, after which publication came to a sudden halt. The earlier corpus built for this purpose entailed a first stage search for transcripts in the website containing

the keywords *doctor*, *surgeon*, *physician*, *practitioner*, *pathologist* in the texts, since it was presumed that their presence in the text might demonstrate the actual involvement of such professionals and their practice in the unfolding of the trial. The offence under consideration is infanticide, and the corpus was to include trials with all verdicts and all punishments. In the second stage, the search was narrowed down to trial accounts from January 1900 to December 1913, the last year in which the proceedings were published. Table 1 shows the results of the search. Twenty trial transcripts from March 1902 to January 1913 were found for that particular offence, i.e. infanticide.

1902-1913 Infanticide Corpus (The Old Bailey Proceedings online)		
[IN01]	Emily Moir	10th March 1902
[IN02]	Marian Dicker	5th May 1902
[IN03]	Louisa Beaumont	12th January 1903
[IN04]	Annie Walters Amelia Sach	12th January 1903
[IN05]	Louisa Lunn	21st March 1904
[IN06]	Mildred Cole	18th April 1904
[IN07]	Clara Hlldebrand	6th March 1905
[IN08]	Clara Bridges	29th May 1905
[IN09]	Leah Abrahams	16th October 1905
[IN10]	Alice Sargent	22nd October 1906
[IN11]	Alice Mary Ellis	22nd April 1907
[IN12]	Louisa Day	21st October 1907
[IN13]	Florence Hawkins	31st March 1908
[IN14]	Florence Perry	26th May 1908
[IN15]	Ethel Harding	10th November 1908
[IN16]	Nellie Betts	19th July 1909
[IN17]	Jane Stephenson	26th April 1910
[IN18]	Jennie Button	11th October 1910
[IN19]	Eleanor Eslick	19th March 1912
[IN20]	Eleanor Martha Browning	7th January 1913

Table 1. 1902-1913 Infanticide Corpus (the Old Bailey Proceedings online).

Table 1 shows then contents of Infanticide Corpus 1902-1913. The [IN] code stands for Infanticide to distinguish this particular corpus from others which also constitute the object of parallel research and which refer to different types of offences. In the second column the defendants' names and surnames can be found, while the third column provides the date of the trial.

In a subsequent stage of corpus building, a systematic and detailed reading of the twenty trial proceedings revealed that, despite the presence of such keywords as *doctor*, *surgeon*, *physician* or *pathologist* in the texts, six of them – namely [IN01], [IN11], [IN012], [IN13], [IN14], and [IN16] – do not actually include any medical expert narrative and were therefore excluded from analysis.

Consequently, the investigation was condensed to the fourteen trial transcripts that constitute the final corpus. Table 2 only contains the fourteen trials in which medical examinations were discussed and shows the total number of words in each transcript, the number of medical experts who testified in each trial and the number of words in the medical examinations. As we can see, the entire set of texts in the transcripts totals 42,459 words and those of the expert testimonies amount to 14,332 words. Despite the relatively small amount of data analysed, the results obtained do substantiate the conviction that the testimonies examined are representative of medical discourse in the legal context in the early 20th century.

Trial	*# of words*	*# of medical experts*	*Medical examinations # words*	*%*	*Type of examination in the transcript*
[IN02]	654	3	226	34.5	DE
[IN03]	3,311	3	752	22.7	DE/CR
[IN04]	11,431	3	1,699	14.8	DE/CR/RE/COE
[IN05]	4,679	2	1,684	35.9	DE/CR/RE
[IN06]	1,379	2	861	62.4	DE/CR/RE
[IN07]	5,029	1	1,463	29	DE/CR/RE
[IN08]	2,805	2	1,637	58.3	DE/CR/RE/COE
[IN09]	5,711	3	3,324	58.2	DE/CR/RE
[IN10]	966	2	189	19.5	DE
[IN15]	1,756	3	473	26.9	DE/CR
[IN17]	1,277	1	632	49.4	DE/CR/COE
[IN18]	1,612	2	799	49.5	DE/CR/COE

[IN19]	1,336	1	466	34.9	DE/CR
[IN20]	513	2	127	24.7	DE/CR
Total	42,459	30	14,332	33.7	

Table 2. Word count and type of examinations in the trials.

As shown in the percentage column, in some cases (such as [06], [08], and [09]) the medical testimonies cover more than 50% of the whole text. The last column in the table indicates the type of examination reported in the transcripts and the use of codes allows for better identification: DE stands for Direct Examination, CR stands for Cross Examination, RE stands for Re-examination and finally COE indicates Court Examination for those cases in which the intervention of the Court is provided.

It is worth noting that the transcripts in the website do not generally report the lawyers' or judges' questions, which were often omitted or abridged in the Proceedings. Conversely, the witness testimonies, including the medical accounts, are presented in the form of narratives. Yet it is clear that the practitioners and physicians were all answering questions posed by the Prosecution, the Defense and the Court. It is equally important to reiterate that the discourse in examinations was organized into a series of question and answer pairs, where both the turn order and the type of turn allocated to each party are fixed and pre-determined, as can be expected when dealing with a type of institutional discourse where specific forms of interaction are embedded in specific workplace contexts (Atkinson/Drew 1979; Thornborrow 2002; Heritage 2004). However, abridgments in the Proceedings were unavoidable since complete transcripts would have been uneconomic to publish because, as the website itself recounts, "publishers sought to make the trials readable and entertaining by presenting testimony unencumbered by legal and procedural details". Therefore, the largest amount of missing information concerns the role played by lawyers and judges, such as statement by counsel, opening statement by the prosecution, cross-examinations and judges' summing up, which were habitually excluded.

Despite the abridgments, the Old Bailey Proceedings website represents an invaluable historical corpus that facilitates both

diachronic socio-linguistic and socio-pragmatic research. Although this study will not take a diachronic perspective, but will conduct a synchronic analysis of expert witness narratives and discursive strategies in trials in the early 20thcentury, trials and expert witness testimonies undoubtedly represent a good example of spoken language data from earlier periods and moreover provide an invaluable source of information on the participants' age, sex, status, culture, and their relationship in a specific context and setting which would not otherwise be available.

As already discussed in Giordano (2012), trial proceedings are a speech-based genre, i.e. stemming from speech that has been permanently recorded and preserved in writing. This seems to be one of the major obstacles that historical pragmatics has to face: knowledge of the spoken interaction of the past is only confined to what can be gleaned from written records (Culpeper/Kytö 2000). In considering the value of the Old Bailey Proceedings as a source of historical data, it is important to remember that even if they "do not provide a full transcript of everything that was said in court", as the website itself states, the materials reported can be considered accurate and their reliability has often been confirmed by other manuscripts or published records which can be checked using multiple sources or a 'triangulation' procedure, as suggested by Culpeper and Kytö (2010). Printers of the Old Bailey Proceedings relied on several note takers and shorthand writers who actually attended the trials. Additionally, it can be presumed that the trials under scrutiny here, occurring in a period between 1902 and 1913, were very likely to have undergone a comparison with other reports or alternative accounts before publication. As Culpeper and Kytö (2000: 188) explain, many trial proceedings were designed for general public consumption and "sometimes part of the marketing strategy was to claim, usually in the title page, that the proceeding was a 'true' or 'faithful' record taken in court". The same authors later state that the important factor in this kind of historical research is that "the historical speech report *purports* to be a faithful report" (Culpeper/Kytö 2010: 81).

Therefore, along with a quantitative analysis of data, a qualitative analysis will also be conducted. The inquiry will focus on the managing of specific medical lexis and phraseology (such as, for

example, the expressions *a separate existence*, *puerperal fever* and *transitory mania*) and their embedding in the legal context of which the particular setting and situation call for explanations and clarifications of meanings unknown to the lay jury, the lawyers and the judge himself as well as most of the people present in the courtroom.

3. Medical experts in the historical courtroom

The present chapter analyses the position and the discourse of medical experts in the historical courtroom: the adjective *historical* here carries multiple meanings. The first and more straightforward one is that which alludes to the old period being considered, in this case the decade 1902-1913, more than a century ago. The second meaning points to the distinction between the salient features of early courtrooms and the present-day ones and looks at what insights present-day courtroom linguistic studies can gain from the investigations of early or historical courtroom discourse. More precisely, the expression *historical courtroom* is utilised by authors such as Kryk-Kastovky (2000, 2006), Jucker (2008) and Chaemsaithong (2011), who see the courtroom of earlier periods as the site from which examples of original spoken language of the past can be derived. The analysis of the historical courtroom discourse aims at reconstructing the spoken idiom of the past on the basis of old written sources. Following this, the historical linguist or pragmatist is confronted with the question of how the written data available nowadays actually reflects the language spoken in that given historical period, in order to understand the "conventions of language use in communities that once existed and are no longer accessible for direct observation" (Archer 2005: 6).

With this in mind, it must be pointed out that the modern expert witness was a creation of the late 18th century (Golan 2003). However, the same author reports that, already in 1554, a judge declared,

> If matters arise in our law which concern other sciences or faculties we commonly apply for the aid of that science or faculty, which it concerns. Which is an honourable and commendable thing in our law. For thereby it appears that we don't despise all other sciences but our own, but we approve of them and encourage them, as things worthy of recommendation. (Golan 2003: 18)

It used to be the case that in order to exploit the knowledge and science of experts in their trials, courts could choose to follow one of three procedural options: call them as jurors, call them as consultants or call them as witnesses testifying on behalf of one of the parties. Historically, experts could in fact participate as specialist jurors whose particular knowledge was gained from their personal experience and training. In the late 13th and 14th centuries, such specialist juries were generally composed of goldsmiths, aldermen, cooks, fishmongers and masters of grammar who used their specialized knowledge to render their verdict (Chaemsaithong 2011). Towards the early modern period, there began a constant and continual decline in the use of a knowledgeable and informed jury that was entrusted with a "fact-finding, investigatory role" (Stygall 2001: 331). It was gradually replaced with a silent and uninformed jury whose responsibility was merely to consider evidence and testimony from the other witnesses in a trial. Thus, expert witnesses became necessary to give specialised testimony and evidence that would better inform the jury about the case before pronouncing their verdict (Chaemsaithong 2011). Nevertheless, as noted above, experts did not use to benefit from the same social-standing and professional status as their modern peers. Since they had personally observed the facts and testified as to their conclusions, they could express their opinions; yet these were not differentiated from those of lay jurors who could do exactly the same, basing themselves on their direct knowledge of the facts of the case (Golan 2003).

Furthermore, what must be borne in mind is that the growth of expert knowledge in fields such as medicine and its recognition as such is a relatively recent phenomenon, dating back to about the end of the 19th century. This was of course the result of the growing reliance on science and the simultaneous rise of university and mass education systems that helped to legitimize the privileged status of

experts, resulting from their professional expertise, capability and competence (Chaemsaithong 2011). However, as still happens in the modern adversarial court, expert witnesses in the historical courtroom needed to construct and negotiate their identity, especially during the cross-examination when they were obliged "to counterbalance sceptical attitudes and hostile attempts aimed to undermine their testimony that accompanied their vulnerable status and image" (Chaemsaithong 2011: 472). An analysis of their discursive practices could also help shed light on the means they adopted to gain control during the interaction and (re)negotiate and (re)affirm their identity and professionalism.

4. Analysis and discussion

The defendants in the fourteen trials under investigation were all unmarried women, aged 18-29 who worked as tailoresses, laundresses or domestic servants who were all accused of infanticide generally following an illegitimate pregnancy. Most of them were judged guilty and condemned to imprisonment or hard labour; some received the death penalty, and some were considered unfit to plead because of their (presumed) insanity.

As can be seen from Table 3, the medical experts were generally medical superintendents, or assistant medical officers, registered medical practitioners, divisional surgeons of the police, or pathologists. Despite their titles and qualifications, as stated above, medical experts in the historical courtroom had to negotiate their professional identity and their expertise. Cross-examinations were much more challenging than direct ones, as in present-day times. Experts were not always allowed to expand on their answers or provide further explanations of medical evidence for the benefit of the jurors and the judge. Table 3 reports the number of words in each examination (DE, CE, RE and COE) for each one of the experts who took part in the trials under investigation.

Trial	*Experts*	*# of words*			
		DE	*CE*	*RE*	*COE*
[IN02]	Divisional surgeon	27			
	Medical man	78			
	Assistant medical officer	121			
[IN03]	Medical doctor superintendent	71	75		
	Assistant medical superintendent	323	129		
	Medical superintendent	68	86		
[IN04]	Medical practitioner	145	25+4	96	19
	Master in surgery	931	8	78	
	Divisional surgeon of police	182	175		
[IN05]	Registered medical practitioner	379	478	90	
	Pathologist	382	355		
[IN06]	Registered medical practitioner	173	67		
	Pathologist	398	205	18	
[IN07]	Registered medical practitioner	685	323	445+10	
[IN08]	Registered medical practitioner	610	196	241	
	Medical man	507			83
[IN09]	Bachelor of medicine	842	1,223	183	
	Divisional surgeon of police	438	306	48	
	Medical officer	65	199	20	
[IN10]	Divisional surgeon	85			
	Assistant medical superintendent	103			
[IN15]	Medical doctor	139	59		
	Medical superintendent	192	38		
	Assistant medical officer	45			
[IN17]	Surgeon	498	47	87	
[IN18]	Doctor	314	155	110	
	Medical superintendent	44	27	49	
[IN19]	Registered medical practitioner	257	209		
[IN20]	Doctor	78	16		
	Medical officer	33			

Table 3. Word count in the experts' testimonies.

The medical narratives in direct examinations are generally longer than in the other examinations and this can be explained by its less challenging and taxing nature. Yet there are some cases in which cross-examinations were longer than direct examination such as in [IN05] and [IN09], thus showing that in certain circumstances doctors were able to expand on their answers and give much more information than required by the conventions of courtroom discourse. Listed below

are the professional titles utilized by the experts to introduce themselves:

- B.M., Bachelor of Medicine;
- M.R.C.S., *Member of the Royal College of Surgeons*;
- L.R.C.P., *Licentiate of the Royal College of Physicians*;
- Medical Superintendent;
- Assistant Medical Officer;
- Medical Doctor Superintendent;
- Assistant Medical Superintendent;
- Registered Medical Practitioner;
- F.R.C.S., *Fellow of the Royal College of Surgeons*;
- Master in Surgery;
- Divisional Surgeon of Police;
- Pathologist;
- Medical Officer;
- Medical man.

4.1. Medical jargon embedded in the legal context

From a thorough reading of the transcripts, the use of two particular phrases comes immediately to the reader's attention: *separate existence*, referred to the newly-born baby and *puerperal fever*, referred to the mother. As will be explained later through the selected excerpts, the experts in the trials in the corpus appear to have had the opportunity to provide clarifications and details about the meaning of the two expressions and this can be explained by what Chaemsaithong (2011) states about expansions of response. In their answers to the lawyers' questions, they were able to provide detailed information and to expand their replies, often adding explanations of the most difficult medical terminology or of the expressions which needed to be clarified for the lay jury and the public present in the courtroom or even for the legal professionals who had no knowledge of or even familiarity with certain scientific and medical facts. Additionally, Chaemsaithong (2011: 480) notes that, differently from lay witnesses, experts in historical courtrooms were there to convey their opinion about a particular issue based on their qualifications and thus

attempted to shield themselves from blame and criticism. The expansion of responses had several communicative goals for medical experts:

a) to establish their identity as experts;
b) to negotiate positive self-representation and prevent their already vulnerable status from being attacked;
c) to propagate and reproduce the scientific ideology.

The need to elucidate on scientific principles and disseminate medical perspectives was often in contrast with the discredit and distrust that experts were sometimes subjected to. Nevertheless, as highlighted by Anesa (2012: 164), "the expert witness plays a crucial function in framing specialized (scientific) knowledge and often assumes the role of an expert mediator of knowledge". The author refers to experts in the contemporary courtroom context, but we can safely affirm that what she says was true of the historical courtroom, where witnessing through medical and scientific evidence was also a way to make medicine and science more comprehensible and accessible to lay people.

In order to try defendants in an infanticide case and judge whether they objectively committed the crime of killing their newly-born baby, the baby's life had to be demonstrated before presupposing it was actually murdered rather than stillborn. Therefore, the baby's *separate existence* had to be proved scientifically by the doctors or pathologists in the trial. As the Barrister-at-Law Stanley B. Atkinson wrote in 1904,

> A child is not born alive in law, and consequently cannot claim the right of a subject of the King, until it has exhibited a separate and independent existence after complete extrusion from the body of its mother. This expulsion does not also imply the delivery of the paraphernalia of the fœtus, nor need these be disconnected, for the legal consummation of birth (539-544).

In excerpt (1) the divisional surgeon to the H division of the police, Mr. Charles Graham Grant made the *post-mortem* examination of the newborn child and explained why, in his opinion, the fatal blow to the victim was given during its legal life:

(1) in my opinion that bruise was inflicted during legal life according to the definition given in our medical text books […] we are taught to gauge the circulation by our experience by the quantity of hemorrhage and the severity of the injury − if the prisoner were able to give the child a blow on the head directly it presented itself the results might be the same, but I cannot say positively − my opinion is that the blow was given during legal life − the hemorrhage extended over a considerable part of the surface of the brain − […] but I am going largely by the books. [IN09]

The doctors in the trials under examination utilized the expressions *separate existence* 24 times and *independent existence* four times. One of the ways in which they provided evidence that the baby was actually born before being killed is through the examination of the lungs, which were inflated to demonstrate that the baby breathed fully and deeply before receiving the lethal injuries. In [IN06] direct examination, the pathologist Dr. Ludwig Freyberger stated that the baby's lungs were perfectly inflated. Then, when cross-examined, he provided expansion and further explanation of how the hydrostatic test worked, as in excerpt (2):

(2) A child does not breathe so fully when only half born as it does when the birth is complete; the amount of air in the lungs varies […] – the hydrostatic test is, in my opinion, absolutely conclusive in circumstances of this kind; each lobe is separately tested to see if it floats; then each is cut into pieces, and these pieces are tested, and so you get a complete test of the lungs […] the inflation of the lungs, to my mind, proved conclusively that the child had had a separate existence, and breathed fully and deeply. [IN06]

It appears from some of the trial testimonies that the concept of *separate existence* must have been decisive and crucial in certain circumstances since the expression *born alive* itself did not have the same meaning in the two fields, medical and legal; this could have created some misunderstanding when trying to ascertain the legal life of the child. In [IN09] cross-examination, the Bachelor of Medicine Dr. Leonard Harman distinguishes between the biological (and medical) and the legal sense of the phrase *born alive*:

(3) I told the Magistrate that I formed the opinion that the child was probably born alive − I fully appreciate the difference of the sense of the biological and

> legal phrases of being born alive − in a medical sense 'born alive' means the child has breathed, but in the legal sense it means it has breathed after it was wholly separated from the body of the mother […]. [IN09]

This seems to be a crucial and critical matter in infanticide trials, since other examples show that the separate existence of the child had to be demonstrated in order to proceed with the investigation of the events and the formulation of hypotheses on how things must have gone at the crime scene. In [IN18], Dr. Alfred B. Blomfield of the Camberwell Infirmary exposed his findings resulting from the examination of the baby's body and stated:

(4) I do not think the wounds could have been inflicted before complete birth. From the appearances as a whole, I conclude that the child did have a separate existence. [IN18]

When examined by the Court, the doctor amplified his answer and provided further explanation of the phrase *separate existence* and its medical meaning, as shown in excerpt (5):

(5) I think the child, at the moment before it died, was separated from the mother and had an independent or separate existence. […] In my opinion the wounds contributed to the child's death. By 'separate existence' I mean that the child breathed; […] that it has born and has breathed; by 'born' I mean that it is away from the mother; the attachment or non-attachment of the cord makes no difference. [IN18]

Therefore, from a medical point of view, the attachment or non-attachment of the umbilical cord makes no difference and a child is fully born even if the placenta is still inside the mother, as reiterated by the medical superintendent William J.C. Kent in the same trial when examined by the Court. The two doctors were apparently asked the same question, i.e. to explain what they meant by separate existence. Through his medical opinion, part of which is shown in excerpt (6), Dr. Kent provided a confirmation of what had been already opined by his colleague Dr. Blomfield in excerpt (5) above:

(6) By a 'separate existence' I understand that the child was carrying out its life entirely apart from any circulation of its mother. The child may have a separate existence although the placenta remains in the mother. The probabilities are that this child had a separate existence. [IN18]

The second expression analysed here is *puerperal fever* which, according to medical dictionaries and glossaries present on the web, was once a devastating disease, affecting women in the first three days after childbirth and causing acute symptoms of severe abdominal pain, fever and debility. The first example is uttered by Dr. Christopher Thackaray Parson, Superintendent of the Isleworth Infirmary in trial [IN03] in the corpus:

(7) I examined the prisoner and came to the conclusion that she had recently been delivered of a child – I could not form a definite date, but it would be within ten days – after her admission she developed symptoms of puerperal fever − that is a common occurrence within four of five days of confinement. [IN03]

In excerpt (7) there are two expressions strictly linked to the phrase *puerperal fever*, *be delivered of a child* and *confinement*, which deserve particular attention. Saying that the prisoner *had recently been delivered of a child*, thus using a passive construction rather than the active one *had recently delivered a child*, might hint to the fact that in the past pregnancy and childbirth were life-threatening ordeals and many women did not get through them alive. To disburden a woman of the fœtus was like to 'be delivered' of this danger, to be relieved from it. The idea that pregnancy was a burden, a menace and a risk is also confirmed by the frequent use in the corpus of the word *confinement* and the clause *she had been recently confined*. Confinement meant keeping a new mother and her baby at home for a certain number of days or weeks after delivery, in order to protect both from infection and help the mother to recover. This is a traditional practice which is still used in some Western and Eastern countries, where women observe some forty days of recuperation in their post-partum period. Puerperal fever was one of the symptoms women endured during the period of confinement, as in excerpt (8):

(8) a woman having her first child may, in a way, be affected mentally; there would be pain during the birth, which would be accentuated by depression − child birth is very often followed by a period of partial or total unconsciousness – a woman might not know what was going on around her, or what she was doing herself – I do not think that child birth is a surprising branch of medical science. [IN05]

According to the doctors in the corpus, puerperal fever was the same as or was followed by *puerperal mania*, also known as *transitory mania* or *temporary insanity*, which affected women mentally, causing delusions, or leading to depression or even unconsciousness.

(9) When confinement comes on women frequently suffer from temporary insanity and they have been known to suffer from delusions; if a woman were having her first confinement by herself I think those circumstances might send to make her do things without realising what she was doing. [IN19]

In excerpt (9) Dr. Harry Brown explained that this temporary insanity affected women especially during their first pregnancy or first confinement, particularly if they had given birth to the child unassisted. Some of the defendants were so young and inexperienced that they did not even know to be *in the family way* (as stated in [IN15]), i.e. to be pregnant. This excerpt shows how the doctor justified the woman's actions following the delivery, perhaps including the baby's killing, i.e. she was not aware of what she was doing. Generally, doctors in the corpus affirmed that it was quite likely that a woman having her first child might have her mental equilibrium upset and that for a brief period she might not realize what she was doing. They often maintained that, at the time the accused killed the newborn baby, the woman was undoubtedly not responsible for her actions because she was in a state of frenzy, caused by the 'pain acting on her nerves', as explained in excerpt (10):

(10) I do not think that the concealment of the body of a child recently born would be the act of a person suffering from transitory mania – it generally comes on after the last pain and before the child is born − it is the pain acting on the nerves of a woman […] puerperal mania comes on afterwards. [IN07]

Therefore, puerperal fever developed into puerperal mania or puerperal insanity which was adduced as the strongest argument in the woman's defense for the killing and concealment of the baby's body, as reported in excerpt (11):

(11) I found her then suffering from puerperal insanity; that is a form frequently accompanying the stoppage of milk, and infanticide is one of the characteristics. [IN20]

A reading of excerpt (12) might lead us to assume that Dr. Patrick McGregor in [IN07] was pressed by the taxing and challenging counsel's questions during cross-examination, when he went so far as to affirm that transitory mania could occur in cases of illegitimate pregnancy. Then, after hesitating and hedging, he promptly corrected himself and stated that loss of memory and other symptoms could be especially present in first labours, but they were not caused or linked in any way to illegitimate pregnancy:

(12) where women have never had a child before there is a possibility in cases of this nature, and especially in illegitimate pregnancy, that an occurrence of transitory mania may be followed by loss of memory of events at this period − loss of memory may follow any confinement − I would not say as to illegitimate pregnancy − I should say especially to first labours, whether they were illegitimate or not. [IN07]

The same assertion about certain symptoms being somewhat linked to illegitimate pregnancy can be found in [IN15]. When cross-examined, Dr. Charles Ewart explained that the state of mental excitement is typical of married women and thus even more likely to occur in young unmarried women who find themselves in great agony because of their unwanted pregnancy, as shown in excerpt (13):

(13) I have had a great deal of experience in child delivery. Even a healthy married woman at such a time would be in a state of mental excitement; a respectable, but unmarried young woman in great agony, suddenly discovering that she was about to become a mother, would be even more likely to be affected in her mind [IN15].

Along with the expressions already analysed such as *separate existence*, *independent existence*, *confinement*, *be delivered of a child*, *puerperal fever* or *transitory mania* and *born alive*, other expressions were found which refer to the defendants' state of health right after delivering (such as *loss of memory*), or to the abovementioned *hydrostatic test* performed through the *inflation of the lungs* on the bodies of the dead babies to ascertain their separate existence after birth.

Other expressions belonging to medical professional discourse and typically recurrent in infanticide cases seem to be *complete birth* to mean the complete separation from the mother's body and *precipitated birth* or *precipitative birth* (corresponding to the modern 'precipitate delivery') to refer to a delivery which follows an unusually rapid labour and results in a sudden and spontaneous expulsion of the infant, causing health problems to both the baby (such as brain haemorrhage) and the mother (such as lacerations and infections). In [IN09] cross-examination, Dr. Thomas John Price Jenkins explains that the defendant might have become delirious because of the pain of a rapid and intense labour and considers the matter of precipitative delivery, which might cause the newborn's brain to haemorrhage:

(14) I was told on one occasion of her being inclined to be violent – such pain as she had had might make her temporarily insane and unconscious – I do not say irresponsible, but unconscious – it is quite possible that she became delirious through pain, because she was melancholic – I do not think the pain would make her unconscious, but it might make her delirious – severe haemorrhage would produce unconsciousness – if in a case of precipitative birth a child had its head fractured on a hard surface, death would be produced by it, and in those cases there would be signs of haemorrhage in the brain – they do not die immediately from the fracture of the skull. [IN09]

Table 4 below summarizes the occurrences of some of the medical jargon found in the trial transcripts.

separate existence	24
independent existence	4
confinement	8
confined	4
be delivered	9
alive	14
born alive	6
fever	1
puerperal fever	1
puerperal insanity	1
puerperal mania	2
temporary insanity	1
transitory mania	4
loss of memory	2
hydrostatic test	4
inflation of the lungs	4
precipitated birth	3
precipitative birth	1
complete birth	2

Table 4. Occurrences of medical jargon in the trial transcripts

5. Conclusions

The research carried out in the present paper showed that medical discourse in the historical courtroom deserves thorough investigation as it represents a type of both interprofessional and lay-professional discourse embedded in the specific institutional legal context. Being objective, impersonal and empirical, specific medical discourse was often at odds with the forensic tactics and the argumentative character of trial discourse. This chapter has attempted to show some of the features of expert discourse in court. It has analysed some instances of medical jargon utilized in the testimonies and explained through the

expansion and amplification of responses to judges and lawyers and for the benefit of the lay jurors. Some terminology and phraseology, such as *confinement, be delivered of a child, precipitative birth, puerperal fever* which referred to the defendant and *separate* or *independent existence* and *born alive* which referred to the dead baby, have different meanings and produce different interpretations when considered from a different professional perspective: the medical interpretation does not always correspond to the legal understanding and explanation of certain vocabulary. Despite the small number of texts in the corpus and the consequent relatively low frequency of certain lexis and expressions, the findings can be considered particularly relevant and representative of medical discourse in court and in particular of cases of infanticide in the time span between 1902 and 1913.

References

Anesa, Patrizia 2012. *Jury Trials and the Popularization of Legal Language. A Discourse Analytical Approach*. Bern: Peter Lang.

Archer, Dawn 2005. *Questions and Answers in the English Courtroom (1640-1760). A Sociopragmatic Analysis*. Amsterdam: John Benjamins.

Atkinson Maxwell J. / Drew Paul 1979. *Order in Court. The Organization of Verbal Interaction in Judicial Settings*. Basingstoke: Social Science Research Council.

Atkinson, Stanley 1904. *Separate Existence in the Child.* First published online on 25 August 2005, DOI:10.1111/j.1471-0528.1904.tb07218.x.

Chaemsaithong, Krisda 2011. In Pursuit of an Expert Identity: A case Study of Experts in the Historical Courtroom. *International Journal for the Semiotics of Law* 24/4, 471-490.

Chaemsaithong, Krisda 2012. Performing Self on the Witness Stand: Stance and Relational Work in Expert Witness Testimony. *Discourse and Society* 23/5, 465-486.

Cotterill, Janet 2003. *Language and Power in Court. A Linguistic Analysis of the O.J. Simpson Trial*. Basingstoke: Palgrave Macmillan.

Culpeper, Jonathan / Kytö, Meria 2000. Gender Voices in the Spoken Interaction of the Past: A Pilot Study Based on Early Modern English Trial Proceedings. In Kastovsky Dieter / Mettinger Arthur (eds) *The History of English in a Social Context*. Berlin: Mouton de Gruyter, 53-89.

Culpeper, Jonathan / Kytö, Meria 2010. *Early Modern English Dialogues. Spoken Interaction as Writing*. Cambridge: Cambridge University Press.

Giordano, Michela 2012. The Old Bailey Proceedings: Quoted Dialogue and Speaker Commitment in Witness Testimony. In Mazzon Gabriella / Luisanna Fodde (eds) *Historical Perspectives on Forms of English Dialogue*. Milano: Franco Angeli, 321-342.

Golan, Tal 2003. *Laws of Men and Laws of Nature: The History of Scientific Expert Testimony in England and America.* Cambridge, Mass.: Harvard University Press.

Heffer, Chris 2005. *The Language of Jury Trial. A Corpus-Aided Analysis of Legal-Lay Discourse*. Basingstoke: Palgrave Macmillan.

Heritage, John 2004. Conversation Analysis and Institutional Talk. In Sanders Robert E. / Fitch Kristine L. (eds) *Handbook of Language and Social Interaction*. Mahwah, NJ: Erlbaum, 103-147.

Jucker, Andreas H. 2008. Historical Pragmatics. *Language and Linguistics Compass* 2/5, 894-906.

Kryk-Kastovsky, Barbara 2000. Representations of Orality in Early English Trial Records. *Journal of Historical Pragmatics* 1/2, 201-230.

Kryk-Kastovsky, Barbara 2006. Historical Courtroom Discourse: Introduction. *Journal of Historical Pragmatics* 7/2, 163-179.

Linell, Per 1998. Discourse Across Boundaries: On Recontextualizations and the Blending of Voices in Professional Discourse. In

Linell, Per / Sarangi, Srikant (eds) *Discourse Across Professional Boundaries*, Special Issue of *Text* 18/2, 143-158.

Maley, Yon 2000. The Case of the Long-nosed Potoroo: The Framing and Construction of Expert Witness Testimony. In Sarangi, Srikant / Coulthard Malcolm (eds) *Discourse and Social Life*. Harlow: Pearson, 246-269.

Stygall, Gail 2001. A Different Class of Witnesses: Experts in the Courtroom. *Discourse Studies* 3/3, 327-349.

The National Archives, London Metropolitan Police, *Domestic Records Information 52,* <http://www.nationalarchives.gov.uk>

Thornborrow, Joanna 2002. *Powerful Talk: Language and Interaction in Institutional Discourse*. Harlow: Pearson.

Primary source

Old Bailey Proceedings Online, <www.oldbaileyonline.org>.