

# **Translation of a Book of Evidence and its Impact on a Criminal Trial – a Case Study**

Karolina Jarmołowska, M.A.

Dissertation submitted for the degree of Doctor of Philosophy

Dublin City University

School of Applied Language and Intercultural Studies

Under the supervision of

Prof. Jenny Williams

Ms Mary Phelan

**December 2011**

**Declaration**

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of Doctor of Philosophy is entirely my own work, that I have exercised reasonable care to ensure that the work is original, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

Signed: \_\_\_\_\_ (Karolina Jarmołowska)

ID No.: 57123306

Date: \_\_\_\_\_

## **Acknowledgements**

I would like to sincerely thank my supervisors Professor Jenny Williams and Ms Mary Phelan without whose professional guidance and expertise this work would not have been possible. Their enthusiasm for my work, encouragement and approachability made this project a wonderful academic experience. I am also indebted to other members of the DCU community interpreting research group, particularly to Professor Michael Cronin for his perceptive comments and to Dr Krisztina Zimanyi, who has tirelessly read through numerous draft versions of this dissertation. Special thanks go to Dr John Kearns who generously gave his time commenting on the text. I am also grateful to DCU Language Services, whose generous 3-year research scholarship funded my study and allowed me to pursue this project.

On a more personal note, I wish to thank Margaret and John for their airport pickups, freshly squeezed orange juice and Sunday roasts but, above all, for the warmest of welcomes I received every time. I would like to thank my parents for their support and encouragement during the more challenging times. There is also one person whom I simply cannot thank enough. I would like to thank Shaun who has shown infinite patience and supported me both through words of encouragement and through taking care of all the household duties during the write-up stage. Thank you for believing I can do this.

Finally, I wish to thank the anonymous defendant who agreed to provide me with the data.

## Table of Contents

Abstract .....	9
List of Tables .....	10
List of Figures .....	11
List of Appendices .....	12
List of Abbreviations .....	13
Chapter 1: Introduction .....	14
1.1 Structure of the introduction.....	14
1.2. Origin of the study .....	14
1.3 Research question.....	15
1.4.1 Council of Europe Convention and Recommendations .....	15
1.4.2 European Union legislation.....	17
1.5 Police and court interpreting in Ireland.....	18
1.6 The process of taking an interpreted witness statement at an Irish garda station.....	20
1.7 The Present Study .....	22
1.8 Thesis Structure.....	24
Chapter 2: The Main Issues in Legal Interpreting .....	25
2.1 Introduction .....	25
2.2 The complexity of the legal interpreter’s task: multimodality, register shifts and accuracy .....	26
2.2.1 Multimodality.....	26
2.2.2 Register shifts.....	28
2.2.3 Accuracy.....	30
2.3 Working conditions.....	31
2.4 The role of the legal interpreter .....	34
2.5 Police context: distortion in monolingual and interpreted witness statements.....	36
2.5.1 Electronic recording of police interviews .....	37

2.5.2 Shortcomings of a police transcript .....	39
2.5.3 Impact on the legal process .....	41
2.6 Impact of translation and interpreting on a trial .....	43
2.7 Translation of legal texts.....	44
2.7.1 Witness statement as a legal text.....	45
2.8 Conclusion.....	46
Chapter 3: The Choice of Analytical Model .....	48
3.1 Introduction .....	48
3.2 Case study .....	48
3.3 Background of the case.....	49
3.3.1 Source and target texts.....	50
3.4 Juliane House's functional-pragmatic translation quality assessment model.....	53
3.4.1 Juliane House's model applied.....	56
3.4.1.1. Analysis of the original.....	57
3.4.1.2. Statement of function.....	61
3.4.1.3. Comparison of original and translation and statement of function.....	62
3.4.1.4 Statement of quality .....	64
3.5 Christiane Nord's functionalist model .....	65
3.5.1 Christiane Nord's model applied.....	68
3.5.1.1 Source text analysis.....	68
3.5.1.2 Analysis of effect.....	74
3.5.1.3 Translation criticism.....	75
3.5.1.4 Conclusions .....	80
3.6 Gideon Toury's model.....	80
3.6.1 Descriptive Translation Studies.....	80
3.6.2 Target-orientedness.....	81
3.6.3 The concept of norms in translation.....	81

3.6.4 The method.....	81
3.6.5 Choosing the scope of comparative study.....	82
3.6.6 Initial observations.....	83
3.6.7 Descriptive Translation Studies as a TQA.....	84
3.6.7.1 General description of Leuven-Zwart’s model.....	85
3.6.7.2 Comparative model: transeemes and architranseemes.....	85
3.6.7.3 Difficulties .....	87
3.6.7.4 Summary of results .....	88
3.6.7.5 Initial observations.....	89
3.6.7.6 Descriptive model .....	89
3.6.7.6.1 Semantic modulation.....	90
3.6.7.6.2 Modification.....	90
3.6.7.6.3 Mutation .....	91
3.6.8 Conclusions .....	91
3.7 Conclusion: The Choice of Analytical Model.....	93
Chapter 4: Analysis of police records of interpreted witness statements.....	98
4.1 Introduction .....	98
4.2 Distortion in police records of monolingual interviews.....	100
4.3 Distortion in police records of interpreted interviews .....	100
4.4 Influence of mode in the language used in an interpreted witness statement .....	102
4.4.1 Non-standard use of English .....	102
4.4.2 Spoken language features in a written record of an interview .....	107
4.5 Influence of genre on the language used in an interpreted witness statement .....	113
4.5.1 Legally relevant perspective in a “verbatim” statement – constraints of genre....	114
4.5.2 Genre in House’s analysis .....	114
4.5.3 Genre as a prototype .....	115
4.5.4 Legal genres .....	115

4.5.5 Linguistic manifestations of police participation resulting from genre .....	117
4.5.5.1 Establishing that a crime has been committed – consent and theft .....	117
4.5.5.2 Policespeak .....	120
4.5.5.2.1 Postpositioning of temporal “then” .....	120
4.5.5.2.2 Passive voice .....	122
4.5.5.2.3 Formal language.....	123
4.5.5.2.4 Policespeak and accommodation theory.....	124
4.6 A police record of an interpreted witness statement within House’s model.....	126
4.6.1 Statement of function.....	128
4.7 Conclusion.....	129
Chapter 5: Translations of interpreted records of witness statements.....	131
5.1 Introduction .....	131
5.2 Translation of documents .....	131
5.3 Fourth story generations .....	134
5.4 Non-standard use of English .....	134
5.5 Interpreter’s shift into principal role .....	137
5.6 Choosing readability over accuracy - the role of the cultural filter .....	138
5.6.1 Lexical mismatches .....	138
5.6.2 Written statements in inquisitorial and adversarial systems .....	141
5.7 Solving ambiguities .....	142
5.7.1 A telephone call or a visit - “call to” .....	142
5.7.2 Two meanings of the verb “to come” .....	146
5.8 Genre requirements.....	147
5.8.1 Lexical mismatches and genre: vaginal.....	148
5.8.2 Lexical mismatches and genre: dirty vs not washed.....	149
5.8.3 Structure of a witness statement: primary and secondary reality .....	150
5.8.4 Primary reality in translation .....	152

5.9 Naming conventions .....	154
5.10 Translations of interpreted witness's statements within House's model: statement of quality .....	158
5.11 Conclusion.....	160
Chapter 6: Impact on Trial .....	162
6.1 Introduction .....	162
6.2 The use of written witness statements in direct examination .....	164
6.2.1 The examination-in-chief: no evidence .....	166
6.2.2 The examination-in-chief: additional evidence .....	169
6.2.3 The examination-in-chief: consequences .....	172
6.3 The use of written witness statements in cross-examination .....	173
6.3.1 Inconsistencies between witness testimony and police statements.....	173
6.3.2 Impact of ambiguities on cross-examination.....	179
6.4 The use of written witness statements in cross-examination by a self-representing defendant.....	182
6.4.1 Navigation issues and misrepresentation.....	182
6.4.2 Inconsistencies between translations.....	188
6.4.3 Impact on trial due to distortion between ST and TT .....	193
6.4.3.1 Started to tear ticket vs. tore the ticket .....	193
6.4.3.2 Ring vs. visit.....	195
6.4.3.3 Come vs. come .....	197
6.5 Time spent on T/I issues .....	199
6.6 Conclusion.....	201
Chapter 7: Conclusion .....	204
References: .....	213
Appendices.....	221



## **Abstract**

Interpreting in a legal setting in Ireland is not subject to any regulation. Police and court interpreters are neither certified nor tested. The current study aims to analyse the impact on a criminal trial of unqualified interpreters' assistance in the pre-trial process. The starting point of the investigation is an analysis of witness statements written with the assistance of unqualified interpreters. It is followed by an analysis of the statements' translation into Polish. The analysis of statements is performed based on Juliane House's translation quality assessment model. Finally, analysis of court transcripts investigates the impact of translation and interpreting on the trial. The findings show that covert translation of witness statements disrupts the flow of the trial and suggest that overt translation may be more appropriate for this text type. The investigation highlights the dangers related to commissioning unqualified interpreters and translators in a legal setting and confirms an urgent need to regulate this field in Ireland. Furthermore, the study demonstrates that Juliane House's translation quality assessment model can be successfully applied to legal texts such as witness statements.

## List of Tables

<b>Table 3.1</b> Participants in each statement-taking session	50
<b>Table 3.2</b> Juliane House's translation quality assessment model (1997)	53
<b>Table 3.3</b> Christiane Nord's functionalist model of translation analysis (1991)	67
<b>Table 3.4</b> The Polish translation of the witness statement within DTS	83
<b>Table 3.5</b> Shifts in translation (T)	88
<b>Table 3.6</b> Shifts in translation (T) according to shift type	88
<b>Table 4.1</b> Participants in each statement-taking session	99
<b>Table 4.2</b> Number of contracted and full forms across statements	109
<b>Table 4.3</b> The use of temporal "then" across statements	122
<b>Table 4.4</b> The use of passive across statements	123
<b>Table 5.1</b> Register shifts in lexis	140
<b>Table 5.2</b> The construction of a suspect's statement	141
<b>Table 5.3</b> Formal police interview genre	151
<b>Table 6.1</b> Witness story generations in the legal process	162
<b>Table 6.2</b> Witness's story generations used during trial	163
<b>Table 6.3</b> Different recontextualisations of the sentence S1(29-30) in the course of the legal process	186
<b>Table 6.4</b> Different recontextualisations of the sentence S1a(94-95) in the course of the legal process	191

## List of Figures

<b>Figure 1.1</b> Generation 1 of the witness's story	20
<b>Figure 1.2</b> Generation 2 of the witness's story	21
<b>Figure 1.3</b> Generation 3 of the witness's story	21
<b>Figure 1.4</b> Generation 4 of the witness's story	21
<b>Figure 1.5</b> Generations 4.1 and 4.2 of the witness's story	23
<b>Figure 3.1</b> Interpreted statement-taking session	51
<b>Figure 3.2</b> Source (S1a) and target (T) texts in the current analysis	52
<b>Figure 4.1</b> Interpreted statement-taking session	99
<b>Figure 5.1</b> Recontextualisations of the witness's story	131
<b>Figure 5.2</b> Recontextualisations of the witness's story in the analysed case	133

## **List of Appendices**

**Appendix A** – English statements of the complainant: S1, S1a, S1b

**Appendix B** – Polish translation of the complainant’s statements from the book of evidence: T

**Appendix C** – Polish translation of the complainant’s statements provided on individual sheets of paper: T1, T1a, T1

For confidentiality reasons the appendices are not available in the printed version of the thesis.

## List of Abbreviations

W	Witness (Complainant)
SRD	Self Representing Defendant
DC	Defence Counsel
P	Prosecution
J	Judge
PO1	Police officer 1
PO2	Police officer 2
PO3	Police officer 3
INT1	Interpreter 1
INT2	Interpreter 2
S1	the first statement taken from the witness (English)
S1a	the second statement taken from the witness (English)
S1b	the third statement taken from the witness (English)
T	Polish translation of the witness's statements from the book of evidence
T1	Polish translation of the first statement (S1) provided on individual sheets of paper
T1a	Polish translation of the second statement (S1a) provided on individual sheets of paper
T1b	Polish translation of the third statement (S1b) provided on individual sheets of paper

All names and other potentially identifying details have been either anonymised or changed.

# Chapter 1: Introduction

## 1.1 Structure of the introduction

The first part of the introduction explains where the idea for the study came from and the events that led to the present research project. Next, the main research question is presented followed by the aims of the study broken down into more detailed questions. Then, the legal framework of legal interpreting is outlined with reference to the recommendations of the Council of Europe and the European Union provisions related to translation and interpreting in a legal context. Next, this context is narrowed down specifically to Ireland and the general situation of legal interpreting in an Irish context is discussed. The subsequent section describes the process of taking a witness statement via an interpreter at an Irish police station. Finally, the unique character of the study is highlighted and an outline of the structure of the entire dissertation brings the chapter to a close.

## 1.2. Origin of the study

The idea for this empirical study arose when the researcher was acting as an interpreter at a criminal trial, in which the defendant was relying on the Polish translation of witnesses' statements taken at the police station with the assistance of interpreters. Because the defendant decided to represent himself, without the help of lawyers, and his English was limited, his knowledge of what the witnesses said at the police came solely from the Polish translations of the statements. Moreover, the interpreters used at the police station were not fluent in English thereby heavily impacting the quality of the English used in the statements and consequently hindering understanding of the statements by the English speaking participants. During the trial it soon became evident that the translation had significantly altered the defendant's understanding of the case which subsequently led to miscommunication between the defendant and the other court participants, who were using the English version of the statements. It was then that the researcher thought of describing the impact of translation and interpreting on the legal process as a fascinating research topic. The dissertation presents the results of this practice-driven research project and makes recommendations which could inform the current

practice of working with interpreters and translators in Irish police stations. The study relies solely on actual witness statements taken by the police, as well as court transcripts from the subsequent trial in which the statements were used. All names and identifying data from the court materials have been either anonymised or omitted.

### **1.3 Research question**

The overall research question is the following:

- What is the impact of interpreting and translation of witness statements on a criminal trial?

Within that broad question, the aim of the study will be to answer the following, more detailed questions:

- What does the process of taking a witness statement with the assistance of an interpreter look like in an Irish police station?
- Whose voices can we distinguish in a written statement taken from the witness by the police with the assistance of an interpreter?
- How and why are witness statements translated?
- How do the subsequent recontextualisations of the witness's story through interpreting and translation affect the examination of the witness in court?

### **1.4 Provision of police and court interpreters – legal framework**

The discussion on the legal framework of interpreting provision will be limited to the European context relevant for Irish courts and police stations.

#### **1.4.1 Council of Europe Convention and Recommendations**

Interpreting provision in criminal proceedings is guaranteed by the Council of Europe 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), which was incorporated into Irish law by the European Convention on Human Rights Act 2003. Article 5.2 on the right to liberty and security guarantees that “everyone who is arrested shall be informed promptly, in a

language which he understands, of the reasons for his arrest and of any charge against him”. Similarly, Article 6 on the right to a fair trial ensures the defendant is informed of the accusation against them, and guarantees the right to interpreters:

3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Gibbons (2003) notes that this free assistance includes also the translation of documents used in court proceedings, which was confirmed by the European Court of Human Rights in its judgement in the 1980 case of *Luedicke, Belkacem and Koç v. Federal Republic of Germany*. The assertion was made in a judgement by the European Court of Human Rights in a related case of *Kamasinski v. Austria* from 1989 p.74 of which states:

The right stated in paragraph 3(e) of Article 6, to the free assistance of an interpreter applies not only to oral statements made at the trial hearing but also to documentary material (...). However, paragraph 3(e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself (...)

The judgement does not specify which documents are to be translated in order to ensure that the defendant has a knowledge of the case and leaves this to be decided by the court or police. In Ireland, the written translations usually encompass the written evidence, called the book of evidence described in Section 4b of the Criminal Procedure Act 1967. The term “book of evidence” itself has no statutory meaning, but is used to describe a set of documents that need to be produced by the prosecution and given to the accused (Abrahamson, Dwyer and Fitzpatrick 2007, p.321). Abrahamson et al. point out that a book of evidence must be served within 42 days from the defendant’s first appearance in the District Court. The prosecution may apply to the court to have that period extended if a good reason exists, but if it fails to make an application and does not serve the book of evidence within 42 days, the case is struck out. It is also possible to serve additional evidence at a later stage, but only in relation to the initial accusations. The book of evidence, together with additional evidence, outlines the totality of the case. The translation of the book of evidence into the defendant’s mother tongue is the responsibility of the defence solicitor, but there is no set time within which it must be provided.



Moreover, there is a body of Council of Europe recommendations, which include Recommendation No R(81)7 on measures facilitating access to justice. Point 6 of the Appendix to this Recommendation states that:

6. Where one of the parties to the proceedings does not have sufficient knowledge of the language of the court, states should pay particular attention to the problems of interpretation and translation and ensure that persons in an economically weak position are not disadvantaged in relation to access to the court or in the course of any proceedings by their inability to speak or understand the language of the court.

Furthermore, Art, 3 of Resolution 78(8) of the Council of Europe on legal aid urges that legal aid should cover all the costs incurred by the person to defend their legal rights, in particular lawyers' fees, experts' fees, witnesses and translations.

#### **1.4.2 European Union legislation**

Due to the general character of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the standards of interpreting in European courts and police stations vary from country to country. In Ireland, the court is obliged to apply the provisions of the Convention where possible (MacFadden 2010, p.14). Consequently, the decision whether to appoint an interpreter or not is in fact at the discretion of the presiding judge (Bacik 2007, p.117; Waterhouse 2010, pp.49-57). In an effort to harmonise the standards and raise the quality of legal interpreting, the European Commission's GROTIUS and AGIS projects resulted in the publication of a survey on the provision of legal interpreting in the EU and developed recommendations for the implementation of best practice in providing legal interpreting across Member States (Hertog and Van Gucht 2008). Building on the findings of the GROTIUS and AGIS projects ([www.eulita.eu](http://www.eulita.eu)), the Reflection Forum on Multilingualism and Interpreter Training was set up and, in March 2009, a final report of their work was published by the European Commission<sup>1</sup>. The recommendations of the Reflection Forum have formed the foundation for the new EU Directive on the Right to Interpretation and Translation in criminal proceedings. The directive was adopted by the European Parliament on 16th June 2010

---

<sup>1</sup> The report is available online at:  
[http://eulita.eu/sites/default/files/final\\_reflection\\_forum\\_report\\_en.pdf](http://eulita.eu/sites/default/files/final_reflection_forum_report_en.pdf)

([www.eulita.eu](http://www.eulita.eu)) and on 7th October 2010 by the Council of Justice Ministers<sup>2</sup>. It will have to be implemented by the Member States by October 2013, i.e. 36 months after the publication in the Official Journal of the European Union. Article 2 of the directive guarantees the right to interpretation while Article 3 deals with the translation of essential documents including “decisions depriving a person of his liberty, the charge/ indictment and any judgment”. Articles 2.8 and 3.9 of the directive state that both interpreting and translation services should be “of a quality sufficient to safeguard the fairness of the proceedings”. In order to achieve the desired quality, the directive suggests that Member States establish registers of appropriately qualified translators and interpreters. It is the first piece of European legislation which mentions the quality of the services provided and outlines such specific guidelines. In order to facilitate the implementation process, the European Legal Interpreters’ and Translators’ Association (EULITA), founded in November 2009, is actively involved in developing a code of best practice.

### **1.5 Police and court interpreting in Ireland**

Both the Irish police and the Courts Service of Ireland outsource interpreting services to private agencies. Following a public tender in 2006, the Courts Service appointed Lionbridge Ireland Ltd. as the sole provider of interpreting services in the Irish courts (Bacik 2007). The Irish police, An Garda Síochána, followed a similar route and outsourced translation and interpreting services to private businesses in 2009. During an ITIA workshop organised in Dublin on 25<sup>th</sup> September 2010, Superintendent Fergus Healy from An Garda Síochána reported that money spent on face-to-face interpreting in Garda stations amounted to €2.5 million in 2009 (data for the period from 1st February to 31st December) and €1.76 million for the first eight months of 2010. The courts service paid Lionbridge €3.6 million in 2008 and €3 million in 2009 (*The Sunday Times*, 29 March 2010). However, according to a representative of the GRA (Garda Representative Association) most of the money spent by An Garda Síochána are net profits for the interpreting agencies while individual interpreters earn very little. The GRA would like to see the agency system abolished and wants

---

<sup>2</sup> For details see:

<http://www.eulita.eu/sites/default/files/Council%20adopts%20EU%20wide%20rights%20to%20interpretation%20and.pdf>

Gardaí to use a register of vetted and qualified interpreters (*Irish Times*, 4 April 2009). Moreover, a feature article in the *Irish Times* published on 7th June 2010 which addressed the issue of the poor quality of interpreting in the legal context in Ireland shows that there is an urgent need for improvement. This is in contrast to the EU Scrutiny Report No. 28 published by the Joint Committee on European Scrutiny of Houses of the Oireachtas<sup>3</sup>. The report was issued in relation to the Council Framework Decision on the right to interpretation and to translation in criminal proceedings and states that “[Ireland] spent approximately €7 million in 2008, and it emerged in negotiations at EU level that Ireland is to the forefront in the provision of interpretation and translation services” (2009, p.4). However, it needs to be taken into account that outsourcing interpreting services triggers higher costs and the large sums spent on interpreting do not guarantee quality if no quality control measures are in place.

In Ireland, legal interpreters are not required to undergo any form of testing. The Irish Translators’ and Interpreters’ Association (ITIA) introduced an accreditation process for interpreters in 2009. Candidates who wish to become ITIA Professional Members and to be included in the register of interpreters need to prove adequate qualifications and experience, and to pass an ITIA translation test followed by an interview. Moreover, Dublin City University has run a course in public service interpreting – a Graduate Certificate in Community Interpreting (GCCCI), which ran from 2004-2009 and currently may be revamped in the light of the forthcoming EU directive on legal interpreting and translation. The course included classes on ethics and terminology, as well as practical modules in the relevant language pair encompassing medical and legal interpreting (Phelan, 2007).

However, one does not have to be a Professional Member of the ITIA or hold a GCCCI certificate, to interpret at Irish police stations or courts. Nor are trained and accredited interpreters prioritised for work.

Besides training courses for interpreters, there is a demand for training of those in the legal profession on how to work with interpreters. None of the respondents to MacFadden’s study (2010) carried out among Irish judges, barristers and solicitors

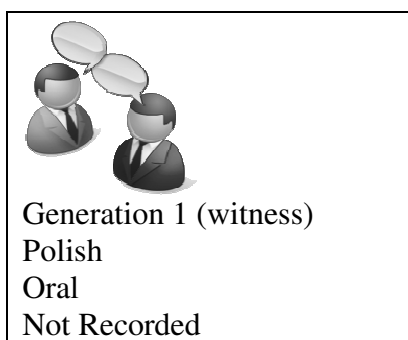
---

<sup>3</sup> The report is available online at:  
<http://www.oireachtas.ie/viewdoc.asp?DocID=13239&CatID=74&StartDate=01%20January%202009&OrderAscending=0>

underwent any form of training on how to work with interpreters. Such training will become compulsory as part of the implementation process of the EU Directive on the Rights to Interpretation and Translation in criminal proceedings.

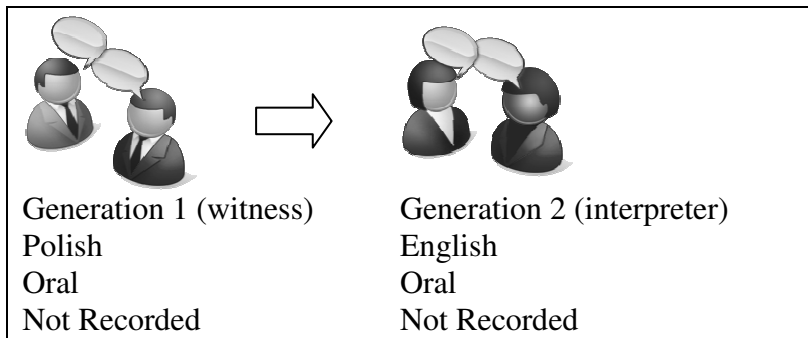
### **1.6 The process of taking an interpreted witness statement at an Irish garda station**

Let us now look at the process of taking a witness statement from a non-English speaking witness at an Irish garda station. While witnesses are generally interviewed in the same question and answer format as suspects, the format in which witness statements are transcribed differs from the format of a suspect interview record. Witness accounts are recorded as monologues written in the first person, in contrast to suspect interviews, which are recorded as a dialogue. The police officer's questions to the witness are not written down in the record of the witness interview and the entire interview is not electronically recorded, unlike suspect interviews, which are customarily videorecorded. The taking of a statement at a Garda station begins when the witness tells the story in a foreign language; for the present purposes, let us assume it is Polish. This version, or generation (Linell and Jönsson 1991) is not understood by the police nor is it recorded for future reference – either by the interpreter or electronically.



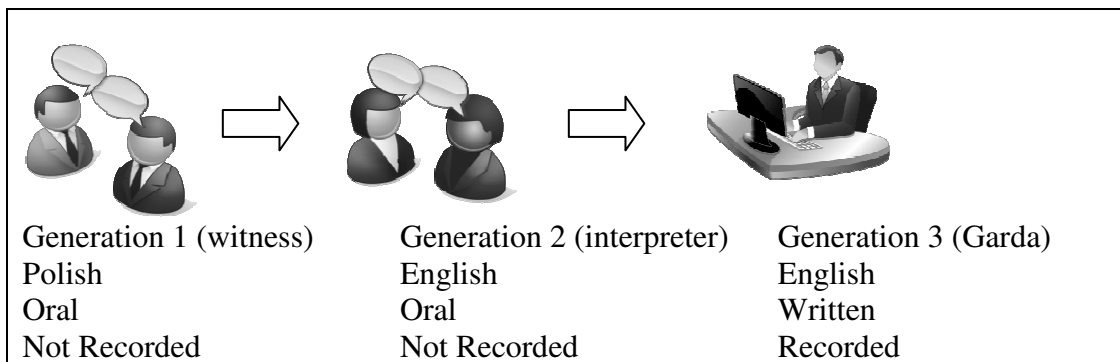
**Figure 1.1 Generation 1 of the witness's story**

The second step in the process happens when the witness's Generation 1 is interpreted from Polish into English by the interpreter. The interpreter's rendering of the witness's words will be called Generation 2. This version is again only conveyed in an oral form by the interpreter and is not recorded on tape or video.



**Figure 1.2 Generation 2 of the witness's story**

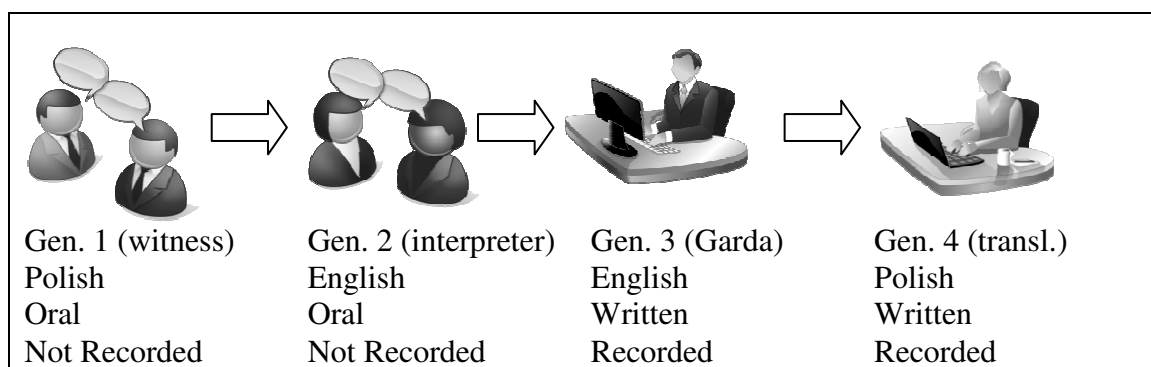
Next, the police record, called Generation 3, is the first version of the story that is recorded and makes its way to the case file. It is firstly handwritten by the police officer and at the end of the interview read and interpreted back to the witness before they put their signature under the English language version. The handwritten record is subsequently typed out by transcribers. For the purpose of the analysis, it has been assumed that the handwritten notes and their typed version are identical. The handwritten version is not included in the diagram and Generation 3 stands for the typed statement recorded by the police.



**Figure 1.3 Generation 3 of the witness's story**

According to Article 6 of the ECHR, a suspect in a criminal case is entitled to the free assistance of an interpreter to understand the charges against him or her. As discussed before, the meaning of the ECHR was extended to cover not only interpreting, but also the translation of any relevant written material needed to entirely understand the case, usually the body of witness statements. What this means in practice is that if the defendant facing a trial in Ireland does not speak adequate English, he or she needs to have the witnesses' statements translated. If the defendant is Polish, the law requires the statements to be translated into Polish. This applies also to statements from Polish witnesses and leads to a situation where the statements given to the police in Polish are translated back into Polish from Generation 3, the

English police record. In the absence of the electronic recording of any of the previous versions, backtranslation is the only option which may be pursued to comply with the legal requirement to provide the statements in the defendant's mother tongue.



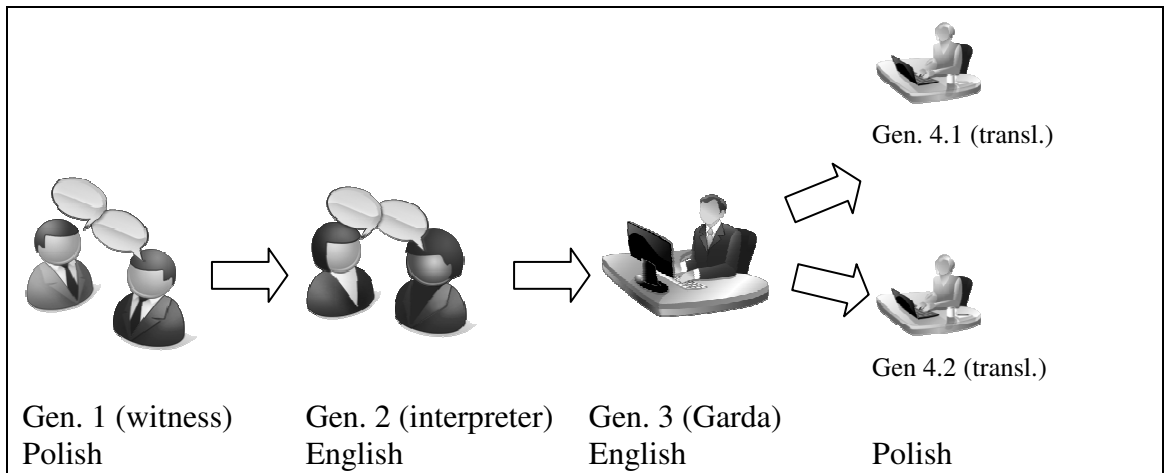
**Figure 1.4 Generation 4 of the witness's story**

Consequently, this leads to the creation of another version of the witness's statement (Generation 4). Numerous recontextualisations of the witness's story may lead to distortion, the exploration of which will be one of the main issues discussed in the current research project.

### 1.7 The Present Study

The present investigation follows the journey of interpreted witness statements through the legal process. In the present case, the police used two *ad hoc* interpreters, friends of the complainant, to interpret the witness's statements from Polish into English. Because the *ad hoc* interpreters' command of English was poor, and the police were careful not to interfere with the style of the statement, the text contains numerous grammatical and lexical errors. The Polish original was neither written down nor electronically recorded and the Irish police used their own record of the interpreter's version as the exhibit in the case.

In accordance with the current practice and the provisions of the ECHR, the English statements of the complainant, as well as statements of other witnesses, were later translated into Polish for the benefit of the accused. What is more, the defendant in this case was provided with two different sets of translations of the complainant's statements (Generations 4.1 and 4.2), as presented in the diagram below.



**Figure 1.5 Generations 4.1 and 4.2 of the witness’s story**

It is not clear why two sets of translations were made, but taking into account that the defending solicitor is responsible for providing the translations and the defendant changed legal teams a couple of times, it is likely that a new defence team commissioned their own translation not knowing that one already existed. Both sets of translations were performed by the same translation agency based in Dublin but presumably by two different translators. The identity, experience and level of training of the translators are unknown.

The groundbreaking nature of the present project is due to two main factors. First of all, it is based on a range of authentic data – witness statements, their translations and court transcripts from the subsequent trial. Thanks to that, the study can follow the entire path of a witness statement from the police station in a small Irish town to The Central Criminal Court in Dublin and observe how the witness’s story is recontextualised at different stages of the criminal process. While studies on the co-construction of witness narratives by the police have been done in the past, it is still unclear whether this collaboration has any adverse effect on the future stages of the criminal process (Rock 2010, p.137). Therefore, the data collected for the current study presents a unique opportunity for making that missing link between the language data from a police station and the corresponding court trial. It is also the first thesis in Ireland based on authentic court transcripts and witness statements.

Secondly, the specific circumstances of the case created an exceptional research opportunity. Normally, the defendant, who receives translations of witness statements into his or her mother tongue, clarifies any doubts about their content with

his or her legal team. Therefore, the discussion about potential differences between the English and foreign language statement takes place between the solicitor and the defendant and is not formally recorded. However, in the present case the defendant decided to represent himself without the help of lawyers. As a result of him basing his line of defence on the Polish translations, any discrepancies between the Polish (Generations 4.1 and 4.2) and the English (Generation 3) statements were discussed in court during the trial and recorded in court transcripts. Due to this the court transcripts provide a unique body of empirical data, in which translation and interpreting issues are openly discussed between the defendant, who uses Generation 4 of the statements and the other court participants, who rely on Generation 3.

Thanks to this unique empirical data, the study aims to make a significant contribution to the under-researched field of public service interpreting, in particular, police interpreting, which faces acute problems related to data access. It is also the first PhD thesis on translation and interpreting in Irish police stations and the first one to follow the path of an interpreted witness statement from the police station to the courtroom. The multidisciplinary nature of the study draws inspiration from Translation and Interpreting Studies, Forensic Linguistics and Criminology.

## **1.8 Thesis Structure**

Chapter 2 discusses the relevant literature within the field of police interpreting and witness statements. Chapter 3 outlines the process of choosing an analytical model for the analysis of witness statements. It contains the results of the pilot study in which three translation quality assessment models (TQA) were applied to a sample of the data and explains reasons for choosing a specific model. Chapter 4, the first of the data analysis chapters, sets out to describe the analysed witness statements within the framework of the chosen TQA model. It is followed by the assessment of the translations, which is provided in Chapter 5. The next chapter contains a data-driven evaluation of the impact that translation and interpreting, in particular the interpreted witness statements and their translations, had on direct examination and cross-examination in court. Finally, the results of the study are reflected on in Chapter 7, which also provides recommendations for practitioners and points to areas for future research.



# Chapter 2: The Main Issues in Legal Interpreting

## 2.1 Introduction

Legal interpreting is a field with a limited body of data driven empirical research. This reflects the general difficulty voiced by researchers from all parts of the world in accessing authentic data, which is manifested in the large number of studies based on, for example, the O.J. Simpson trial (Rigney 1997; Pym 1999; Cotterill 2002). The fact that it was broadcast on TV made the data readily available. Access to data in such a sensitive environment as the legal process is indeed problematic. Empirical studies on police interpreting are mainly discussed in journal articles (Krouglov 1999; Fowler 2003; Berk-Seligson 2000; Nakane 2007, 2008, 2009; Mpolweni 2008; Leung 2003). Berk-Seligson's *Coerced Confessions* is the first monograph focusing solely on interpreted police interviews (Berk-Seligson 2009).

Difficulty in obtaining data is also one of the reasons why the issue of translated witness statements and their impact on a trial has not been researched before. To gain access to translated police statements and their original versions together with court transcripts or recording from the trial, in which the statements were used could be a painstaking and time-consuming process. As no research has been done to date on the analysis of interpreted and translated witness statements and their possible impact on a trial, such a study is a pioneering work in the field with the potential to open up further exciting research opportunities.

Due to the shortage of data on police interpreting, the scope of this chapter will be a discussion of the main issues in legal interpreting including the challenges of a legal interpreter's task, working conditions and the role of a legal interpreter. Next, research on police interviews taken with and without the assistance of interpreters will be discussed followed by an overview of relevant studies on the translation of legal texts.

## **2.2 The complexity of the legal interpreter's task: multimodality, register shifts and accuracy**

### **2.2.1 Multimodality**

Legal interpreting involves different modes of interpreting (González, Vásquez and Mikkelson 1991; Mikkelson, 2000). Generally, short consecutive interpreting, or liaison, is used during police interviews or when a witness gives evidence in a language different to the language of the court and the entire cross-examination is performed via an interpreter. Sight translation mode is also used in courtrooms when documents need to be read out to a witness or defendant who does not speak the language, and when lawyers quote legal textbooks. This can happen frequently in common law trials, where previous cases and police statements are often quoted by counsel. Finally, simultaneous interpreting is used in situations when a defendant does not understand the proceedings and, in order for them to be kept informed of what is happening (Mikkelson 2000, p.73; González, Vásquez and Mikkelson 1991) they need to have interpreting provided usually in a whispered simultaneous mode, i.e. *chuchotage*. Whispered interpreting differs from simultaneous conference interpreting in two ways; firstly, the interpreter does not have any equipment that would aid audibility in the court and, secondly in a country such as Ireland there is no system of teams of interpreters working together, so the same interpreter may end up working in simultaneous mode for an entire day during a trial. Therefore whispered interpreting is a more challenging task, even though it is considered as having a lower status than simultaneous conference interpreting performed in a booth. A detailed analysis of the advantages and disadvantages of simultaneous and consecutive interpreting with and without electronic equipment and their proper use in a courtroom is presented by González, Vásquez and Mikkelson (1991, pp.163-166).

In the past, according to the American Court Interpreters Act of 1978, it was considered that certain parts of proceedings could be delivered in a summary mode, i.e. paraphrased and “condensed” by the interpreter. However, the 1988 Court Interpreters Amendments Act, specified the modes of interpreting which were to be used in courtroom settings. According to the Act, consecutive mode should be used for testifying witnesses and simultaneous interpreting for all other parties (González,

Vásquez and Mikkelson 1991). Summary interpreting is not mentioned any more. According to Berk-Seligson (2002) summary interpreting should be kept to a minimum and is only acceptable when technical documents are read out as information for the judge. González, Vásquez and Mikkelson (1991) argue that summary interpreting was used in the past by unqualified non professional interpreters who could not keep up with the pace of the proceedings.

Even though a spokesman for the Irish Courts Service claims that consecutive, rather than simultaneous interpreting is used in the courts because “international experience shows it is more accurate” (*Irish Independent*, 3rd May 2004), interpreters confirm that all modes of interpreting are used and in fact most of the interpreter’s work is done in a whispered mode (Waterhouse 2010, p.212). Since it is hardly feasible even for an experienced and qualified interpreter to simultaneously interpret a complex legal argument without prior preparation, the interpreters themselves admit that it is not possible to interpret everything that is said in court (Waterhouse 2010, p.212). One gets a similar impression while observing interpreters at work: “It seems to me when I sit in the district court that some interpreters are not interpreting everything that is said. They are just standing there beside the defendant and interpreting what they consider the important bits. I’m quite sure that justice is not being done”, says Mary Phelan, honorary secretary of the ITIA (Phelan, *Sunday Times*, 6th May 2007).

More recently, the use of remote interpreting provides further challenges for legal interpreters (Mikkelson, 2000). The use of videoconferencing (VC) in the courts has been allowed in the EU since 2000 (Convention on Mutual Assistance in Criminal Matters between EU countries, Art. 10) and has gained prominence in the last few years. Videoconferencing has also been allowed in the Irish courts since 2011. Research into the use of VC has been conducted in various initiatives, including the EU-funded AVIDICUS Programme on the Assessment of Videoconference Interpreting in the Criminal Justice Services, which published a concluding report in 2011.

### **2.2.2 Register shifts**

The style and register used in court vary enormously, which adds to the difficulty for the interpreter. Participants at trials come from all walks of life. Judges, barristers, solicitors, guards and a variety of witnesses – from expert witnesses to uneducated people – may all be using different registers and lexis. Additionally, adversarial proceedings combine the legal jargon of motions, rapid exchanges and the technical evidence of expert witnesses, which all add extra pressure and pose a considerable challenge for the interpreter (Mikkelson 2000). Moreover, in common law countries, transcripts or, recently, also digital recordings of proceedings, can provide grounds for appeal. This adds to the “show” and the theatrical nature of the trial (Mikkelson 2000). It used to put a lot of responsibility on the interpreter as only the English version of the non-English speaking witness’s evidence was transcribed. However, with the move to digital recordings of court hearings, it has become possible to record the interpreter’s words, too, when consecutive mode is used.

Difficulties in interpreting an expert witness’s testimony are explained in detail by Miguélez (2001). Scholars argue that witness testimony is most challenging due to its textual density (Palma 1995) and terminology (Colin and Morris 1996). Miguélez (2001) demonstrates that expert witness testimony includes many grammatical and structural mistakes and is not as lexically and semantically dense as could be expected. In their testimony, expert witnesses frequently made tense errors and were not consistent in subject/verb agreement. Their testimony often lacked cohesion and they used overly complex descriptions in preference to simple terms (e.g. ‘visual form’ instead of ‘shape’). Palma (1995) claims expert witnesses’ testimony often lacks logical sequence and is characterised by a high degree of abstraction. Such features make the interpreter’s task even more difficult as it is more difficult to visualise abstract notions, which consequently makes it difficult to remember what has been said. Palma stresses the challenges in interpreting high density texts, but points out that such features will pose more difficulty for an inexperienced interpreter. Lay witnesses, on the other hand, pose another challenge for an interpreter as they may use slang, speak too fast or in an incoherent manner (Colin and Morris 1996).

The judge and legal counsel will be the most frequent users of legal language, which also contributes to the difficulty of the interpreter’s task. As Berk-Seligson notes,

most studies on legal language focus on its written form, which a legal interpreter comes in contact with only occasionally. Studies by Crystal and Davy (1969 cited by Miguélez 2001) on British written legal language reveal some of its characteristics. Passives, nominalisations, multiple negatives, lengthy sentences, lack of cohesion, confusing repetition, extreme precision and intentional ambiguity are just some of the many features of legal language. Indeed, the style of legal discourse often runs contrary to commonly accepted norms of written texts.

Oral legal language was distinguished as a separate category by O'Barr and his associates, who have made an important contribution to the study of spoken legal language, alongside such researchers as Berk-Seligson (2002) and Hale (2004). Berk-Seligson (2002) quotes O'Barr (1982), who distinguishes four varieties of spoken legal language: formal legal language, standard English, colloquial English and subcultural varieties. None of the individuals observed used all four varieties, but court participants often switch between two of them. Formal legal language resembles the written, complicated language of the law with its lengthy sentences, professional jargon and complex syntax. Each of these four varieties is used in the courtroom and, what is more, each court participant may randomly shift from one variety to another depending on, for instance, who she or he is talking to. However, it is unlikely that a single person will use all four varieties. A court interpreter is, however, expected to know and use all four varieties in at least two languages. In general, the legal language of the courtroom is characterised by a specialist lexicon, phrasal and syntactic complexity and a high register (Gibbons 2003). In a recent study of legal language used in Irish District Courts (Waterhouse 2010), it has been argued that the language of the District Court is difficult to understand not due to the complexity of the legal arguments, which are rare in the lower courts, but rather due to the fact that key words and grammatical features are regularly omitted due to the presumption of shared knowledge among the court participants (2010, p.277). Legal English – whether spoken or written – tends to be hard for the layperson to understand and even lawyers, considered experts in the field, sometimes struggle to understand legalese (Smith 1995).

### **2.2.3 Accuracy**

When even the slightest variations of register or other language elements may be decisive in a jury reaching a verdict, accuracy is of paramount importance. It is a natural human instinct to help the underdog and the defendant – at a linguistic disadvantage – often falls into this category. However, the interpreter should only remove the language barrier, which means that clarifying a barrister’s complex question is not acceptable as they may have had a purpose in asking it in a particular way (Mikkelson 1998; Berk-Seligson 2002). A witness’s quick and responsive answer to an attorney’s sophisticated question creates a different impression of the person on the jury. The witness may be perceived as more educated than they actually are. Clarifying witness testimony is not allowed either as the answers may well be purposely vague. Any interpreter’s modification of style or tone distorts rather than aids the legal process (Mikkleson 2000).

Interpreters are described as tools of justice and legal conduits, who should preserve the language level, style, tone and intent of the speakers (González, Vásquez and Mikkelson 1991, pp.18-19, 475-476). However, the interpreting task is not a verbatim, word-for-word rendition, but rather one in which every word used by the speaker is accounted for in the interpreter’s version (Mikkelson 1998, p.23). Hale (2004, p.12) claims that if the interpreters understand that their role is to remove the language barrier, they provide more accurate and impartial interpreting.

The above discussion shows that the view of interpreting as a “simple word matching exercise capable of being performed by anyone who can speak two languages,” is a far cry from reality and can lead to a lack of appreciation of how difficult the task is (Gibbons 2003, p.248). Contrary to the common belief that any person who speaks two languages can be an interpreter, Moeketsi (2002) exposes the shortcomings of a bilingual person without interpreting training acting as an interpreter. The analysis of the interpreter’s renditions during an Alternative Dispute Resolution in South Africa showed that he falsified the message and was highly emotional and subjective while performing his duties. Strategies used by the interpreter in circumstances when he failed to find a lexical or cultural equivalent included the following: omissions, lexical simplification, approximation, explication and repetition. While some of the above (e.g. explication or some of the approximations) worked relatively well, others (e.g. omissions or simplifications) are definitely unacceptable when interpreting

courtroom proceedings. The above example challenges the view that the knowledge of two languages is in itself sufficient to guarantee the ability to interpret professionally. Berk-Seligson adds that being bilingual is a necessary but definitely not a sufficient condition for a legal interpreter. In not realising how difficult the interpreter's task is, court personnel think the interpreter is a type of "machine" that transfers languages (Berk-Seligson 2002). This way of looking at an interpreter as a mere conduit is surprisingly widespread also among interpreters themselves (Hale 2004).

The tasks performed by court and police interpreters are often much more challenging than those performed by conference interpreters. However, due to the outsourcing of legal interpreting to private companies and the lack of standardisation, in Ireland, this challenging task is performed by a heterogeneous group of both highly qualified and completely untrained and inexperienced people. Yet, regardless of the interpreter's qualifications, their rendition carries the same evidentiary value in the legal process (Berk-Seligson 2009, p.36). Taking into account the financial resources spent on interpreting and the fact that the integrity of the justice system may be at stake, the issue of regulation and quality control in the field of legal interpreting should not be overlooked.

### **2.3 Working conditions**

Challenges for a legal interpreter are not only created by the difficulty of the task of interpreting itself. The physical conditions of work in a courtroom put additional strain on the interpreter. Frequently no chair or water is provided for the interpreter, even though they may speak at least twice as much as anybody else in the courtroom (Gibbons 2003, p.246). Acoustics in the courtroom may not always be adequate and the reluctance of some lawyers to use the microphones provided does not improve the situation. Interpreters are usually seated close to the defendant, which they may find threatening. Mikkelsen (2000, p.74) recommends that legal interpreters should alternate every 20-30 minutes to avoid fatigue, but practice shows that this is not the case in reality. Colin and Morris (1996, p.94) quote a 1995 case of *R v Ragu Shan* in which a sign-language interpreter refused to work because the other interpreter, who was meant to be in court and to alternate with him, failed to appear. The interpreter

was acting in accordance with the code of ethics, but the judge wanted to send him to prison for contempt of court.

Moreover, the rate of pay for interpreters in many countries is very poor which, in turn, makes the professionalization of the field difficult. In Australia, legal interpreters are paid by the hour and the rate is only slightly higher than that paid to unskilled manual workers (Gibbons 2003, p.243). In Poland, the 2004 Act on the Profession of Sworn Translators says that “the Minister of Justice shall fix, by way of a regulation, the rates of remuneration for the activities of a sworn translator”. They are indeed fixed and for interpreting from English to Polish amount to 29.90 PLN per hour, i.e. approximately €8. However, those rates apply only when interpreting for state authorities. Due to a relatively low demand for police and court interpreting in Poland, sworn interpreters work mainly for private clients, whom they can charge market rates, which start at €25 per hour. Members of the Irish Translators’ and Interpreters’ Association report that legal interpreters in Ireland are paid a rate that varies from €15- €25 per hour. Lionbridge, who provides interpreting services to all Irish courts pays an hourly rate of €18 to most of their interpreters from which the company withholds 25% tax. The current situation is unsatisfactory as most interpreters earn €13.50 per hour after tax for their work in the Irish courts. While interpreters in Britain are paid for half or full days, interpreters in Ireland have only one hour’s pay guaranteed. If we take into account that travel time is not paid within cities and the court assignments rarely exceed two hours, it turns out that the interpreter may actually sometimes get less than the minimum wage when the total time required for the job is taken into consideration (Phelan 2007, p.11).

The courtroom setting in which interpreters have to work is far from being an interpreter-friendly environment. In his analysis of the under-use of interpreters in Australian courts, Gibbons (2003, p.233) reports on a reluctance on the part of judges and lawyers to use interpreters. He also reports that interpreters are used in only approximately 1-1.5% of all police interviews in Sydney, where 50% of the population speak English as a second language. The widespread opinion is that the defendant, who may know a little English, will unnecessarily benefit from the questions being interpreted, which will allow him to think over their response while the interpreting is performed. Participants in the judicial process argue that interpreting alters non-verbal signs, which makes it difficult to assess witness



credibility. Finally, it was claimed that the interpreter may alter the content of what has been said and intervene in the proceedings. The above opinions show that the interpreter is viewed more as an obstruction than an aid and is considered to be better avoided altogether. The Australian police are equally reluctant to avail of interpreting services. Costs and delay are the main reasons given for not using an interpreter. Loss of verbal signs, e.g. intonation or eye contact, during interpreting and the common assumption on the part of the police that the interpreter is on the side of the defendant may often play a role in the decision not to engage an interpreter (Gibbons 2003, p.235).

Legal interpreters are generally not appreciated by the other participants of the court, especially when they ask for clarification or want to look up a word in a dictionary (Gibbons 2003, p.248), which is viewed as causing an unnecessary delay. Niska claims lawyers are usually sceptical about the interpreter and their qualifications. One judge is quoted as saying “There is no question that they [the interpreters] delay the court proceedings” (Falck 1987 cited in Niska 1995, p.302). Such a negative perception of interpreters has not been confirmed by a recent Irish study (Waterhouse 2010). Interpreters surveyed for the Irish study said they were treated well within the environs of courtroom. If they had complaints, they were often directed at the subcontracting agencies and not at the members of the legal profession (2010, p.278). A survey of Irish judges, barristers and solicitors (MacFadden 2010) found that the legal profession is unaware of issues such as impact of speech style on the jury and that they underestimate the impact of the interpreter on speech style. All of the solicitors involved in the study were of the opinion that interpreters should not use dictionaries and one offered an unsolicited comment that if they need one, they are not qualified for the job. Similarly, most of the respondents did not deem it necessary to give the interpreter any prior information about the case to allow for preparation. On the other hand, a modicum of understanding was shown about the role of the interpreter because none of the respondents were of the opinion that an interpreter should act as an advocate for the witness. The study was a small-scale project involving a total of 25 members of the legal profession and as such cannot be regarded as representative of the entire legal profession in Ireland. However, it highlighted the need to raise awareness within the legal profession of their co-responsibility in facilitating the interpreter’s work by providing adequate information

about the case beforehand or allowing the interpreter to consult a dictionary. The attitude of the legal profession towards interpreters shows that legal personnel do not realise the importance of an interpreter's role in the legal process and highlights the need for training for those dealing with interpreter. None of the participants in MacFadden's research (2010) underwent any training on how to work with interpreters. However under the new EU Directive on the Rights to Interpretation and Translation in criminal proceedings, which Ireland, alongside other EU member states, will have to implement by October 2013, such training will become mandatory.

#### **2.4 The role of the legal interpreter**

Frequently more than just translation or interpreting is expected from the translator, who is considered by the defendant as an aid or an advocate. Defendants who may be in an unfamiliar situation, naturally turn to the interpreter for help (Falck 1987 cited in Niska 1995, p.297). The fact that interpreter users are not clear about the interpreter's role often leads to frustrating or awkward situations. Furthermore, it is also the counsel or the judge who often requests the interpreter to perform tasks beyond the scope of their duty and expertise. Judges may ask the interpreter to explain tax legislation in the interpreter's home country (Falck 1987 cited in Niska 1995, p.299). Lawyers may expect the interpreter to clarify their incoherent messages and registrars may ask interpreters to fill out forms for the defendant or to provide an impromptu explanation of the meaning of a bail bond (Mikkelson 1998, pp.24-25).

Such requests indicate that the interpreter's role in the courtroom may often be unclear to many in the court, including to the interpreters themselves. In Ireland, where public service interpreting is not regulated, little research has been done in this field so far (Bermúdez Pérez 2000; Phelan 2007; Zimányi 2005 and 2010; MacFadden 2010; Waterhouse 2010). However, Irish newspapers and tabloids abound in embarrassing anecdotes about legal interpreters. Examples of this are stories about two Polish interpreters in Cork District Court who could not define the word 'ambiguity' (*Irish Examiner*, 12 October 2007) or the female interpreter in Galway, who had to be reprimanded by the judge for having "tight low-cut jeans on and a midriff-baring top" (the Irish edition of *Daily Mail*, 20 July 2006). Phelan

(2011) further discusses the perception of Irish interpreters in her thorough review based on Irish newspapers published between 2003 and 2010. Waterhouse (2010, p.6) quotes further interpreter-related news articles including reports of illegal immigrants employed as interpreters for the Gardaí or judges who refuse to grant interpreters. Bad experiences with untrained and inexperienced people not familiar with specific codes of professional conduct gain publicity and adversely affect the public perception of the profession.

From a legal point of view, the interpreter's status is also unclear. In Ireland, the Garda Síochána Act 2005 does not mention interpreters explicitly, but Article 62 (1) states that "a person who is or was a member of the Garda Síochána or of its civilian staff or who is engaged under contract or other arrangement to work with or for the Garda Síochána shall not disclose, in or outside the State, any information obtained in the course of carrying out the duties(...)". This article also applies to interpreters, who are engaged on a contract basis by the Garda Síochána and a person who breaches the provisions of the article could face a "fine up to €50,000 or imprisonment for a term not exceeding 5 years or both." *Ad hoc* interpreters, who have not signed codes of professional conduct may not be aware of these legal consequences and this concern was raised by the ITIA in their submission on the Garda Síochána Corporate Strategy 2007-2009.

Niska (1995, p.295) quotes Norwegian Court Law that states that the interpreter "shall carefully monitor the proceedings and notify the judge of misunderstandings or misconceptions of what is taking place". In Australia interpreters are regarded as expert witnesses and can be charged with perjury if they make a deliberate omission. González, Vásquez and Mikkelsen (1991) discuss the controversial status of the legal interpreter, who is regarded as an officer of the court while interpreting, only to switch to the role of an expert when a language problem occurs and linguistic explanation needs to be given.

Mikkelsen (1998, p.22) stresses the fact that the interpreter's role is to "place the non-English speaker on equal footing (...) with an average layperson who understands ordinary English." Similarly, González, Vásquez and Mikkelsen (1991) say the interpreter should, as far as possible, put a foreign-language speaker in the same position as a native speaker so that the foreign defendant is neither

disadvantaged nor advantaged by the fact that interpreter services need to be provided for him. Consequently, the interpreter cannot render legal service or explain terminology, as was often the case in the past (González, Vásquez and Mikkelson 1991). Some scholars adopt a different approach claiming that the interpreter should be able to paraphrase and explain the linguistic characteristics of the source text so as to enable the listener to understand the language used in court (Conomos 1993 cited in Hale 1997, p.8). Barsky (1996) argues that, in a refugee hearing, the interpreter should polish and improve the lay person's utterances, something which is considered unacceptable by the majority of other scholars. Both Niska (1995) and Hale (2004) argue that interpreters should form part and parcel of the proceedings, exercise their right to intervene and ask for clarification whenever necessary. They should behave and be regarded as true professionals, just like other court participants. Hale (2004) stresses improvement of the situation in legal interpreting will not be possible without the involvement of all parties. Lawyers need to understand the complexities of the interpreter's task and the scope of their role and realise that they need qualified and professional people to do this challenging and responsible job. On the other hand, the interpreters should strive to improve their qualifications, familiarise themselves with the legal system and abide by the code of professional conduct in order to improve the image of the profession among other court participants. Finally, the procedural safeguards should be amended and tertiary-level training in interpreting should be made compulsory for all who wish to work as court interpreters (Hale 2004, p2).

### **2.5 Police context: distortion in monolingual and interpreted witness statements**

In discussing the context in which legal interpreting takes place, we cannot underestimate the importance of the pre-trial phase, i.e. the witness and suspect interviews at police stations. Even though they are not "produced" in court, they are designed for a "future audience", i.e. the judge and jury (Johnson 2006) and are part of a procedure which is future-oriented and reaches far beyond the interview itself (Linell and Jönsson 1991, p.437). The police interview is what Lee (2010, p.61) calls the "primary reporting context", the first opportunity for the witness to tell the story as part of the legal process. This version may then be referred to in the "secondary reporting context", i.e. the court trial. Gibbons (cited in Coulthard and Johnson 2007,

p.62) makes a further distinction between primary, secondary and third reality. Primary reality refers to the context of the interview room and is usually characterised by the use of the present tense, secondary reality refers to the story being told by the interviewee while third reality encompasses the references to the judge and jury at trial. While the interviewer is aware of the third reality, the interviewee is usually unaware of the future audience and fails to think beyond the immediate context of the interview room (Haworth 2009, p.145). She also highlights the fact that while the interviewees often realise the investigative role of the interview, they may not be aware of its evidential nature, i.e. that the record of the interview becomes evidence in itself (Haworth 2010, p.178). Therefore, the taking of the statement at the police station and the involvement of an interpreter at this stage of the process is considered by some scholars to be more important than the right to an interpreter in court (Laster and Taylor 1994 cited in Hale 2007, p.68). Similarly, poor interpreting at the police station may come back “to haunt [suspects] at subsequent stages of the judicial process” (Berk-Seligson 2009, p.215).

### **2.5.1 Electronic recording of police interviews**

Despite the significance of the pre-trial stage for the justice system, the collection of written evidence from suspects and witnesses in many countries still leaves a lot to be desired. This is the case for interviews carried out by police officers with basic knowledge of Spanish questioning Spanish-speaking suspects in the US (Berk-Seligson 2009, p.141, 212). To prevent the abuse of the legal system, many researchers have advocated a policy of recording police interviews for all cases, including when there is no language barrier. Despite initial opposition, it transpired that electronic recording of interviews benefits both the suspect and the police officer (Shepherd and Milne 1999, p.139) and the police reacted with enthusiasm to the idea of recording interrogations (Berk-Seligson 2009, p.174). What went on during a police interview became transparent and initiated changes in investigative methods used by the police. Recorded suspect interviews turned out to be an excellent training material and allowed for cost-effective supervision and mentoring of the interviewers (Shepherd and Milne 1999, p.141). Eades (2010, p.146) states that it seems likely that mandatory electronic recording of suspect interviews might have some influence on “the investigative interviewing ethos”. It turns out that the suspect benefits from

recording as it was proven that fully recorded interviews minimise coercive tactics by the police (Berk-Seligson 2009, p.110). Also, the issue of disputed confession statements is eliminated when the recording is present. On the other hand, an electronically recorded interview works to the advantage of the police by providing them with indisputable and unequivocal reference material in the event that the suspects changes their story and claims that statements have been falsified by the police.

In Ireland, the circumstances of the electronic recording of suspect interviews have been normalised to some extent since the introduction of Statutory Instrument 74/1997, Electronic Recording of Interviews Regulations. The application of the regulation is still limited and an interview with a suspect according to article 4(3) of the regulation does not have to be recorded on audio or video if the equipment is faulty, if it is in use by another person or “where otherwise the electronic recording of the interview is not practicable”. Nevertheless, interpreters’ experiences show that suspect interviews are generally recorded by the Gardaí. Unfortunately, the same cannot be said about witness statements which are still not electronically recorded. Phelan (2007, p.19) quotes an extract from the Garda Manual of Crime Investigation Techniques, which outlines the procedure for questioning of people who need the assistance of an interpreter:

1. The person should be questioned through the interpreter who should record the statement in the language in which it is made.
2. A verbal translation should be made as the statement is taken so that any ambiguities can be rectified at the time.
3. All statements should be read over to the person making the statement and signed.
4. An official Irish or English translation should then be made and proved by the interpreter, as an exhibit with the original statement (Phelan, 2007: 19).

However, as ITIA members report, a witness statement is usually written in English by a police officer, read back and orally translated by the interpreter to the witness, who signs the English version. As Superintendent Fergus Healy<sup>4</sup> reported, the situation is changing now and the procedure outlined above should become the norm in the nearest future. While an opportunity to sign a statement in one’s native language is a definite improvement on the current practice, Fowler (2003) conducted

---

<sup>4</sup> 25th September 2010, ITIA CPD seminar, Dublin

an experiment in which some witness statements were written down by the interpreter while others were written by a police officer based on the interpreter's rendition and later translated into the witness's language for signing. The experiment revealed that taking a statement in a foreign language has its drawbacks too. If the interpreter writes down the statement, the police officer loses control over what is written down and cannot interact with the witness while the interpreter is writing, but has to sit and watch the process. The lack of involvement on the part of a police officer may tempt them to let the interpreter take the statement entirely by themselves (Fowler 2003, pp.205-206). In conclusion, Fowler argues that writing a statement in a foreign language first, makes the interpreter responsible for both the foreign version and the English translation (Fowler 2003, p.205). Consequently, a police officer could blame the interpreters for mistakes or inconsistencies (Fowler 2003, p.206). Nevertheless, the current practice, as outlined in section 1.6, is that the officer writes down what they hear from the interpreters and the witness statement taking session is not electronically recorded. One could argue that the Garda is writing down exactly what they hear from the interpreter and that, consequently, their versions are in fact identical. However, this tends not to be the case for a number of reasons, which will be discussed in the following section.

### **2.5.2 Shortcomings of a police transcript**

First of all, as Komter notes in her article (2006, p.222), a police record of an interview should be viewed as a document which only to a certain extent reflects what was said in the interview room. Some of the text which is written in the statement results from the institutional requirements of a statement. While some fragments may be a literal record of what the interviewee said, most of their talk is a response to a question asked by the police officer (Komter 2006, p.222). Hall (1994, p.75) goes so far as to say that asking the interviewer to write a record of an interview without any misrepresentation is impossible. Moreover, during interpreted interviews with witnesses, when a foreign witness talks "out of turn", e.g. when the police officer is busy writing down the previous part of the statement, chunks of the story may not get interpreted at all and the police officer often does not ask for them to be interpreted (Trinch 2003, p.152). Furthermore, empirical research suggests that the police officers, and not witnesses, do most of the talking during witness

interviews, which creates note-taking problems (Shepherd and Milne 1999, p.135). Moreover, Haworth argues that even trained transcribers often make informed guesses about what they heard on the transcript rather than mark a part of an interview as unclear or inaudible (2010, p.100). She recommends that civilian transcribers should undergo more thorough training, including an introduction to linguistics and the differences between spoken and written genres (2010, p.327).

Secondly, Linell and Jönsson (1991) found that written statements are usually more precise and coherent compared to the story told by the witness. This is due to the differences between spoken and written narratives, as well as the “legally relevant perspective” of the police, whose job is to ensure that the written report is clear from the legal point of view (Linell and Jönsson 1991, p.432). Moreover, when the story is written down by the police it is also recontextualised. The process of putting the statement in writing cannot be seen as copying, but involves creative reconstruction and reinterpretation of the narrative, possibly leading to miscommunication (Linell and Jönsson 1991, p.422). Clearly, the possibility of miscommunication is greater when the number of recontextualisations increases, as is the case in interpreted witness interviews.

Furthermore, there are two main objectives of legal questioning listed by Gibbons: eliciting information and getting the intended version of events (2003, p.96). The former is related to a pursuit of truth and the latter to a pursuit of proof (Baldwin 1994 cited in Gibbons 2003, p.96). The objectives of an interview act as a natural filtering mechanism – the police are likely to note down information relevant to and consistent with the version of events they wish to obtain. This may not be done consciously, but with the purpose of an interview in mind, the officer naturally focuses on what is relevant in the given context. In other words, one tends to write down what suits one’s purpose, which is one of the reasons why written transcription of oral speech will never be exact or “verbatim”. On the other hand, Grant (2006) notes that the interviewer’s input may not necessarily be undesirable as witness statements authored solely by the witness may not be usable in the investigation. The police know which details need to be included in the statement and as long as their contribution does not distort the testimony of the witness and the statement is not treated as “verbatim”, it is natural that the interviewer co-constructs the statement (2006, pp.268, 275). Grant goes on to say that the court needs to accept the fact that



statements are inevitably co-constructed, but needs to learn how to manage it instead of ignoring the matter altogether (2006, p.275). Another issue is the validity of statements taken by the police. Berk-Seligson (2009, p.18) notices a potential conflict of interest in a situation where police officers make transcripts, which are used for evidentiary purposes at a later stage in the legal process. Similarly, Haworth (2009, p.142; 2010, p.178) argues that the police interview favours the prosecution's version of events and that the prosecution's case is privileged in the statement. This undermines the investigative nature of the interview, which by definition should investigate what had happened and include information which may contradict the prosecution's version of events.

As far as interpreted police interviews are concerned, Krouglov's empirical study of Russian-English police interviews demonstrated that interpreters also distort the witness's story by their avoidance of hedges and colloquialisms and the introduction of more polite forms of address (1999, p.288). Taking into account that address forms reflect the relationship between the interlocutors, they are an important feature and part of the message conveyed by the text. Krouglov claims that interpreting in a police setting should be performed in a manner similar to the translation of legally binding texts where only minimal changes are allowed (1999, p.300). Finally, interpreted versions of statements will always be different due to the inherent nature of translation and differences between languages. In her study of English-Chinese police interviews, Leung discusses some of the issues including lack of equivalent terms, different varieties of Chinese and grammar marking of present and past (2003, pp.295-297). Finally, Nakane's research on Japanese suspects interviewed by English-speaking police officers through an interpreter, shows that even the most routine parts of a police interview may pose a difficulty for the interpreter: see, for example, her discussion on interpreting a police caution (Nakane 2007).

### **2.5.3 Impact on the legal process**

From the above overview we can see why the interpreter's version and the police record of the statement cannot be identical. It has been proven that vital details may be missing from the statement even though the witness had mentioned them at the police station (Shepherd and Milne 1999, p.135). If a witness presents significant

information during their live evidence in court, which is, however, not included in their statement given at the police station, the jury may make negative inferences regarding the witness's credibility. This is particularly the case when the witness insists that he or she had definitely made a particular statement to the police. However, not having the original witness's words recorded, it is impossible to establish whether the statement got distorted along the way for one of the reasons listed above, or whether the witness is simply lying.

Despite the inadequacy of the police transcript, the court assumes that the written record is a verbatim reflection of what the witness said. A written witness statement is treated as a straightforward representation of what was said to the police. In fact written statements are often regarded as having more evidential value than the spoken interviews on which they were based (Coulthard and Johnson 2007, p.80). Even in the case of audio recorded suspect interviews "the transcript is used almost exclusively in preference to the tape recording" (Haworth 2006, p.756). In interpreted witness interviews, the court still takes a monologic assumption that the interpreter's version is identical to the interviewee's talk (Wadensjö 1998, p.278) and the third generation of the witness's story is treated as a legally binding exhibit. Consequently, many defence barristers, during both bilingual and monolingual trials, are faced with that most frustrating of situations where it is impossible to establish what the witness had said at the police station:

Because the content of statements is controlled by what investigators, who record them, choose to include, attempts to use the statement to test consistency often degenerate into a farce, with unresolved conflicts over just exactly what it was that the witness did say to the police. (Wolchover and Heaton-Armstrong, 1992:163)

In light of these unquestionable benefits and the availability of recording equipment in police stations, it is still remarkable that witness statements are not universally recorded. This is particularly striking when we consider the crucial role witness statements play in the judicial process. As Heaton-Armstrong, Wolchover and Maxwell-Scott note (2006, pp.171-172):

For the prosecution they [witness statements] inform the charging decision and the nature of the way the case is put. For the defence, they provide the basic structure on which to prepare the attack on the prosecution case and to build the defendant's account. In the trial itself, pre-recorded witness statements provide the blueprint for both examination-in-chief and cross-examination (...).

Given the undeniably significant evidentiary value of the witness's account and the rigorous testing of evidence during a criminal trial in the adversarial system, it is surprising that in most cases the court relies solely on the police record of the witness's story.

## **2.6 Impact of translation and interpreting on a trial**

As discussed in section 1.4.1, the right to the free assistance of an interpreter extends to the translation of documents deemed necessary for the preparation of one's defence. In Ireland this provision is complied with by translating books of evidence, i.e. collections of statements, memos of interviews with suspects and other supporting material. There is little research on the analysis of witness statement translations and the possible impact they may have on the court proceedings. There is a study by Lee (2009) which makes a connection between the statement and the court trial. In the analysed case, a definite article is used in an English translation of a telephone conversation in Korean. The translated conversation mentioned "the condom", which created the impression that the witness knew about the condom beforehand. However, in Korean the distinction between new and known information is not as clearly marked as in English (Lee 2009, p.391). Therefore, the use of "the condom" in the English translation might have been a mistake as the witness denied throughout cross-examination that she had any knowledge of the condom. Nevertheless, the fact that the definite article was used by the English translator of the phone conversation is used in an Australian courtroom by the defence counsel in their closing speech (Lee 2009, p.393):

I suggest TO you (.) by the very words she used to Richard himself (.) she's telling lies and she tripped herself UP (0.3) because she's probably forgotten what she said to Richard on the phone.(0.7) (omitted)... not a condom (0.3) THE condom, the definite article. (1.7) she could only have been talking, ladies and gentlemen, of the CONDOM which she would've KNOWN about back on \*\* March 200\* (...)

This example shows how the defence counsel challenges witness credibility based solely on the fact that the definite article was used in the translation of the conversation that originally took place in Korean. It clearly illustrates how even a seemingly insignificant grammatical device like a definite article can carry weight in

a criminal case. Moreover, it highlights a lack of linguistic awareness on the part of the counsel and judge, who treat a translated text as an original exhibit. Finally, Lee (2009, p.393) criticises the two interpreters present in court for their lack of intervention, which denied the witness her right to be fully represented in court. Another issue with respect to translated evidence is discussed by Bucholtz (1995) in her analysis of telephone conversations in Spanish translated into English and presented as evidence in court. The analysis exposes the shortcomings of a written transcript of oral speech that is not an appropriate reflection of the conversation due to, among other things, the lack of intonation markers.

In addition, there is a body of empirical research dealing with the impact of court interpreters on a trial and the perception of witnesses giving evidence through an interpreter (Berk-Seligson 2002, 1988; Hale 2004; Lee 2009, 2010). Lee (2009) describes another interesting example when a court interpreter's inconsistent use of a lexical item is used by the defence lawyer to attack a witness's credibility in the closing speech. Hale (1997) points out that the speech behaviour of a given witness in an adversarial system can determine the outcome of the case. O'Barr also discusses the effects of different speech styles on the jury saying that "Unimpeded, the jury must be allowed constantly to assess style, paralinguistic cues, and nonverbal behaviour to determine (...) truthworthiness, credibility(...)" (1982, p.46). That is one of the reasons why legal interpreting is a highly responsible task – everything, including language style contributes to the impression formed of the witnesses by the jury and their reception of the testimony. Translation or interpreting errors can thus be harmful, especially where the defence case relies on the credibility issues and inconsistencies in the statements. Empirical studies like this highlight the need to educate lawyers and judges about the use of translated evidence and the impact of interpreters on the examination of witnesses

## **2.7 Translation of legal texts**

There is a substantial body of literature that deals with written translations of legal texts (e.g. Šarčević 1997; Matulewska 2007) and with the problems encountered while trying to convey terms used in one legal system in another language, the users of which may operate in a completely different legal setting (Smith 1995). Such

works discuss problems in the translation of constitutions, codes, statutes, treaties, judicial decisions, pleadings, appeals, petitions etc. In translating legal texts, the importance of accuracy over style is stressed (Brown 1995; Smith 1995), as well as the faithful duplication of meaning (Beyer and Conradsen 1995).

Other scholars claim that before embarking on any translation, be it legal or general, its function in the target culture needs to be established (Obenhaus 1995; Hammond, 1995). The legal translator should not consider equivalence, but rather function as the main goal and treat the source text as a mere basis for translation (Obenhaus 1995). Similarly, Matulewska (2007) describes a model for legal translation developed by Kierzkowska (2002) based on *skopos* theory. Kierzkowska's model of pragmatic translation requires the choice of an appropriate strategy, which can be oriented towards the source- or target-language legal system, oriented to the customer or aimed at an international audience (Matulewska 2007, p.309). Importantly, the strategy should be applied consistently at all levels, including the text level, i.e. genre analysis. Cooke (1995) expresses a similar view in his analysis of a legal translation from English into Aboriginal languages in Australia. The goal of the translation was to ascertain that the target audience understands legal concepts that are absent in the Aboriginal system – e.g. the right to silence or the concepts of guilt and innocence. Consequently, the target text was twice as long as the original document and included explanations of alien concepts and additional information that was implicit in the source text. The author's argument is that, had he not included the explanations, the document would not have been understood at all. The legal translator in this case offered the linguistic support that was needed by the Aboriginal people in order to understand the document.

### **2.7.1 Witness statement as a legal text**

Written statements are a specific type of a legal text with their own peculiarities. Cao (2010) distinguishes four major categories of legal texts: legislative texts, judicial texts, legal scholarly texts and private legal texts. Witness statements belong to the last category. They consist mainly of oral reports given by witnesses, who may come from all walks of life and, as a result, use a variety of registers. They may, for example, contain vulgarities, which are uncommon in other types of legal texts

(Matulewska 2007, p.125). Private legal texts, and witness statements in particular are still written in what can be called legal language because legal language denotes language used for communication in legal settings and not only the language of law (Cao 2010, p.79). Witness statements are usually transcriptions of the witness's oral description of an incident, which accounts for their simple syntactic structure and general lack of complicated vocabulary. Witness statements are translated in Ireland to provide linguistic access for non-English speakers, but it is the English version that is submitted as an official exhibit. While translating witness statements one needs to bear in mind that it is a legal text and that the translation will be used by the defendant as the basis for his or her instructions to the defence counsel. Similarly, any register changes in translation may influence the way the witness is perceived (Matulewska 2007, p.126). This applies to common law systems, in which legal documents, including witness statements, need to be "stand alone" documents and thus more detailed than documents created in civil law systems. Legal texts in civil law systems can be interpreted within the framework of statutory provisions (Matulewska 2007, p.311). Therefore, they do not have to include the provisions of the relevant statute and, as a result, are significantly shorter. Smith (1995) also lists depositions, an American word for statements made under oath, as a type of legal text. Unlike prescriptive statutory orders or regulations, depositions are descriptive in nature. According to Smith (1995), the translation of depositions requires the same strategy as the translation of other legal texts. The translator should thus strive to convey the facts and the translation should be "painstakingly detailed" and as close as possible to the original (Smith 1995, p.193).

## **2.8 Conclusion**

This chapter outlined the main issues in legal interpreting as a basis for understanding the analysis chapters. The general context of legal interpreting has been outlined – its challenges related to multimodality, register shift and accuracy requirements. Next, we discussed the wider context in which interpreting takes place including working conditions and the perception of the role of a legal interpreter. Furthermore, the chapter set out to describe the process of taking a statement from a witness at a police station and possible distortions in the police record in a monolingual and bilingual setting. We have also discussed the impact of pre-trial

translation and interpreting on the court trial. Finally, we outlined the requirements for the translation of legal texts, including the discussion of witness statements as an example of a legal text.

The following chapter will discuss the process of choosing the methodological tool for data analysis. Three translation quality assessment models will be applied to a sample of data. On the basis of the sample analysis, one of the three models will be selected and used in the data analysis chapters.

# Chapter 3: The Choice of Analytical Model

## 3.1 Introduction

This chapter presents the methodology used in the current study. It outlines the process behind choosing the most appropriate methodological tool for the analysis of witness statements and their translations. The first section briefly discusses the type of data collected, as well as a case study as the model for the present research project. Next, the background of the case is briefly outlined followed by a more detailed description of the data used for the analysis in the current chapter. The remaining part of the chapter consists of three sections. Each section presents its application of one translation quality assessment model to the data. Within each section, we firstly present a brief, general description of the model and then present the summarised results of the application to the primary data. Next, the three models are compared and a summary of their advantages and disadvantages as tools to assess translations of witness statements is outlined. Finally, we present the reasons given for the choice of model that will form the methodological tool for the research project.

## 3.2 Case study

Due to the fact that the empirical data had been collected before the commencement of the project, the type of analysis performed was predetermined by the nature of the data. The data consists of a collection of English language witness statements (i.e. the book of evidence discussed in section 1.4.1) and the translation of these statements into Polish. The statements relate to an alleged rape offence and formed the basis of a trial. Moreover, the researcher has over twenty volumes of court transcripts from the trial in which the witness statements were used. The three types of primary data, i.e. witness statements in English, translations of witness statements into Polish and court transcripts from the trial, create a unique opportunity to follow



the story told by the witness as it travels from an interview room to the courtroom. Consequently, the research is a naturalistic empirical study (Williams and Chesterman 2002, p.62) because the analysis is based on authentic data, which are a true reflection of reality. This enhances the validity of the findings. Due to the fact that the data refers to a single trial, the current research project will be a case study. Case studies focus on a situation occurring in its natural context and by their nature involve more variables than simulations or other experimental studies (Williams and Chesterman 2002, p.65).

The current study is devoted to an analysis of witness statements and their translations, as well as the impact of interpreted and translated material on a trial. Because the analysis focuses on a single case to achieve more reliable results, the statements and translations will be triangulated (Williams and Chesterman 2002, p.63) with court transcript data. The court data contains the judge's, barristers' and defendant's comments about the translation and interpreting process in general, as well as their analysis of specific problematic examples. Moreover, authentic excerpts from cross-examination of the witness during the trial will serve to illustrate certain points. The triangulation will be achieved through the use of three different sources of evidence, i.e. statements in English, two Polish translations of the statements and trial transcripts. The study will be a qualitative one with some quantitative elements. Being a case study, the results of the research cannot be seen as applicable to all situations and all interpreters.

### **3.3 Background of the case**

The case, which forms the basis of the study, was a complaint of rape reported by a Polish national in a rural town in Ireland. The complainant did not speak English and went to the police station to report the crime with her two friends, who spoke some English. The friends were ultimately taken with the complainant to the interview room and served as interpreters throughout the interview process. In the course of the investigation, three interviews were conducted with the complainant, which resulted in three written statements. It is those statements that are at the core of our analysis. Following further investigation, two Polish suspects were arrested and charged with several counts of rape, threat and false imprisonment. The case went for trial during

which one of the defendants decided to represent himself, i.e. without the help of the solicitors and barristers who were assigned to him under the legal aid scheme. He defended himself and examined the witnesses in court through a court interpreter.

### 3.3.1 Source and target texts

The data analysed in the following chapters consists of three witness statements (S1, S1a, S1b) taken from the complainant (W) in a rape case. The statements of the complainant were chosen due to the fact that she was the main witness and her statements were rigorously tested in court by the defence team. Long examination in court provided us with sufficient breadth of data for the analysis. The statements were interpreted from Polish into English and written down by the police officers (PO1, PO2, PO3). The statements were interpreted by two friends of the witness (INT1 and INT2), who came with her to report the complaint. Statement S1 was taken by PO1 with the assistance of INT1 and INT2, S1a was taken by PO1 and PO2 with the assistance of INT1 and INT2 while S1b was taken by PO3 with the assistance of INT2 only. The Table below presents the immediate participants in each of the statements taken. Brackets signify that the participant assisted at the statement taking, but did not have a major role in either interpreting (INT2) or taking down the statement (PO2). For instance, INT 1 translated most of the S1 and S1a but INT2 was also present in the interview room.

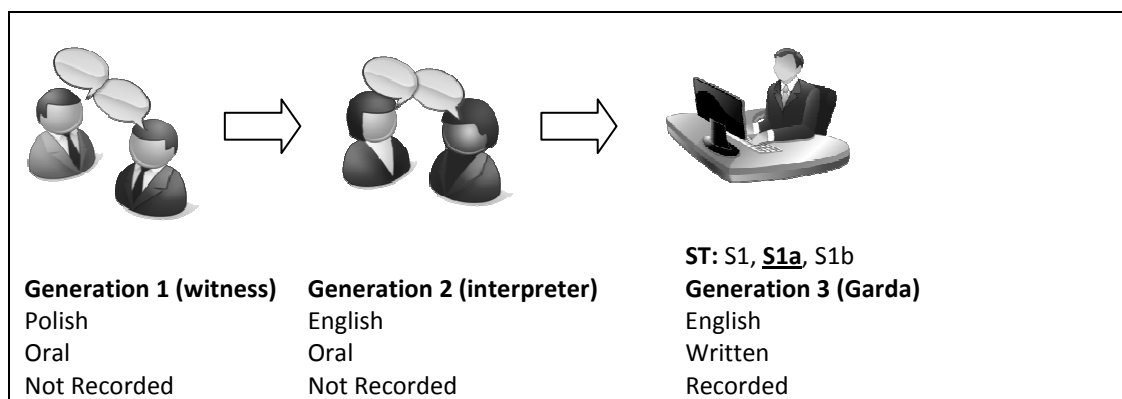
<b>Statement</b>	<b>S1</b>	<b>S1a</b>	<b>S1b</b>
<b>Complainant</b>	W	W	W
<b>Interpreter</b>	INT1, (INT2)	INT1, (INT2)	INT2
<b>Police officer</b>	PO1	PO1, (PO2)	PO3

**Table 3.1 Participants in each statement-taking session**

Even though the police took three statements from the witness, the current chapter will serve as a pilot study and only one statement (S1a) will be analysed. The analysis will allow us to choose the best translation quality assessment model which will be applied to all three statements in the following chapters. The sample chosen for the analysis consists of one full statement, which makes it a good example of the genre as it represents all elements of a normal witness statement. The statement will

be analysed in accordance to three translation quality assessment models: the revisited model of Juliane House (House 1997), Christiane Nord’s functionalist model (Nord 1997 and 1991) and Gideon Toury’s Descriptive Translation Studies model (Toury 1995).

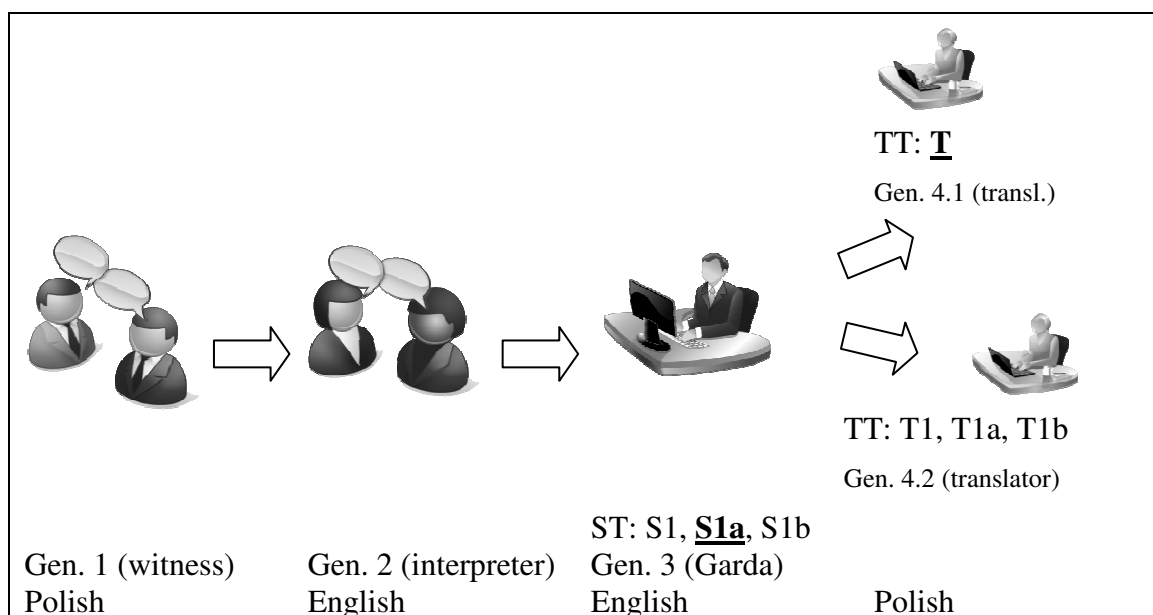
Statement S1a, which will be the only one analysed in this chapter, is 1800 words long and was the second out of the three statements taken from that witness. It was interpreted from Polish into English and written down by the police officers (PO1, PO2). The statement was interpreted by two friends of the witness (INT1 and INT2), who were not qualified interpreters, but only accompanied the witness to the police station. The process of taking an interpreted witness statement was already discussed in section 1.6 but let us reiterate the main points. Unlike interviews with suspects, which are videorecorded, witness statements are produced only in written form. The written record of the witness’s statement is noted down by the PO in English. Neither the witness’s nor the interpreters’ words are recorded. The source text analysis is based on the Garda records of the interpreted statements (S1a), marked ‘Generation 3’ in the following diagram:



**Figure 3.1 Interpreted statement-taking session**

As already discussed in section 1.7 and presented in figure 1.6, ‘Generation 3’ had to be translated for the Polish defendants into Polish. The translations of Generation 3 are already the fourth generation of the story, or ‘Generation 4.1’. They are in fact a back translation of the English record into Polish. Generation 4.1 is our target text in the current analysis and will be marked T. It is marked by a single letter because all three statements (S1, S1a, S1b) were merged into a single document by the translator, and this document is labelled T for the purpose of the current analysis. Moreover, as already explained in the Introduction, the defendant in this case was provided with another set of translations (marked 4.2 on the diagram below).

However, for the purpose of the pilot study in the present chapter, the target text analysis will only discuss one set of translations, i.e. Generation 4.1. Generation 4.1 is the translation of the complainant’s statement into Polish which was included in the book of evidence. Both sets of translations will be analysed in their entirety in the following chapter according to the chosen TQA model. Figure 3.3 below indicates ST and TT. The statements which will be used for the analysis in the current chapter have been underlined and printed in bold.



**Figure 3.3 Source (S1a) and target (T) texts in the current analysis**

The full text of the statements and their two translations (T and T1, T1a, T1b) are included in Appendices 1, 2 and 3 and references to specific lines in the statement will be used throughout the chapter, e.g. S1a(23-24) refers to lines 23-24 of the statement and T(252) refers to line 252 of the first translation.

In addition, reference will be made to the court transcripts from the trial in which the statements were used as exhibits. References to the trial will be marked by a different font and a header stating the day of the trial and page in the court transcript, e.g. TRIAL, DAY 16 p. 115. Due to the sensitivity of the court data and their length, they cannot be provided as appendices in their entirety. All the names, locations, dates and other identifiable features have been either removed from the data or changed. The statements and court transcripts are quoted as transcribed including spelling mistakes and any other errors.

### 3.4 Juliane House's functional-pragmatic translation quality assessment model

The first model applied to the ST, i.e. statement S1a is Juliane House's translation quality assessment model (House 1997). For the analysis the revised model was used, which introduces the new category of genre that had not been included in the original model (House 1977). The table below presents specific stages in the application of House's model:

<ul style="list-style-type: none"><li>I. Analysis of the original<ul style="list-style-type: none"><li>1. Register: broken down into the following situational dimensions of a text:<ul style="list-style-type: none"><li>a) Field</li><li>b) Tenor<ul style="list-style-type: none"><li>i. Author's Temporal, Social and Geographical Provenance</li><li>ii. Author's Personal (Emotional and Intellectual Stance)</li><li>iii. Social Role Relationship</li><li>iv. Social Attitude: formal, consultative and informal style</li></ul></li><li>c) Mode<ul style="list-style-type: none"><li>i. Medium: spoken/written, simple/complex</li><li>ii. Participation: simple/complex</li></ul></li></ul></li><li>2. Genre</li></ul></li><li>II. Statement of function: interpersonal/ideational</li><li>III. Comparison of original and translation and statement of quality<ul style="list-style-type: none"><li>1. Register<ul style="list-style-type: none"><li>a) Field</li><li>b) Tenor</li><li>c) Mode</li></ul></li><li>2. Genre</li></ul></li><li>IV. Statement of quality: overt/covert translation</li></ul>
---

**Table 3.2 Juliane House's translation quality assessment model (1997)**

House's model allows the analyst to perform a comparison between ST and TT on three different levels: language, register and genre. By analysing the texts according to these dimensions, House accounts for the interconnectedness of context (register, genre) and text (language). The analysis is based on the concept of context-dependent equivalence. According to House, equivalence is defined by a situation

and is by no means a fixed feature that can be linked to syntactic or lexical similarities between the two texts (House 2001, p.247). In evaluating translation, the researcher should look at functional, pragmatic equivalence. By translating, we re-contextualise the ST into a functionally and pragmatically equivalent text in the L2. The first condition necessary for achieving this goal is equivalence at the level of function. Function, in turn, is defined as a use of the text in a particular context. It is a combination of text and context and describes the interconnectedness of language and the situational context. Therefore, in the Housian analysis, the function is determined by an analysis of the context within which a given text exists. House breaks down the “context of situation” into “situational dimensions”, i.e. field, tenor and mode (House 2001, p.248). This division is inspired by the analysis of register performed by Halliday (Halliday and Martin 1993). The dimension of field describes the subject matter or topic of the text. It is concerned with the content and discusses “what is going on” in the text. Tenor refers to the relationship between the participants in the interaction and their different roles in terms of power, distance and emotional attitude. In the analysis of tenor, we are looking for language which indicates the relationship between the interlocutors and their personal attitude towards the content they are trying to communicate. Moreover, tenor reflects social attitudes through the analysis of text, which can vary on the formality scale. Finally, mode is described in detail in House’s model using two subcategories – that of medium and participation. Medium refers to the channel of communication, i.e. spoken or written, but can also include more complex variation, e.g. a text written to be spoken or, as in the case of witness statements, a spoken text written down to be read out in court. Participation refers to the degree to which addressees are involved in the text production and can be subdivided into simple, when we deal with a monologue with no addressee participation, to more complex situations with an increased interaction between the writer and the reader.

Linguistic analysis alongside these situational dimensions forms the basis for the next part of the investigation – the statement of function. However, before the function can be determined, the revised model (1997) also introduces the concept of genre. This enables the researcher to make connections between the analysed text and a wider group of texts sharing the same purpose. In the current project, the focus will be on the genre of a witness statement. House decided to add the concept of

genre to the analysis because the register analysis provided only a description of context/text relationship of an individual text. By adding the dimension of genre to the evaluation model, House connects the analysis of an individual text to the wider group or “cultural community in which texts are embedded” (House 2001, p.248). Thanks to that, the model allows for deeper analysis of patterns and structures which govern the given cultural community and given text type. After the analysis of the ST in line with the above categories, the textual function of the ST is determined. According to House’s model, each text is a mixture of two functions – interpersonal and ideational with one of them being dominant.

The next step is the evaluation of the target text according to the same categories. During the translation analysis, the researcher is looking for mismatches in the realisation of each of the dimensions, i.e. field, tenor, mode and genre. What follows is the statement of quality. Depending on the type of mismatches found, the target text is labelled as a covert or an overt translation. For it to be an overt translation, the TT needs to be equivalent with the ST at the level of register and genre. Overt translation is closely tied to the source culture event or addressee. It gives the target readers an opportunity to observe the TT and judge it for themselves. In an overt translation, the translator and his or her work are visible. It is clearly ST-oriented and is applied when the ST, due to its status in the source culture, has to remain as intact as possible in translation (House 1997, pp.66-70). For example, it could be suitable for literary texts of high status in the ST if we want their unique features to be accessible to the readers of the translation.

Covert translation on the other hand is equivalent at the level of function with the ST. Due to the fact that functional equivalence is the priority, the language and register used in the TT can be changed to fit the function and genre requirements of the target culture (House 2001, p.250). In the case of covert translations, the potential application of a cultural filter needs to be taken into account. The cultural filter is based on contrastive pragmatic research in the given language pair. It may be applied in covert translation in order to conform to target culture norms, conventions and/or preferred styles for a given text type. Therefore, covert translation is less straightforward to evaluate because what may seem like a mismatch for the analyst, may have been a conscious application of a cultural filter by the translator.

In a situation when a cultural filter is applied without justification and with certain presuppositions about the TT reader preferences, which are not substantiated by evidence, the translation is deemed inadequate and labelled a covert version (House 1997, p.73). Covert versions need to be distinguished from overt versions in which a text function is added in TT so as to accommodate the special requirements of the TT readers. An example of an overt version as understood by House can be a simplified version of a literary classic aimed at a young audience, in which omissions and simplifications are necessary if we want to reach this particular audience (House 1997, p.73).

In general, Juliane House's translation quality model is based on Hallidayan systemic-functional theory, but also utilises selected elements from speech act theory, pragmatics, discourse analysis and a corpus-based distinction between spoken and written language (House 2001, p.247). The functional and pragmatic approach developed by House combines linguistic analysis and value judgement, but makes a clear distinction between them. Linguistic analysis allows for more objective results as the linguistic features of the text are more tangible and analysable. The analysis is based on empirical research and knowledge of language use norms (House 2001, p.256). And seeing that translation is in principle a linguistic-textual phenomenon (House 2001, p.255), the linguistic description of the parallel texts comes first. It is followed by the more subjective part of the process – the analyst's judgement on translation quality (statement of quality). Although the second part of the assessment depends more on the analyst, his or her opinion is still based on the linguistic evaluation performed first. According to House, a translation quality assessment model that relies solely on objective measures such as error count seems futile and would not do justice to the complexity of the translator's task. On the other hand, a model based solely on the reviewer's judgement would be merely a subjective commentary of the given translation and could not be called an assessment (House 2001, p.256).

#### **3.4.1 Juliane House's model applied**

In the following section, the summarized results of the application of House's model are presented. As already mentioned in the introduction, the statement (S1a) analysed in this part of the study was taken from a Polish complainant in a rape case in an Irish Garda station. Because the witness spoke no English, the police officers asked



two friends of the complainant to interpret her statement. Both friends acted as interpreters when the police took statement S1a from the witness. Therefore, the ST in the analysis is an already interpreted version of the witness's words. The TT, labelled T, is one of the translations the defendant was provided with before the trial. In fact, it is a backtranslation into Polish of the witness's own words. This translation is included in the book of evidence. The translation was commissioned from a Dublin-based translation agency, most likely by the defence solicitor.

### 3.4.1.1. Analysis of the original

#### 1. REGISTER

##### a) FIELD:

In general terms, the notion of field reflects the experiential domain (Steiner 1998) as it “construes a model of experience” (Halliday and Matthiessen 2004, p.61) or, in other words, the subject matter or subject field of the analysed text. Halliday describes field as “the nature of the social process in which the text is embedded – ‘what’s going on’”(Halliday and Webster 2009, p.370).

The ST is the second of four statements given by a Polish complainant in a rape case. In the analysed statement the complainant describes her family and educational background, talks about the circumstances in which she met the accused and about her trip from Poland to Ireland. Because it is the second statement given to the police, the witness also elaborates on and clarifies certain points made in the first statement, which she had given the day before.

The statement is characterised by simple language and short declarative sentences. The vocabulary is simple with a few more specialised items referring to the nature of the offence:

S1a(58): I was forced to do **oral sex** after I try to escape.

The statement contains numerous grammar and word-order rule violations:

S1a(87-88): They tell me to say something that I don't like her, I not friend anymore and not call anymore.

The grammatical errors and lack of precise vocabulary often lead to ambiguity and lack of clarity of certain fragments:

S1a(82-83): Because I was hitted on Friday I was bleeding from my down lip.

On many occasions, linking phrases between the sentences are missing or illogical:

S1a(18-19): Bartek brought me roses and strawberries often. We thought he was nice. He promise to marry me in December.

S1a(67-68): After they change driving, **because** I was still afraid.

This results in low textual (conjunctive) cohesion of the text (Halliday and Hasan 1976, p.323), i.e. gaps in logical relations between clauses.

b) TENOR:

The style of the statement is strongly marked as the text is riddled with mistakes. The statement is taken from a witness, who is in a foreign country and does not speak the language. These facts alone put her at a disadvantage. Despite the social distance we may expect given the situational context of a statement-taking session and the power imbalance, the author of the text addresses the police officer by his first name:

S1a(79): These are the clothes I hand you, Declan, today.

On another occasion, the police officer is addressed by his rank together with the first name, which is an example of mixing the formal and informal naming conventions:

S1a(105-106): The bars "Prety" I see Bartek and Artur with, these are the bars that Garda Declan has shown me.

This is a very interesting phenomenon and most likely an example of the interpreters' distortion. Because the alleged crime happened in a small town, it is likely that the *ad hoc* interpreters knew the police officer and were used to calling him by his first name. It is an interesting example of how the interpreters affect the witness's narrative, which is worth investigating further during the data analysis stage.

Moreover, the witness is reporting traumatic experiences, which justifies her personal involvement in the text. She reiterates numerous times how afraid or scared she felt:

S1a(67-68): After they change driving, because I was still afraid.

The language bears some resemblance to spoken genres due to the chaotic distribution of information and the use of contracted forms:

S1a(73-74): When we went to go do shopping we had to wait a little **cos** Lidl **don't** open till 12.30p.m.

The text creates an impression of a chaotic monologue that was not scripted or rehearsed before.

c) MODE

The medium of the text is complex. Being a witness statement, it is a record of spoken discourse, which is taken down in writing by the police to be read, but also spoken. It is read by the Director of Public Prosecution's Office (DPP) and by the defendant before the trial. Witness statements are also written down to be spoken because fragments of them are always read out in court in front of the judge and jury during the examination-in-chief and cross-examination. A statement taken at a police station has an entire "future audience" (Johnson 2006, p.668) of which the interviewed witness is usually not aware.

The analysed text is characterized by both involved and informational text production. Its main function is to provide information but "involvedness" is clearly marked as well and manifests itself mainly in explicit references to fear. The phrase "I was afraid" occurs five times in the five-page excerpt. The complainant describes not being allowed to do certain things, e.g. take a sanitary towel from her bag, or mentions instances of being threatened or forced to do things:

S1a(74): I was afraid to pick out clothes.

The participation category can be described as complex, too. The text is presented as an overt monologue, but various means of direct participation of other interlocutors are visible, e.g. in the use of pronouns and direct addresses. This is characteristic of statements in general: to get the full picture of what had happened, the police use different elicitation techniques such as questions, but the account of events is taken down as if it were a monologue. Another indication that the story is elicited by other participants is the order in which the events are described – the witness "jumps" from

one topic to another unpredictably; the author is most likely answering questions put to her by the police. The last sentence of the statement is a formulaic expression used at the end of any witness statement:

S1a(106): This statement is correct.
--------------------------------------

It bears no relation to the preceding sentence and would be completely unnatural in regular interaction. This shows how institutionalised the text is and how this structured interaction is managed by other participants, i.e. the Gardaí in this case.

## 2. GENRE

In layman's terms a witness statement is a formal document taken down in writing to set out the witness' own account of the circumstances of the alleged incident(s) witnessed. The statement should be limited to facts, and comments in the statements should be kept to a minimum. The purpose of the statement is to support the witness's case and show it in its strongest light<sup>5</sup>. In general, the purpose of the statement is to give the police a written account of what was witnessed. If the case goes to trial, the prosecution will rely on witnesses who gave their statements at police stations and will call them to court to give evidence under oath about what they had witnessed<sup>6</sup>.

In his analysis of genre, Swales (1990, p.58) states that genre is a communicative event whose members share a set of communicative purposes. This corresponds with the definition of police interviews in general presented by Coulthard and Johnson (2007, p.80), who stress that such interviews are goal-focused and their primary aim is the collection and synthesis of evidence into a written statement that will be used in court. According to Rock (2001, p.44), a witness statement has multiple goals – extraction, communication, use of emotional and factual information. Aldridge (2007, p.65) identifies the gathering of information and the quest to seek out a reliable and credible account of events as the main aims of a police interview, in which the police officer should be investigative and use various strategies to encourage the witness to speak in order to obtain a credible account and achieve the

---

<sup>5</sup> [www.pinsentmasons.com](http://www.pinsentmasons.com)

<sup>6</sup> [www.citizensinformation.ie](http://www.citizensinformation.ie)

goal of the interview. The investigative nature of the interview has been challenged by Haworth (2010, p.142) who argues that the interview aims at presenting the prosecution's case and is not necessarily an objective account of the events. As far as the form of a witness statement is concerned, every witness statement has a conventional structure and formulaic expressions used at the beginning and at the end of the statement. Using the book of evidence from the case under analysis, which contains statements taken from 45 different witnesses, we can see that every statement is preceded by a paragraph which includes the date and the witness's name together with a caution to the witness:

S1a(5-8): I hereby declare that this statement is true to the best of my knowledge and belief and that I make it knowing that if it is tendered in evidence I will be liable to prosecution if I state in it anything which I know to be false or do not believe to be true.

What follows is the witness's account written in the form of a monologue. At the end of the statement, the witness reiterates that the statement is correct and that it has been read over to him or her before signing, e.g.:

S1(132-133): This statement has been read over to me and is correct.

The above fragment has been taken from the first statement of the complainant (S1) because S1a does not say that the statement has been read over to the witness, which is part of the procedure. This makes it deviate from the rules governing the genre of a witness statement. Finally, at the end of a witness statement, the name of the interviewed person is stated together with names of police officers and interpreters, if applicable. The statement may also include the date and time when the statement finished, as is the case with S1a.

#### **3.4.1.2. Statement of function**

The function of this text, which consists of ideational and interpersonal components, may be summed up as follows: the witness's intention is to tell a story, her own account of what had happened. The ideational component is dominant and was as a

matter of fact predetermined by the particular genre of a witness statement, in which by default the interpersonal function should be kept to a minimum. On field, the presence of simple clauses should make the text easy to read. It is, however, not easy to follow due to the poor English used and numerous lexical and grammatical mistakes. Also, there is little repetition or redundancy in the statement and the reader needs to read it carefully so as not to overlook certain information.

On tenor, the author's situational context – that of a complainant in a rape case in a foreign country not speaking the language – would suggest considerable social distance and isolation. However, the serious content of the text is contrasted with its language realisations. The witness addresses one of the police officers by his first name and uses contracted and informal forms. This discrepancy between the tenor and the language used may be accounted for by the fact that it is an interpreted statement. Therefore, the discrepancy is most likely a result of the *ad hoc* interpreters' distortion, which the police officer was trying to copy as closely as possible in his transcript.

On mode, the complex medium supports the ideational function of the text. Even though other interlocutors are present, the text is written down as a monologue, which facilitates an uninterrupted information flow unimpeded by any direct presence of the addressees. Similarly, on participation, the addressee-involving structures are infrequent, which also acts in support of the ideational component. On the other hand, direct forms of address and personal pronouns appear and, even though infrequent, indicate that the interpersonal component is present, too.

#### **3.4.1.3. Comparison of original and translation and statement of function**

After a detailed analysis of the two texts, the interpreted version of the statement in English (S1a) and its back-translation into Polish contained in the book of evidence (T), mismatches were found in the following instances:

1. Register
  - a) Field

T, the Polish translation of S1a, is more explicit through the addition of explanations and disambiguation. T is a more polished version and one can see that the translator was trying to make sense of the ambiguous sentences:

S1a(98): I tell her about rape and threaten to kill me on walk to Garda.

T(252-253): Powiedziałam jej też, że mnie gwałcili i że grozili, że mnie zabiją, kiedy szliśmy na posterunek Gardy.

[I also told her that they had raped me and threatened they would kill me, when we were walking to the Garda station.]

Short and simple sentences were generally preserved:

S1a(18-19): Bartek brought me roses and strawberries often. We thought he was nice. He promise to marry me in December.

T(157-159): Bartek często przynosił mi kwiaty i truskawki. Myśleliśmy, że jest bardzo miły. Obiecał, że się ze mną ożeni w grudniu.

[Bartek often used to bring me flowers and strawberries. We thought he was very nice. He promised to marry me in December.]

Clarification and disambiguation of the unclear fragments make T easier to read than S1a.

b) Tenor

The style is unmarked, the mistakes present in the original are corrected and translated into standard Polish:

S1a(87-88): They tell me to say something that I don't like her, I not friend anymore and not call anymore.

T(238-239): Kazali mi mówić, że już jej nie lubię, że już nie jesteśmy przyjaciółkami i żeby do mnie więcej nie dzwoniła.

[They told me to say that I don't like her anymore, that we are no longer friends and so that she does not call me anymore.]

The feeling of fear is generally preserved in T. The social distance is low and the direct address to the police officer is preserved:

S1a(79): These are the clothes I hand you, Declan, today.

T(227-228): To są te ubrania, które Ci teraz wręczam, Declan.

[These are the clothes I am handing to you now, Declan.]

Other interlocutors are less visible than in the ST, only one of the two instances of direct address is preserved.

### c) Mode

The lack of direct address to the readers (except for one instance) reduces the spoken dimension of the text and makes the interlocutor participation less visible.

## 2. Genre

In translation, the structure of the statement is not preserved. The opening paragraph is omitted:

S1a(5-8): I hereby declare that this statement is true to the best of my knowledge and belief and that I make it knowing that if it is tendered in evidence I will be liable to prosecution if I state in it anything which I know to be false or do not believe to be true.

T: ∅

Similarly, the last few lines with the names of the witness, interpreters and police officers are omitted in translation. Moreover, the analysed statement is merged in translation with the previous (S1) and the following (S1b) statements. Consequently, there is a single body of text in Polish (T), which incorporates the content of S1, S1a and S1b. Due to these formal changes and omissions, T does not conform as closely as the S1a to the norms of an Irish witness statement.

### 3.4.1.4 Statement of quality

The analysis of the original and the translation has revealed a number of mismatches, in particular along the dimensions of field and tenor, but also various overt errors



which may on the surface improve the readability of the text but may not convey the intended meaning of the original statement.

On the topic of field a greater explicitness in the translation was established in a number of cases as well as an improvement in cohesion by the addition of explanations. Many erroneously constructed original sentences were polished and their mistakes corrected. This makes the translation easier to read and understand. Moreover, it changes the tenor – the Polish version seems to make more sense, is better structured and easier to understand. Furthermore, the translation seems even more monologous as a result of the omission of some of the second person direct reference to the interlocutors. Finally, there are mismatches in the dimension of genre as the conventional opening and closing of a witness statement were removed in translation.

The greater explicitness, disambiguation and explanation suggest that the translation is a covert one. Covert translation is also manifested by the shift in tenor, i.e. the corrections of grammar and lexical mistakes. As a result, the translation reads better than the original, but the statement creates a different image of the witness and, what is more, a different account of what happened – not only at the time of the alleged offence, but also at the police station. It could be argued that due to differences between the English statement and its Polish translation, in particular the correction of errors, the defendant did not realise the statement was unclear, ambiguous and written in poor English, which provides us with some clues as to what the communication was like at the police station. Moreover, we could say that because of deletion, addition and overt errors in the translation, the defendant was not informed about the totality of the case against him as he did not have full access to the original statement.

### **3.5 Christiane Nord's functionalist model**

While House focuses more on the ST in her analysis, Christiane Nord's model puts the function of the TT in the foreground. According to her, the translator should convey the function of the text, not the wording. The ST is thus somewhat "demoted" in Nord's model. It only functions as an "offer of information" and "raw

material” (Vermeer 1987 cited in Nord 1997, p.37) for the translator. This is not to say that the ST does not matter at all – it is used to establish the appropriate translation strategy and hierarchy of functions to be conveyed in the target text. However, the ST is just one source of information for the translator, alongside, for instance, the translation brief.

In general terms, the analysis of the translation is performed according to a top-down approach. The TT function is decided on first. The translation can have the following four functions: referential, expressive, appellative and phatic (Nord 1997, pp.39-45). The referential function informs the reader by reference to specific items in the real or fictional world. The expressive function shows the author’s feeling and emotions and generally describes the author’s attitude. The appellative function is aimed at making the listener do something, either directly or indirectly. These three functions were drawn from Bühler (1990, pp.34-39). In her functionalist model, Nord added one more function to this typology, i.e. the phatic function aimed at maintaining contact between the listener and receiver. This function was adapted from Jakobson (1960 cited in Nord 1997, p.40). Once the function of the translation is established, it determines the translator’s subsequent choices (Nord 1997, p.39), both in terms of the general choice of strategy, e.g. whether to conform to source text norms or conventions, as well as specific linguistic choices that comply with the general translation principle chosen.

<p>I. Source text analysis</p> <ol style="list-style-type: none"> <li>1. Extratextual factors</li> <li>2. Intratextual factors (example intratextual factors below) <ol style="list-style-type: none"> <li>a) Content</li> <li>b) Presuppositions</li> <li>c) Non-verbal elements</li> <li>d) Stylistic elements: lexis, sentence structure</li> </ol> </li> </ol> <p>II. ANALYSIS OF EFFECT</p> <p>III. TRANSLATION CRITICISM</p> <ol style="list-style-type: none"> <li>1. Transfer stage</li> <li>2. TT profile</li> <li>3. TT analysis <ol style="list-style-type: none"> <li>a) Content</li> <li>b) Presuppositions</li> <li>c) Non-verbal elements</li> <li>d) Stylistic elements: lexis, sentence structure</li> </ol> </li> </ol> <p>IV. Conclusions and suggested translations</p>
---

**Table 3.3 Christiane Nord's functionalist model of translation analysis (1991)**

To be more specific, Nord's model starts with an analysis of the extratextual factors of the source text, i.e. the context in which the text was produced, general information on the author, recipients, text type and function, time and place of communication (Nord 1991, p.36). Secondly, selected intratextual factors (Nord 1991, p.79) are analysed, depending on the text type being analysed. Intratextual factors may consist of such aspects as content, text composition, lexis, non-verbal elements and sentence structure. After the analysis of the ST has been performed, the model analyses its effect on the recipients.

The next step in Nord's model is translation criticism. This stage can be subdivided into three parts. First, the transfer stage, which is an attempt to reconstruct the translation instructions from the situational context or the translation brief, if such exists. Next, the TT profile is established and translation *skopos* (purpose) decided on. The term *skopos* in relation to translation was first used by Vermeer, who postulated that the *skopos* must be defined before any translation can begin

(Schäffner 2009, p.117). According to Vermeer, “to translate means to produce a text in a target setting for a target purpose and target addressees in target circumstances” (Vermeer 1987 cited in Schäffner 2001, p.15). Even though Nord’s functionalist approach is less radical than Vermeer’s, the general principle remains the same. Functionalist models are prospective since it is the function that the TT is supposed to fulfil that determines the purpose of the translation (Nord 1997, p.24). This stands in contrast with retrospective, ST-oriented approaches such as House’s approach applied in the previous section. The *skopos* of the translation in Nord’s model is determined on the basis of the analysis performed in the first step. Thirdly, the researcher analyses the TT in relation to those intratextual factors operating in the ST, that are relevant for the function of the translation. The discussion is followed by conclusions and a model translation suggested by the analyst.

### **3.5.1 Christiane Nord’s model applied**

#### **3.5.1.1 Source text analysis**

##### **1. Extratextual factors**

The information discovered in the analysis of extratextual factors has been to some extent included in the introductory part of the chapter. The “sender” of the text is a Polish witness, a complainant in a rape case, who gives a statement at a police station in Ireland. We also know that two friends of the complainant served as text producers, i.e. interpreters. The analysis of the situational context of text production is more detailed in Nord’s analysis in comparison to that of House. Therefore, additional features are discussed here.

The introductory paragraph, which can be considered the text environment, contains personal information about the complainant, i.e. her name, age and address. The paragraph also includes information about the other participants and the exact date and place of text production (Garda station). The fact that the Gardaí were participating in the text production and that it took place at the police station gives us clues about the subject matter. We can expect that the text is related to criminal activity of some sort. We can also infer that the text sender is most likely a witness because the police usually take statements from witnesses and interview the accused.

Moreover, we can infer that the participants could have been tired, as the time when the first statement was finished was 6:30 am suggesting that they may have been up all night (there is no information about commencement time). Consequently, we may expect repetition or mistakes in the text that could result from fatigue.

The direct recipients are the police officers who took down the statement. As the investigation continues, there will be more recipients of the text – the police superintendent who decides to send the case file to the Director of Public Prosecution (DPP), who in turn decides whether the case should go to trial, the defendant and, finally, the future audience, i.e. judge and jury who will hear the statements quoted in court during the trial. As discussed previously, the interviewee is not usually aware of the future audience and takes into account only the Gardaí as the immediate recipients, who are trying to collect as much relevant information as possible. The information should be factual and should clearly indicate that a crime has been committed. The extratextual factors mentioned above tell us a lot about the recipients' expectations. For instance, the police know that the two interpreters are friends of the complainant and that they have some English, but are not professionally trained interpreters. Therefore, they may be more tolerant of grammatical and lexical mistakes in their speech. They write it down as they hear it and try to get a clear picture of what happened despite the linguistic difficulties so as not to be accused of scripting the statement themselves.

The witness statement is a text type that presents an abundance of extratextual information. This applies to the medium/channel as well because we know exactly how witness statements are routinely taken and who their future audience will be. The medium in this case is extremely complex. First of all, it is a spoken text reproduced in writing. The text is transcribed by its immediate recipients, i.e. the Gardaí who conduct the taking of statements. Moreover, the text will be later quoted in court. This creates a kind of loop: a spoken text is written down at the police station to be later transformed into a spoken text again, when it is read aloud in court by the defence or prosecution and quoted during examination. Furthermore, the text has a number of recipients to whom it is transmitted via different media – the police, judge and jury hear it in its spoken form and the DPP and counsel gain access to the text by reading it at the pre-trial stage.

Due to the specific text type, it can be presumed that it has an informative function. A number of factual details need to be collected by the police to send the case to trial and this is why the statements are taken from the witnesses. As mentioned in the discussion of genre under House's TQA, one of the aims of a police interview is the gathering of sufficient information to obtain a reliable and credible account of events. Moreover, Rock notes that a witness statement is a combination of emotional and factual information (2001, p.44). If we translate it into functions, we can say that in witness statements, the referential function is dominant, but the expressive function is also present. Our examination of extratextual factors will form the basis of our analysis of intratextual factors

## 2. Intratextual factors

### a) Content

As far as content is concerned, all the units of the analysed text are information units. There are a small number of sentences, which have a clearly expressive character, e.g.:

S1a(30): I was happy because I got the job.

These are, however, few and far between and most of the statement is of pure informative value. Due to the spoken nature of a witness statement, as well as the lack of qualifications on the part of the interpreters, there are certain cohesion and coherence gaps. This suggests that the usual ties that bind the text together, such as conjunctions, are missing or the ideas presented in the text do not logically follow each other (Crystal 1997, p.119). Moreover, the statement includes a large amount of repetition, which is characteristic of spoken language, for example

S1a(16-17): Bartek told me that **woman in Waterford in Ireland, a woman in hostel** say she have job for woman to clean.

Some of the coherence gaps from the text can be filled using the other two statements given by the complainant. Nevertheless, a witness can only provide information they have personally seen or heard. This, naturally, gives us only a one-sided view of the events. To have a much clearer picture, it is necessary to read all the statements given by all witnesses in the case, which together form a more complete story.

b) Presuppositions

Another feature of the text discussed by Nord is presuppositions. As mentioned before, witness statements have a wide range of recipients. In the case of an interpreted witness statement such as our ST, the sender (Polish witness) and the recipients (Gardaí, judge, jury) typically belong to different cultural backgrounds. Therefore, we can expect a certain amount of extra explanation about Polish culture-specific elements in the ST for the benefit of the Gardaí. On the other hand, the recipient of the TT (the defendant) in this case will share the same cultural information as the witness because they are both Polish and come from the same region of Poland. This is quite an unusual situation – usually the ST sender and ST recipient belong to the same culture, whereas the TT recipient does not. In this case, however, there is no cultural gap between the complainant (ST sender) and the defendant (TT recipient).

As the text refers to the Irish reality and is directed to Irish recipients we can expect the information about the Irish reality not to be made explicit. For instance *Garda*, the word used to denote a police officer in Ireland, is used throughout the text and no explanation or footnote is added. However, the sender is Polish and, as a consequence, we can also expect some “Polish-specific” information to be explained by the complainant to the police. This hypothesis seems to be confirmed by the following sentence from the statement. In the following example, the words ‘mother’ and ‘father’ in brackets beside the Polish name facilitate the Irish recipient, who may not know which name is male and which female.

S1a(17-18): Bartek also tell my parents, Zofia (mother) and Mateusz (father) about this cleaning job.

Secondly, the sender (witness) presupposes that the recipients (police officers) know the communicative situation of the text production and does not refer to them specifically. For instance, the name of the person referred to in the following sentence is not specifically given but only referred to by means of a personal pronoun (you):

S1a(71): The cola bottle I told **you** about, (...)

They are examples of exophoric references (Halliday and Matthiessen 2004, p.552), i.e. the reference items are not recoverable from the text itself, but point “outwards” to the text environment. In the case of a witness statement, the sender presumes that the entire situational context of the interview is part of the recipients’ “horizon”. Since it is the Gardaí who are conducting the investigation, it seems perfectly reasonable to believe they have a certain amount of knowledge about the circumstances of the case. Moreover, the interaction takes place in the interview room and the witness probably addressed the above sentence to one particular individual. Therefore, the reference was recoverable for the people in the interview room at the time, but is no longer recoverable to the readers of the written version of the statement. References to the people present in the interview room may corroborate the hypothesis that the sender (either the witness or the interpreters) is unaware of the larger context in which the statement is going to be used and the future audience, who “overhear” the interview.

c) Non-verbal elements

Another feature of the text tackled in Nord’s analysis is the non-verbal elements. As mentioned in section 1.6 the interpreted statement was handwritten by the police in English. The handwritten version was later typed out and that version was given to the translator. Therefore, the typed version is the one that is being analysed.

The text includes a number of non-verbal elements. The number of the statement – S.1(a) is printed in bold, in a larger font size in the right hand corner of the page. The name of the witness is printed in bold in the opening paragraph. These features allow for quicker identification of the appropriate witness in the book of evidence, which contains statements from 44 other witnesses.

Next, the conventional introductory paragraph is separated by a straight horizontal line from the rest of the text. Finally, the conventional ending of a statement with the names, date and time is separated by a couple of blank lines from the actual body of the statement. The separation of the stock parts of the statement from the rest of the text allows the interested parties to go straight to the information contained in the statement. The conventional parts are the same or similar for all witnesses so there is no need to go through them for every witness statement we wish to read. To



conclude, the non-verbal elements in the statement allow for easier navigation in the book of evidence and make it possible to find relevant statements quicker.

d) Stylistic elements (lexis, sentence structure)

The extratextual factors analysed in the previous section have a major impact on the use of lexis, which is the next feature analysed by Nord. The text producers are not fluent speakers of English and, consequently, the text is full of grammatical and lexical mistakes. The field of lexis is linked to the nature of the charges – words like *hit*, *bleed*, *to be afraid*, *threat*, *sex*, and *force* appear in the text. In general, the style of the text is informal – contractions and some forms characteristic of spoken language are used throughout, for example:

S1a(73-74): When we went to go do shopping we had to wait a little **cos** Lidl **don't** open till 12.30p.m.

Moreover, at one stage, one of the Gardaí is addressed by his first name, which indicates a high degree of familiarity:

S1a(79): These are the clothes I hand you, Declan, today.

If we were to read the statement without any external knowledge of the communicative situation, we would be confused as to why the sender intentionally violates the rules for the given text type. However, having analysed the extratextual factors and knowing that the statement is interpreted by *ad hoc* interpreters with limited English proficiency we develop a kind of “tolerance” for the grammatical and lexical mistakes.

Finally, a brief discussion of sentence structure is required. The sentences in the text are short and mostly simple. The more complex ones are usually linked with causal links, e.g. *cos*, *because*. There are many deviations from standard word order, for example:

S1a(18): Bartek brought me roses and strawberries often.

The knowledge gleaned from the text environment suggests that the structural deviations are not intentional and do not convey any special sender’s intention. If the intention of the sender is to provide information, it is unlikely she would deviate

from the conventional sentence structure as to do so would impede the reader's information processing capacity. The non-standard sentence structure results from the interpreter's linguistic shortcomings and the fact that the Gardaí who were taking the statement tried to write the statement as they heard it. They did not correct any mistakes in the English probably so as not to be accused later of "glossing" or "fixing" the statement. An interesting example is given by Coulthard and Johnson (2007, p.138) when in the case of *Regina v. Lapointe* significant differences were noticed by the defence between the level of English in the statement and the French defendants' English proficiency. The defence claimed that the statement cannot have been produced by the defendants. However, the court decided that the changes were not deliberate attempts to change the content of the statement and rejected the objection. It is likely that the police officer in the analysed case was aware of such allegations and retained the mistakes heard in the interpreters' renditions so as to avoid producing a statement in a language which would be beyond the production capacity of the *ad hoc* interpreters.

### **3.5.1.2 Analysis of effect**

The characteristic features of the ST discovered during the analysis produce a specific effect on the immediate recipients (the police). The Gardaí obtain the information presented to them in a very "raw" form, but are able to presume that the mistakes are not intentional, but due to the *ad hoc* interpreters' lack of English competence. Therefore, the police disregard the mistakes and recognise the informative value of the statement. The intention of the sender is achieved, i.e. the police believe her and the defendant is arrested a couple of hours after the statement is made, which is the short-term effect of the text. Next, the defendant is charged with a series of offences described in the statement and the case is sent for trial, which is the long-term effect of the text. Moreover, the non-standard English used in the statement has a certain effect on the future audience (judge and jury) of the statement and provides some information on the process of taking the statement for those recipients of the statement who were not present in the interview room. The language deficiencies reflected in the statement shed light on the interpreter's knowledge of English and, consequently, suggest that the taking of the statement was not straightforward.

### 3.5.1.3 Translation criticism

#### 1. Transfer stage

There is no explicit translation brief, but we can formulate translation instructions from the situational context. The Polish translation of the statement needs to be prepared for the defendant so that he is aware of the totality of the case against him. The translation will show him all the witness statements and will allow the defendant to prepare his line of defence and give appropriate instructions to the legal team. The effect that the target text should produce on the defendant (TT recipient) is that the translation of statements should allow him to prepare his defence, for example by exposing any credibility issues that could be inferred from the analysis of the statement. At trial, as the name suggests, the parties *try* and test the statement given at the police station by asking detailed questions about its content and looking for contradictions that could undermine the witness's credibility. Therefore, the translator should show "practical imagination concerning the possible consequences of linguistic actions" (Nord 1991, p.132). Accordingly, the translator should anticipate that the interpretation of the text should be preserved in the translation. The translator should aim at equivalence at the level of ST recipients' reaction. The defendant should know exactly what the police had learnt and what effect the text had on the police in order to prepare his defence. He should also know what effect it may have in court and use the information accordingly in his cross-examination. This is particularly important if we take into account that the English language version of the statement is the only official exhibit.

#### 2. TT profile

Taking the above into consideration, in the analysed case "the translation *skopos* requires the reproduction of the whole of the content and the smallest omission, as long as it is not due to a TT recipient-specific presupposition, is a translation error" (Nord 1991, p.170). To achieve the *skopos*, the translator's priority should be to preserve the content of the statement without omissions, additions or disambiguation. The only omission allowed, as mentioned above, is the omission of redundant

information, which is presupposed by the defendant, given that he belongs to the same culture as ST sender.

Secondly, the ST sender's intention should be accessible for the TT recipient. The complainant's intention was to report a crime, a detailed account of what had happened to her. The deviations from grammatical and stylistic norms were not the intention of the witness, but are due to the lack of competence on the part of the interpreters (text producers). On the other hand, the police officers retained the mistakes in English in order to allow the judge and jury to "see" what went on in the police interview. Therefore, the non-standard English used provides us with important information on the process of taking the statement and reflects the intentions of the police officers. Consequently, the grammatical, stylistic and lexical mistakes should not be corrected by the translator so as not to distort the function of the text. The marked style of the statement was preserved by the police with the judge and jury in mind and it informs those who were not present in the interview room about possible communication difficulties during the interview.

Finally, as the statement may be quoted numerous times in court during examination and cross-examination, the layout of the translation should resemble the layout of the English version as closely as possible. Preserving the non-verbal elements in the TT and making sure that page numbers in the TT correspond to the same fragments in the ST will facilitate the identification of the quoted fragments during the trial.

### 3. TT analysis

In the following section, the factors relevant to the translation *skopos* will be analysed i.e. the content, presuppositions, non-verbal elements and stylistic features.

#### a) Content

As far as content is concerned, the translator decided to omit the two conventional parts of the statement – the introductory paragraph and the signatures, time and date at the end of the statement. These omissions do not correspond to the profile of the TT and should be regarded as a translation error.

According to the *skopos*, the translator should put the preservation of content as a priority. This also means avoiding disambiguation. The translator did not follow this rule at all times and in the following sentence, the word *broken* has been disambiguated in translation:

S1a(44): The kitchen window I could not open, it was **broken**.

T(189): Nie mogłam otworzyć okna w kuchni, było **zepsute**.

[I could not open the kitchen window, it was **broken**. (meaning: damaged)]

In Polish, there is no single word or phrase convey the ambiguity of the word *broken* in this context, i.e. a damage that may either refer to broken glass or a damaged window frame. The translator chose the latter meaning, taking the general context into account.

The general tendency in the TT is to clarify the sentences that are unclear in the ST, for example:

S1a(61): The bus station I remember there was place of Garda.

T(205-206): Pamiętam, że dworzec autobusowy był tuż przy posterunku Gardy.

[I remember that the bus station was just next to a Garda station.]

and:

S1a(74): I was afraid to pick out clothes.

T(223): Bałam się wziąć jakieś ubrania.

[I was afraid to take any clothes.]

Generally, the translation shows numerous examples of disambiguation and explanation, not present in the ST. This tendency to clarify the meaning of the ambiguous ST is contrary to TT profile, especially taking into account the fact that the translator most likely did not have access to the witness or her interpreters to clarify the meaning of the ambiguous fragments.

b) Presuppositions

Drawing on the examples used in the ST analysis it can be noted that the translator adapts the text, taking into account the background knowledge that the TT recipients have, i.e.:

<p>S1a(17-18): Bartek also tell my parents, Zofia (<b>mother</b>) and Mateusz (<b>father</b>) about this cleaning job</p> <p>T(156-157): Bartek powiedział o tej robocie sprzątaczkki również moim rodzicom, Zofii ∅ i Mateuszowi ∅ .</p> <p>[Bartek also told my parents, Zofia ∅ and Mateusz ∅ , about the cleaner's job.]</p>
--

The translator omitted the information in brackets deciding that clarifying which name is male and which female was redundant for a Polish reader.

On the other hand, the Irish-specific information is preserved and the Irish word *Garda* is not translated into Polish but left in its original form. In this case the translator assumed the Polish reader does not need to have the word 'Garda' explained.

<p>S1a(61): The bus station I remember there was <b>place of Garda</b>.</p> <p>T(205-206): Pamiętam, że dworzec autobusowy był tuż przy <b>posterunku Gardy</b>.</p> <p>[I remember that the bus station was next to the <b>Garda station</b>.]</p>
---

This choice, again is consistent with the target reader profile, i.e. the defendant is a Polish national living in Ireland.

c) Non-verbal elements

As far as the non-verbal elements are concerned, they have not been preserved in translation. As noted earlier, the analysed statement (S1a) was merged with the other two statements taken from the witness (S1 and S1b) and it is impossible to identify the boundaries between them. This decision of the translator led to much disruption at the trial when the judge (J) was confused about which statement was being quoted by the self-representing defendant (SRD). The following quote from the transcript of the thirteenth day of the trial illustrates the point:

TRIAL, DAY 13

J: Which page from the book of evidence are you quoting from?

SRD: I don't have the page numbers.

J: Do you have the English Book of Evidence?

SRD: No.

Such situations were numerous and the confusion was due to the fact that during his cross-examination the defendant used T, the Polish backtranslation of the statement, and the prosecution and the judge used S1a, the statement in English. Because the defendant's translations had a different layout and no page numbers, a lot of time was spent during the trial ascertaining which fragment was being quoted.

d) Stylistic elements (lexis, sentence structure)

The translator decided that the grammatical and lexical mistakes were not part of the text sender's intention and corrected them in the TT, e.g.

S1a(82-83): Because I **was hit** on Friday I was bleeding from my **down lip**.

T(232-233): Ponieważ zostałam pobita w piątek, miałam skaleczoną dolną wargę i leciała mi z niej krew.

[Because I **was beaten** on Friday, my **lower lip** was cut and it was bleeding.]

Moreover, the non-standard word order mentioned in the ST analysis was also corrected in T. On the whole, the translator's decisions concerning stylistic elements are consistent with the witness's intention and would be correct if we assume the police officers are the only recipients of the statement. However, taking into account the overhearing audience, who did not take part in the statement taking process, the correction of mistakes conceals vital information about the interpreters' competence in English and should be regarded as translation error.

### **3.5.1.4 Conclusions**

By analyzing the chosen translation problems and the translator's choices, it can be concluded that the translation does not meet the requirements of the *skopos*. The TT takes account of the defendant's presuppositions but polishes the form of the statement by rendering it in correct Polish.

Moreover, the translator made the decision to disambiguate and clarify certain fragments, which were not clear in the ST. As a result, the TT may not convey the information of the ST in its full form and may not achieve its purpose – the defendant may not be able to prepare his defence fully due to disambiguation and misinterpretations in the TT.

Finally, the translator did not preserve the non-verbal elements, as recommended by the TT profile, which led to some confusion and delays in the course of the trial.

## **3.6 Gideon Toury's model**

This section will describe the analysis of the same witness statement and its translation within the framework of Descriptive Translation Studies (DTS). The general concept of norms in translation will be discussed first, followed by an analysis of the chosen sample aimed at the identification of operational and initial norms.

### **3.6.1 Descriptive Translation Studies**

As the name suggests, Descriptive Translation Studies is about *describing* translational behaviours and drawing conclusions from theoretical reasoning that can be further applied either retrospectively (e.g. in translation criticism) or prospectively (e.g. in translator training). A description of certain translation behaviours leads to an explanatory hypothesis that should form certain "rules" of translation, partial theories that would together form a general theory of translation (Toury 1995, p.16). DTS is descriptive by default and therefore the rules cannot be absolute; they can only indicate a possibility of a certain translation strategy being present under given conditions. An example of such a rule would be, for example, the statement that "witness statements are translated in a less free fashion than are literary texts".



### **3.6.2 Target-orientedness**

DTS is TT-oriented because it is with the target text that the comparative analysis starts. However, this is not to say that the source text does not count, but the analysis of the ST is given lower priority in DTS (Toury 1995, p.36). In general terms, the analysis starts with the discovery stage when certain regularities in the TT are categorised. Next, the researcher attempts to find justifications or explanations for the discoveries. The process is not linear because the explanations then trigger further discoveries (Toury 1995, p.38). A single text can only yield discoveries, but to come up with justifications for them, we need a larger corpus of text. Once discoveries are justified, they may become norms.

### **3.6.3 The concept of norms in translation**

Toury distinguishes two main types of norms governing every translation: preliminary and operational (Toury 1995, p.58). He also introduces the concept of an initial norm (Toury, 1995, p.56), which is the decision by the translator about whether to comply with source- or target text norms. This decision determines whether the translator will prioritise adequacy or acceptability. Preliminary norms are factors that stipulate why a given text needs to be conveyed to a particular culture. Finally, operational norms are decisions taken during the actual process of translation. They include certain sub-norms, such as matricial norms, which deal with the distribution of chapters, the extent of omissions or textual-linguistic norms, which govern the selection of material to be translated (Toury 1995, pp.58-59). Norms are studied indirectly, through translation, i.e. through the product governed by the norms, and through other extratextual sources, e.g. the reaction of the readers to the translation. However, translation as a product is a primary source and should be prioritised in the case of a conflict with extratextual material, to which less weight should be attached (Toury 1995, p.65).

### **3.6.4 The method**

The method for descriptive studies gives a significant degree of freedom to the analyst. The analysis may be limited to the target text only and focus on the

acceptability of a given translation in the hosting system, i.e. the target culture. However, comparative studies are also possible within DTS. The analysis may involve comparison of two translations of the same text into the same language, the study of several parallel translations into different languages or a discussion of how the concept of “acceptability” changed within one translation. Another possibility adopted, for instance, by Leuven-Zwart (1989 and 1990) is looking for shifts in translation as compared with the source text. This approach is valid as long as identification of shifts is not the ultimate goal but leads to the formation of an explanatory hypothesis and thereby establishes an overall concept of translation.

### **3.6.5 Choosing the scope of comparative study**

As seen in the previous paragraph, analysis within the DTS framework is not meant to be “full” and comprehensive. Instead, it should attempt to formulate a partial explanation that can contribute its share to the theory of translation. Consequently, there are numerous possible ways of approaching the analysis that could discuss several different aspects of the given translation. To facilitate the choice and introduce some structure to the data, we shall present a schematic introduction to our data within the framework of DTS.

- |  |
|--|
| <ul style="list-style-type: none"><li>I. Textual sources:<ul style="list-style-type: none"><li>1. A single witness statement (S1a) in English made by a complainant in a rape case, 1800 words. The statement was given by the witness in Polish and interpreted into English by <i>ad hoc</i> interpreters. The English version was written down.</li><li>2. Polish translation: translation (T) by a Dublin based translation agency. This is a translation of S1a into Polish which was included in the book of evidence. It was made several months after S1a was taken.</li></ul></li><li>II. Extratextual sources<ul style="list-style-type: none"><li>1. Statement at the end of the book of evidence reading: “Interpreter’s [sic] note: This is true and accurate translation of the original document. It reflects the writing style, punctuation and phrase structure used in the original text.”</li></ul></li></ul> |
|--|

<p>2. Reactions of the readers – comments made by judge, witnesses, defendant and barristers during the trial, available in court transcripts from the trial</p> <p>III. Initial norm: translator’s decision to comply with ST (focus on adequacy) or TT norms (focus on acceptability).</p> <p>IV. Preliminary norm: factors that decide why a given text needs to be transmitted into a particular culture:</p> <ul style="list-style-type: none"> <li>- Free assistance of an interpreter is guaranteed to anyone charged with a criminal offence by paragraph 3e of Article 6 of European Convention on Human Rights Act 2003 (for details see Chapter 2). The preliminary norm is the defendant’s lack of sufficient competence in the English language and the legal requirement to have documentary material translated for his/her benefit.</li> </ul> <p>V. Operational norms:</p> <ul style="list-style-type: none"> <li>a) Matricial norms: extent of omissions, additions, distribution of chapters</li> <li>b) Textual-linguistic norms: selection of material for translation</li> </ul>
--

**Table 3.4 The Polish translation of the witness statement within DTS**

### **3.6.6 Initial observations**

Initial and operational norms will be reconstructed after the analysis of the chosen passages from the statement under study. An interesting observation is that the translation includes an “interpreter’s note” at the end. The fact that the note comes from “the interpreter” is slightly confusing when used in relation to the written text. The content of the note can give us certain clues about the initial norm. It reads as follows “This is true and accurate translation of the original document. It reflects the writing style, punctuation and phrase structure used in the original text.”, which suggests that the translator decided to follow the ST norms and comply with the principle of adequacy, rather than acceptability. However, as mentioned above, the actual translation is the source of primary data and the initial norm will be established after the translation has been analysed. The note could be a standard statement added by the translation agency after the translation has been submitted and may not reflect the norms that operate in the text under analysis.

### 3.6.7 Descriptive Translation Studies as a TQA

Translation quality assessment is seen in Toury's map of Translation Studies as belonging to "applied extensions" and is thus excluded from the core DTS (Rabadan 2008, pp.102-115). DTS is aimed at making a contribution to the discipline of Translation Studies and Translation Theory by developing generalisations based on corpora of texts. However, Toury does not completely exclude individual texts as objects of study because results of individual studies can also influence the corpus and make a contribution to the bigger picture (Toury 1995, p.39). Because DTS does not deal directly with translation evaluation, Toury's guidelines on how to apply DTS to translation assessment studies are limited. He recognises the need to establish a unit of comparative analysis (1995, p.88), made up of pairs of ST and TT segments. The pairs do not have to be of the same length or scope, but are instead established according to a *heuristic* approach (Toury 1995, p.89). The boundaries are set in such a way that the TT segment contains the entirety of a 'solution' to a problem presented by the ST segment (Toury 1995, p.89). For example, if the translator needs to compensate for a certain feature of the ST in a different sentence or different fragment of the text altogether, the TT segment corresponding to the "problematic" ST segment needs to contain all the fragments which reflect the translator's compensation strategy. In other words, the TT segment has to contain the complete solution to the challenges posed by the ST segment so that no "leftovers" of the solution are omitted. After the pairs of segments are established, further analysis is conducted, in which the relationship between the coupled segments is determined. It is then this relationship which forms the basis of any generalisations regarding the strategy adopted by the translator and tendencies operating in the given translation (Toury 1995, p.89). This practical explanation of the application of DTS has been further developed by Leuven-Zwart (1989 and 1990), who devised a detailed process of establishing the units of comparative analysis and the relationship between them. Therefore, for the purpose of this project, we used the translation quality assessment model devised by Leuven-Zwart (1989 and 1990), which is, however, only an elaboration on Toury's concept of units of comparative analysis. The model was developed with two objectives in mind. Firstly, Leuven-Zwart's aim was to establish objective criteria to describe the differences, or shifts, between the ST and the TT.

Secondly, the description could be used to formulate hypotheses about the translator's interpretation of the ST and the strategy adopted during the translation process (Leuven-Zwart 1989, p.154). In other words, by investigating the shifts in translation, the analyst reconstructs the translator's initial norms. The following discussion will outline the results of the application of Leuven-Zwart's model to the witness statement S1a.

### **3.6.7.1 General description of Leuven-Zwart's model**

The main assumption behind the model is that micro- and macrostructural shifts in translation indicate the norms applied by the translator. By conducting an analysis of the shifts, the researcher is able to reconstruct the norms the translator followed. There are two types of shifts distinguished by Leuven-Zwart: those occurring within sentences, clauses and phrases (i.e. on the microstructural level), and macrostructural shifts on the level of characters, events, time or other meaningful aspects of the text (Leuven-Zwart 1989, p.155).

The first part of the analysis, called the comparative model, deals with the microstructural level and looks into the semantic, stylistic and pragmatic shifts which substantially change the meaning. Following this there comes the descriptive model, which describes the effects of the microstructural shifts on the macrostructural level, i.e. changes in the characterisation of persons, ordering of action or focalisation (Leuven-Zwart 1989, p.155).

### **3.6.7.2 Comparative model: transemes and architransemes**

Since Leuven-Zwart's comparative model presumes a very thorough analysis of clauses, small sample size is preferred as analysing complete witness statements would not be feasible. Leuven-Zwart does not specify the desired length of sample passages suitable for the investigation. For the purpose of this analysis, three five-line passages were chosen from the statement S1a (see appendix 4) and analysed against the Polish translation included in the book of evidence (T). The sample passages were taken from the beginning, middle and end of the statement.

Once we have chosen selected passages from the text, the analysis involves breaking them down into *transemes* (Leuven-Zwart 1989, pp.155-157). Transemes are

comprehensible textual units derived from Dik's Functional Grammar (Dik 1978 cited in Leuven-Zwart 1989, p.155). There are two types of transemes – the main, “state-of-affairs” transemes whose boundaries are indicated by means of /.../ in the analysis and satellite transemes, which usually carry extra information, e.g. on time or location. Satellite transemes are parenthesised ( ) in the current analysis.

The next step of the analysis consists in finding relationships between the ST and TT transemes. The analyst should look for similarities between the two and find the common denominator between the corresponding transemes in the ST and TT, which is called the architranseme (ATR). The ATR can be either semantic, if the ST and TT transemes share a descriptive meaning, or pragmatic if the shared element applies only in one particular situation (Leuven-Zwart 1989, p.157).

The next step consists in establishing the type of relationship between the transemes. First, we look into the relationship between the ST transeme and ATR. Secondly, the TT transeme is compared to the ATR. On the basis of the relationships between the ST- and TT-transemes with their common denominator (ATR) we can establish what type of shift has taken place in translation. The relationship between the transemes and ATRs can be *synonymic* when no shift occurs, *hyponymic* when *modulation* takes place or that of *contrast* in the case of *modification*. It is also possible that no relationship can be established between the units. In that case, the translation has undergone a *mutation* (Leuven-Zwart 1989, p.159).

Modulation occurs when one of the transemes displays an aspect of disjunction in relation to the ATR. Modulation is further broken down to specification and generalisation. Specification occurs when the aspect of disjunction is manifested by the TT transeme, and generalisation if the ST transeme displays the aspect of disjunction towards the ATR (Leuven-Zwart 1989, p.159). The aspect of disjunction can be either semantic or stylistic and, consequently, modulation can be of a semantic or stylistic variety. As a result, there are four types of modulation: semantic modulation/specification, semantic modulation/generalisation, stylistic modulation/specification and stylistic modulation/generalisation (Leuven-Zwart 1989, p.160).

Another shift type is a modification, which occurs if both ST and TT transemes display an aspect of disjunction towards the ATR. Modification may be semantic, stylistic or syntactic (Leuven-Zwart 1989, p.165). Finally, mutation occurs when it is

impossible to find any aspect of conjunction between the ST and TT transemes and the establishment of the ATR is impossible. Mutation includes addition, deletion and radical changes of meaning. A typical example of mutation is the omission of the opening paragraph from the witness statement in T, which was discussed in the previous sections. In this case, there is no correspondence in the TT to the ST transemes and, consequently, no relationship can be found between them.

### 3.6.7.3 Difficulties

The first difficulty encountered when applying the model was the division of the ST into transemes. As mentioned in the previous sections, the ST was a written transcription of the interpreted version of the witness's statement. Because the statement-taking session was not electronically recorded, the English version, which is already a translation from Polish into English, serves as the ST for the analysis. The difficulty arises due to the fact that the police used *ad hoc* interpreters with limited English. Consequently, the ST is often unclear and the segmentation into transemes, i.e. "comprehensible textual units" is not always an easy task. For example, the following sentence was divided into transemes in the following way:

S1a(26-27): /When we came to Ireland **first**// we stay in hostel in Waterford, us three./

However, when the TT was mapped with the ST transemes, it turned out that the translator divided the textual units differently:

T(168):/ Kiedy przyjechaliśmy do Irlandii,// **najpierw** zatrzymaliśmy się we troje w hotelu w Waterford./  
[/When we came to Ireland//**first** the three of us stayed in a hotel in Waterford./

In the ST, the word "first" belongs to the first transeme:

/When we came to Ireland **first**/

This could be paraphrased as:

/When we came to Ireland **for the first time**/

In T, however, “first” belongs to the second transeme, i.e.:

**/najpierw** zatrzymaliśmy się we troje w hotelu w Waterford/

This can be translated as:

**/at the beginning** we stayed in the hostel in Waterford/

The sentence in the ST lacks punctuation and is not well formed, which leaves it open to a plethora of interpretations. Ambiguities in the ST posed a major difficulty in establishing the boundaries between transemes.

### 3.6.7.4 Summary of results

The chosen sample was divided into 35 transemes in total. The table below shows the distribution of specific shifts in T. The total number of transemes in T is 36 due to the fact that two different shifts were discovered in a single transeme. Hence, the total number for T is higher than the number of ST transemes.

NO SHIFT	MODULATION	MODIFICATION	MUTATION	TOTAL TRANSEMES
12	4	11	9	36

**Table 3.5 Shifts in translation (T)**

A further breakdown into shift types is illustrated in the following table:

Shift type	Number of instances
MODULATION: SEMANTIC GENERALISATION	1
MODULATION: STYLISTIC GENERALISATION	1
MODULATION: SPECIFICATION	2
MODIFICATION: SYNTACTIC-SEMANTIC (ADDITION)	2
MODIFICATION: SYNTACTIC-SEMANTIC (DELETION)	5
MODIFICATION: SEMANTIC (CHANGE OF MEANING)	4
MUTATION: ADDITION	0
MUTATION: DELETION	9
MUTATION: RADICAL CHANGE OF MEANING	0
SHIFTS TOTAL	24

**Table 3.6 Shifts in translation (T) according to shift type**



### 3.6.7.5 Initial observations

Comparing the ST and TT transeemes, a total of 24 shifts were observed in the 35 analysed transeemes in T. Modification was the most common shift type:

S1a(27): /we stay in **hostel** in Waterford,/  
T(168): /zatrzymaliśmy się we troje w **hotelu** w Waterford/  
[/the three of us stayed in a hotel in Waterford/]

ATR: stay + accommodation + Waterford

This example illustrates a hyponymic relationship between both – TT- and ST- transeemes and the ATR. The ATR includes the generic term accommodation realized in the ST by the word *hostel* and in the TT by *hotel*. Both *hostel* and *hotel* are a type of accommodation, which makes it possible to establish an ATR. Both the ST and TT transeemes are in a hyponymic relationship to the ATR, which results in a modification in translation (change of meaning). The above is an example of semantic modification. Altogether, there were eleven instances of modification in the analysed sample.

The analysed passage contained four instances of modulation and the instances of generalisation and specification in T were equal. In both modification and modulation shifts, semantic shift types were the most common. T is also characterised by a high frequency of mutations (nine instances), which is due to the fact that one of the passages chosen for analysis has been completely omitted by the translator. Because the introductory paragraph was not present in the TT, nine transeemes were deleted in the TT, hence, the high number of deletions, which are a type of mutation.

### 3.6.7.6 Descriptive model

The next part of the analysis deals with an explanation of how microstructural shifts affect macrostructural ones. This part of the analysis will be limited to the main types of shifts found in the analysis of the chosen sample.

### 3.6.7.6.1 Semantic modulation

Semantic modulation can influence the ideational function of the text on the discourse level, which Leuven-Zwart calls a *mind style* (1990, p.71). When a translator uses specifications consistently, the TT becomes more precise than the ST. On the other hand, if there are more generalisations, the ideational function is affected in the opposite way and the text becomes more vague and less specific (Leuven-Zwart 1990, p.71). The summary of shifts observed in the translation does not yield any conclusive results – T includes the same number of specifications and generalisations. The text does not show a dominant tendency towards either of the two types, but the sample is too small to make universal judgements about the statement as a whole.

### 3.6.7.6.2 Modification

Modification is the most common type of shift observed in the translation of the analysed samples. Semantic and stylistic modification has similar effects on the macrostructure to those of modulation. The deletion of certain parts of an ST transeme will further contribute to the vagueness of the TT and the addition of certain semantic elements will make the translated statement more precise and detailed. In the following example, the ST conveys the witness's uncertainty about whether the person worked in a town or village. The recipients of the TT are not given this alternative as the word "town" has not been translated. Consequently, the witness in T sounds convinced that it was a village, which is not the impression we get reading S1a:

S1a(24): / Recently he work **in a town or village** near Hamburg./

T(164):/Ostatnio pracował **na wsi** obok Hamburga./

[Recently he worked **in a village** near Hamburg.]

Even taking into account the small size of the analysed sample, a clear tendency towards deletion of semantic information is observed.

### **3.6.7.6.3 Mutation**

Finally, mutation occurring in translation results from the impossibility of establishing an ATR at all. The specific effect of mutation on the macrostructural level is closely connected with the semantic features of the mutating elements. Mutation can bring about shifts in both ideational and interpersonal functions. However, its main impact is on the ideational function, i.e. the way in which information concerning the world is given. In the case of mutation, in particular deletion, the information concerning the world is not complete. In the T, for instance, the paragraph containing the police caution has been deleted. This makes the reader unaware of crucial information – the TT reader does not know anything about time, location and participants of the statement-taking process, nor are they aware that the witness declares the statement to be true and is liable to prosecution in the case of perjury and that without this information the statement does not have full legal standing.

### **3.6.8 Conclusions**

The results of analysis on the microstructural level show that the average percentage of shifts per transeme amount to 68% for T (24 shifts in 35 transemes).

Secondly, the categories of shifts belonged mainly to the semantic type. This result corroborates Leuven-Zwart's findings, i.e. that semantic modulation and syntactic-semantic modification were the categories in which the majority of shifts occurred.

Next, within the syntactic-semantic modification, the corpus analysed by Leuven-Zwart points to a high frequency of explanation, e.g. by the addition of causal, final and other conjunctions. Explanation is also achieved when "vague, indirect or 'illogical' links between events and actions are explained" (Leuven-Zwart 1990, p.89). As defined above, explanation is present in the analysed sample as well, which can represent the attempt of a translator to add missing logical links between concepts and ideas. More examples of improved linkage have been demonstrated in the previous analysis according to Nord's and House's models. However, none of these tendencies showed in the analysis performed according to Leuven-Zwart's model. This may be due to the fact that the researcher, according to the instructions outlined in the comparative model, did not include conjunctions in the ATR.

Consequently, conjunctions were not taken into account in the next stages of the analysis.

Finally, by way of summary we can distinguish the following operational norms:

- The percentage of shifts in T amounts to 68%;
- Most of the shifts are semantic and belong to the category of semantic modulation and syntactic semantic modification;
- Generalisations are as frequent as specifications;

The above discussion brings us back to Gideon Toury's concept of initial norms in translation. The analysis of shifts on micro- and macrostructural levels can lead to the conclusion that the translation is target oriented and the initial norm adopted by the translator is that of acceptability. The observed phenomenon of explanation as well as error-correction, which has not been discussed so far, points to the fact that the translator adapted the passages that seemed difficult, unclear or illogical to the assumed taste of the reader. The translation is a comprehensible text constructed in accordance with the linguistic conventions of the TT, even in relation to those features which were not adhered to in the ST, e.g. verb tense or punctuation. This conclusion is in opposition to the content of the "interpreter's note" discussed at the beginning of the chapter, which claimed that the translation "reflects the writing style, punctuation and phrase structure used in the original text." This confirms the initial hypothesis that the note is added by the translation agency after the translation has been completed and does not reflect the actual strategy adopted by the translator in this case.

Surprisingly, in the translation of witness statements from English to Polish examined here, more emphasis is laid on the principle of acceptability than adequacy. Leuven-Zwart's view that "translators seem to give priority to the production of comprehensive, natural-sounding and acceptable text, in some cases at the expense of the distinguishing features of the original text" (Leuven-Zwart 1990, p.94) aptly describes the translator's strategy. However, the results on the basis of the chosen sample would need to be confirmed by a more rigorous study and cannot be regarded as conclusive due to the small sample size.

### **3.7 Conclusion: The Choice of Analytical Model**

Having piloted three translation assessment models, a methodological tool for the next part of the project had to be established. The analysis on the basis of Gideon Toury's model seemed most problematic in application. First of all, the framework of DTS as discussed by Toury, despite being a very comprehensive and reasonable one, does not provide the researcher with enough guidelines to perform the actual analysis. It is the researcher who needs to devise his or her own model of translation quality assessment based on the principles presented by Toury. For that reason, the current project followed a model proposed by Leuven-Zwart. The model was applied to a small sample yet it proved to be very time-consuming. The division into transemes and architransemes takes up a lot of time and is quite problematic due to the poor English used in the ST. Therefore, it may not be feasible for one person to apply the model to a larger sample size. Moreover, DTS deals with the concept of norms that can only be established based on larger corpora of texts. Even though case studies can contribute to a bigger picture with specific observations, and influence the establishment of norms, the framework of DTS is not devised for the analysis of individual cases. Finally, being TT-oriented, DTS focuses on the TT, i.e. backtranslation of the statements into Polish in the analysed case. However, in the context of witness statement translations, it is only the ST, i.e. the statement in English, that has the status of an exhibit and, hence, should be given more prominence than the TT. The model would be a suitable tool if we analysed the witness statements in English (S1a) as a target text. The pidgin English used in the English version of the statement could lead to the establishment of more general ramifications, in this case it would be the lack of regulation in the field of interpreting at police stations in Ireland. The lack of interpreter certification allows *ad hoc* interpreters and people not competent in English to act as interpreters at police stations. In this case, this lack of regulation was reflected in the language used in the statement. However, if we analyse the Polish translations of S1a as the TT, the DTS analysis may not account fully for the norms governing police interpreting in Ireland. In the Polish translations of S1a, the language has been polished and mistakes corrected, which conceals the interpreters' difficulties during the police interview and does not allow us to reconstruct the general norms operating in the Irish interpreting market. Therefore, for all of the above reasons, it was decided not to apply the Descriptive Translation Studies framework to this research project.

Nord's functionalist model highlighted some interesting issues in the data during the sample analysis. Firstly, the model deals with the concept of presuppositions, which were observed in the data and could lead to an interesting discussion in the analysis stage proper. Secondly, the functionalist model highlighted the significance of layout and non-verbal elements in the translation of witness statements. This is particularly important as the court transcripts clearly indicate that the layout proved to be a difficulty during the course of the trial. Consequently, the hypothesis that layout is of great importance in the translation of statements, generated during the data analysis, is corroborated by the court transcript data.

Another interesting feature of Nord's model is the way it discusses the correction of grammatical mistakes in the TT. On the one hand, the functionalist view explains that repetition of obvious ST mistakes in the TT only hinders understanding and information processing capabilities, and should be avoided as it was not the sender's intention. However, if we take a more global view and look at the text as a genre, the police officers act as senders too and the recipients are not limited to the people present in the interview room, but include lawyers, the judge and jury, too. If we take that into account, the polishing of the statement conceals vital information about the process and the interpreters' skills. Moreover, it could be argued again that in the context of witness statement translation, a TT-oriented approach is not desirable because it is the ST that has legal standing in court while the Polish TT is provided for the information of the defendant. In the case of any discrepancies between the ST and the TT in court, the ST is the only version accepted by the judge. Therefore, any changes in translation resulting from the translator's decision to conform to TT norms may cause interference in the course of the trial. If such interference occurs, the defendant who uses the TT will be at a disadvantage as his version is not evidence, but merely a translation of evidence.

Therefore, being TT-oriented, Nord's model puts the TT in focus. In the present study, however, it is the ST which should be given more prominence. By focussing on the TT, we discuss the translator's choices (e.g. presuppositions, non-verbal elements), which are interesting from the translation point of view, but do not have a major impact on the court proceedings. Because the aim of the current project is to discuss the impact of translation and interpreting on the trial, the Polish translators' choices, which are the focus of Nord's analysis, account only for some of the

difficulties in the trial. A model which focuses on the main court exhibit, i.e. the English record of the interview, would seem more appropriate for this particular project.

The application of House's functional-pragmatic model led us to draw some preliminary conclusions that a covert translation may not be an appropriate choice in the case of witness statements. Using House's terminology, overt translation would be the appropriate choice for witness statements as it would give the defendant access to the "unaltered" text that could be clarified and tested during cross-examination. This approach, if interpreted consistently, would mean that the translator should try to reproduce English grammatical mistakes in Polish. Furthermore, House's model is ST-oriented, which allows for an in-depth examination of the ST, i.e. the witness statement in English, which was the main source of the translator's difficulty and deserves special attention during the analysis. As previously mentioned, in the Irish content, the ST has the status of an exhibit and, hence, enjoys a special status being the only binding version in court. If we come back to the origin of the ST, we can see that the ST is an interpreted version of the witness's words. Therefore, the ST is already a translation as the "real" ST, i.e. the witness's words in Polish are not accessible because they were never recorded. This creates an interesting context for translation evaluation because as a matter of fact the translation quality assessment will be performed without the "original" ST. This is yet another reason why the ST-orientedness is preferred because what the model in fact investigates during the ST analysis stage is a statement taken with the assistance of *ad hoc* interpreters, i.e. also a translated text. The ST hides a plethora of interesting issues and a ST-focussed analysis allows the researcher to discuss the English statement in greater detail.

Next, one of the aims of the current study is to inform practice and highlight issues in policies concerning legal translation and interpreting in Ireland. House's model permits close linguistic comparison on a sentence level, as well as straightforward discussion of overt errors in translation. This should be particularly useful while presenting the research results to non-linguists, e.g. legal professionals or policymakers. When the analyst quotes specific examples and compares sentence pairs, such quoted passages and comparisons should be fully understandable and easily digestible for people not familiar with Translation Studies. What is more, the

analysis on the sentence level bears a close resemblance to what actually happens in court during cross-examination. It is often the defence strategy to bring together apparently conflicting excerpts from the witness's statements and test their validity in court. Consequently, the analysis performed in Chapters 4 and 5 could be then logically linked with what happens in the courtroom.

Furthermore, House's model investigates the dimension of participation and medium, which are of particular importance in the context of an interpreted witness statement and the written production of a police record. Witness statements have many recipients, not only the police officers present during the interview, but also other participants in the proceedings, who read the statements before and during the trial. The presence of the police officers, the interpreters, but also of this future audience can be traced back in what seems like a first person monologue dictated by the witness to the police. Also, the discussion of medium is a complex and interesting one in the case of an interpreted witness statement. A witness's story is constantly recontextualised in the process of taking the statement. The witness has to transform their experience into talk, which is filtered through the interviewer's mental representation of the witness's words and entextualised during the conversion from talk to text (Rock 2010, p.134; Komter 2006). The process is even more complex when the statement is interpreted as we have an extra person in the recontextualisation of the witness's story. The various stages of creating a witness statement deserve a thorough investigation and can lead to interesting conclusions regarding the process of taking a witness statement in general. The analysis of participation and medium in House's model can be linked with findings from the area of forensic linguistics, which, in turn, allows interesting interdisciplinary parallels to be drawn between forensic linguistics and Translation Studies.

Finally, in our opinion, the model devised by House is very clear and was the most enjoyable to apply. The combination of linguistic observation and analyst-driven evaluation of the context appeals to the researcher and should yield reliable results. For these reasons, Juliane House's translation quality assessment model has been chosen as a methodological tool for the present research project and House's model will be applied in the discussion of the three witness statements taken from the witness (W) and two sets of translations provided to the self-representing defendant (SRD).



The following chapter will present a detailed description of the ST, i.e. the witness statement in English, which will be analysed in accordance with House's model. The model will be applied to three statements by the same witness taken with the assistance of the two *ad hoc* interpreters.

# Chapter 4: Analysis of police records of interpreted witness statements

## 4.1 Introduction

Following the investigation presented in the previous chapter, Juliane House's functional-pragmatic translation quality assessment model (House 1997) has been chosen as the methodological tool for this project. This chapter will be a follow up to the pilot data analysis performed in the previous chapter. It will present an in-depth analysis of three witness statements made by a Polish witness to the Gardaí through *ad hoc* interpreters.

Even though the study follows the methodology rigorously and House's model is applied closely during the analysis, the current project is practically-oriented and, hence, the presentation of the data in this chapter and the following analysis chapters will focus on the results, rather than the method used for the analysis. The focus on the product of the analysis should make the analysis more reader-oriented, and easier to follow in comparison to an analysis focussing on the description of the process. Nevertheless, the backbone of the investigation remains the textual examination based on House's model with particular interest in the dimension of mode and genre and their realisation in the use of language.

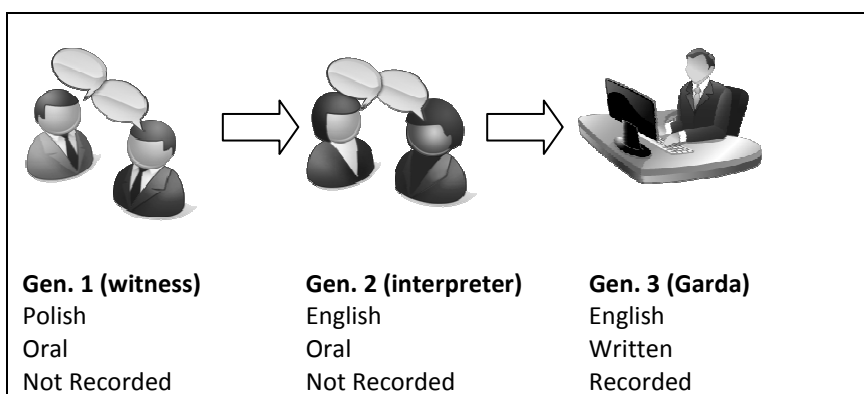
As already discussed in section 3.3.1, the data for analysis in this chapter consists of three witness statements (S1, S1a, S1b) taken from the complainant in a rape case (W). The statements were interpreted from Polish into English and written down by the police officers (PO1, PO2, PO3). The statements were interpreted by two friends of the witness (INT1 and INT2), who came with her to report the complaint. S1 was taken by PO1 with the assistance of INT1 and INT2, S1a was taken by PO1 and PO2 with the assistance of INT1 and INT2 while S1b was taken by PO3 with the assistance of INT2 only. The Table below presents the immediate participants in each of the statements taken. Brackets signify that the participant assisted at the statement taking, but did not have a major role in either interpreting (INT2) or taking

down the statement (PO2). In the previous chapter, S1a was analysed according to three TQAs. In this chapter, we will analyse S1, S1a and S1b according to House's model, which was chosen as the preferred method for the analysis of collected data.

<b>Statement</b>	<b>S1</b>	<b>S1a</b>	<b>S1b</b>
<b>Witness</b>	W	W	W
<b>Interpreter</b>	INT1, (INT2)	INT1, (INT2)	INT2
<b>Police officer</b>	PO1	PO1, (PO2)	PO3

**Table 4.1 Participants in each statement-taking session**

The analysis is based on the Garda records of the interpreted statements, marked 'Generation 3' in the following diagram:



**Figure 4.1 Interpreted statement-taking session**

The statements S1, S1a and S1b are 2390, 1800 and 390 words long respectively. The full text of the statements is included in Appendix 1 and, as already explained in section 3.3.1, references to specific lines in the statement will be used throughout the chapter, e.g. S1a(23-24) refers to lines 23-24 of the second statement. When references to the trial are made, they are introduced in a different font. Court transcripts are not available as appendices due to the length (25 volumes) and data confidentiality. As was the case in the previous chapter, all the identifiable features have been either removed or changed. The statements and court transcripts are quoted as transcribed, including spelling mistakes and any other errors.

#### **4.2 Distortion in police records of monolingual interviews**

As can be seen from figure 4.1, this part of the analysis utilises the police record of an interview with a witness. There is a body of literature dealing with the distortion that can occur in monolingual records of police interviews, a topic which has already been discussed in section 2.5. and will be elaborated on in the analysis of the statements. The sources of distortion may be manifold and may result from such straightforward reasons as memory and note-taking problems (Shepherd and Milne 1999, p.135). Moreover, police officers may be oriented towards the details that are relevant from the legal point of view, for example the question of consent in a rape charge. This, in turn, may lead them to ignore parts of the witness's story, which they may deem irrelevant to the case. Furthermore, there is the question of transforming a police interview, which is a spoken genre, into a written narrative and the differences between spoken and written language. In Ireland, witness statements are written as monologues, rather than in the question and answer format in which they are taken. This further conceals the underlying dialogue and interactive character of the original police encounter. As a result, the Garda record, which is the only recorded version and the only one that is counted as an exhibit in a criminal case, is the second *generation* (Linell and Jönsson 1991, p.422 after Aronsson, 1991) of the original story. Based on empirical research (Linell and Jönsson 1991) it transpires that second generations produced by the police are more coherent and precise, and less emotional in comparison to the witness's or suspect's first generation. At the same time, they are written in a peculiar style, which combines bureaucratic language and colloquialisms (Linell and Jönsson 1991, pp.430-431). The written police record is clearly a collaborative narrative, but there is no distinction as to which parts were volunteered by the witness or suspect and which were simply answers to questions, a phenomenon which Linell and Jönsson call the "blurring of source distinctions" (1991, p.435).

#### **4.3 Distortion in police records of interpreted interviews**

In the case of an interpreted witness statement, the process of producing different generations of the story and of the blurring of source distinctions is more complex. In

interpreted statements, it is no longer the second generation of the witness's story, but the third, which becomes the official exhibit in the case. In the case of interpreted statements, there are some extra possible sources of distortion not mentioned in the previous section on monolingual encounters. The turn-taking activity involves at least three participants now and Trinch notes that some parts of the witness's story do not get interpreted at all (2003, p.152). Moreover, Krouglov (1999) found that interpreters in a police interview setting tend to omit or modify colloquialisms, use more formal register in their renditions and introduce more polite forms. Generally, as Linell and Jönsson note, later generations of messages naturally tend to be more coherent (1991, p.438) and interpreters' renditions are more written-language-like (Wadensjö 1998, p.147). This can be compared to the differences between oral and written texts, where the latter are not real first generations because they are prepared, rehearsed and edited earlier (1991, p.438). The process of producing different generations of the narrative involves reinterpretations, which can lead to various forms of miscommunication (Linell and Jönsson 1991, p.422). We could say that the more story generations we produce, the higher the likelihood of miscommunication and, consequently, the greater the possibility that interpreted witness statements are more prone to miscommunication compared to the monolingual ones. And this is regardless of all the other factors such as the qualifications of the interpreter or interviewing skills of the police officer.

To sum up, a police record of interpreted witness statements is made up of three sources: the witness's story, the interpreter's oral recontextualisation of this story and the further recontextualised written version made by the police. However, in a monologic written statement presented as an exhibit, these three sources are merged together. This chapter will discuss the blurring of source distinctions in an interpreted witness statement, which emerged after the textual analysis of the data based on House's model. In particular, the discussion will focus on the dimensions of mode and genre, which yielded the most interesting results.

## 4.4 Influence of mode in the language used in an interpreted witness statement

### 4.4.1 Non-standard use of English

Based on the above discussion, we could expect the third generation of the story, the police record of the interpreted statement, to be more precise and unambiguous. As seen in the pilot study performed in Chapter 3, where some data was already quoted, this is not the case in the current investigation. The first impression we get is exactly the opposite as the statement is often ambiguous and incoherent, mainly due to the non-standard use of English:

S1a(40-44): The house at O'Connell Street has small hall, on the left a bathroom, kitchen on the right, sitting room opposite the kitchen, stairs on the left. Upstairs bedroom of Artur in front, on the right is bedroom of Bartek and me, this face to back of house. Front door is wooden, brown, with glass in the middle, big glass. Windows aren't the same all through the house. Open on top.

The abstract above is far from being a typical witness statement, which should unambiguously record the details of the case (Wadensjö 1998, p.115). Due to the blurring of source distinctions, the reason for the mistakes may be confusing, but it becomes clear when we come back to the mode in which the statement is taken. Using House's terms, the mode of taking a witness statement is complex. The story is spoken by the witness and interpreted by the interpreter to be written down by the police. It is then read multiple times both in the pre-trial proceedings and at the trial itself. As already mentioned, witness statements in Ireland, similar to England and Wales, are recorded in the first person, where the interviewer makes notes on the witness's behalf (Rock 2001, p.62).

Despite the fact that the analysed data is a third generation of the story, and contrary to what previous research suggests, the analysed police record is neither coherent nor unambiguous. According to the literature, features of written records made by the police include also the solving of ambiguities of the spoken interaction in the written statement, upgrading the language into a more "middle-class version", and shifting from simple sentences to complex ones (Shuy 1998 cited by Komter 2003, p.202). The analysed statements, however, do not show these tendencies. For instance, some

of the ambiguities are still preserved in the written statements, in particular in S1 and S1a:

S1(73): He was covered, a cover pain [sic] or coverlet

S1(91): I go for walk, I go to car for papers.

S1(130): I only make love to Bartek since I come to Ireland.

S1a(60): The bus station I remember there was place of Garda.

S1a(74): The baggage of clothes was put near fireplace. I was afraid to pick out clothes.

The general tendency for subsequent story generations is that they become less ambiguous as they are to some extent rehearsed and processed. In this case, the witness's story is first processed by the interpreters and then by the police. Nevertheless, the ambiguities still remain, but due to the blurring of source distinctions, we do not know why they are still in the statement, which, by definition, should be unambiguous. It could be due to the way in which the police officer noted the interpreter's rendition, it could have been an exact imitation of the interpreter's ambiguous rendition or there could have been an ambiguity in the original story. As far as the language used in the statement is concerned, it is written in pidgin English – past tense forms and auxiliary verbs are not used consistently.

S1(122-123): After I meet Bartek I go home to O'Connell Street.

S1a(102-103): I not go into Joanna house.

S1b(13-14): In earlier statements to Police I said the two men steal money from me, this happened on Friday at the house.

We can also see the L1 interference from Polish in the statement. Unlike English, Polish does not have the make/do distinction and the single word “robić” is used in collocations such as “to do shopping” or “to make breakfast” (*robić zakupy* and *robić śniadanie*). Therefore, it is a common mistake for Poles to confuse the two verbs in English, as we can see in the data:

S1(82-83): At 12 we got to Lidl to make shopping.

S1(79-80): I went downstairs, the breakfast was done.

Moreover, there is a visible problem with a translation of the lexical item “iron bars” from English into Polish. This phrase appears in the statement three times in S1a and each time, the interpreter appears to be struggling with it.

S1a(90): I first see Bartek preparing "prety" iron bars.

S1a(93-94): The Prety were 50cm, 5 or 8cm thick.

S1a (105-106): The bars "Prety" I see Bartek and Artur with, these are the bars that Garda Declan has shown me.

In S1a(90) and S1a(105-106), the interpreter used “code mixed self-repetition” (Berk-Seligson 2009, p.158), which occurs when the same item is repeated in both languages in order to make sure that the message is communicated. “Prety” means “bars” in Polish and we can see above that both language versions are incorporated in the sentence. In S1a(93-94), we can see an instance of lexical insertion, an insertion of a single lexical item “prety”, which occurs when there is a lexical gap in a given language (Berk-Seligson 2009, p.150). Interestingly, when the part about the bars is discussed in court, the judge also uses code mixed self-repetition in his speech:

TRIAL, DAY 13

J: Well, Mr. Kowalski, the Prosecution very correctly didn't introduce the evidence about the bars. Are they the 'Prety' bars?

In the above examples we can trace the interpreters’ participation through their non-standard use of English. However, the interpreters still seem to play their appropriate role, i.e. that of an animator. The role of an animator comes from Goffman’s (1981) participation framework, which was first used to analyse interpreter-mediated encounters by Wadensjö (1998). Following Goffman’s framework, we can describe speakers according to the role they take in a given interaction. A speaker can be an *animator*, when they speak on behalf of somebody else, an *author*, when they “compose or script the lines that are uttered” (Goffman 1981 cited in Wadensjö 1998, p.88) and a *principal*, when they are “the party to whose position, stand and belief the words attest” (cited in Wadensjö 1998, p.88). Therefore, in the interpreter-mediated encounter, the interpreter usually takes on the role of an animator and may



shift to that of an author if they modify or edit the speaker's utterance. However, as Wadensjö notes they normally do not take on the role of a principal:

Interpreters by definition give voice to words that are to demonstrate another person's outlook and thinking, without necessarily subscribing to this thinking themselves, but appointing the prior speaker as ultimately responsible for the "belief the words attest." (Wadensjö 2008, p.189)

However, there are situations in which interpreters need to assume the role of a principal too, for instance when providing clarifications. Wadensjö adds that, as a rule, when an interpreter takes on the role of a principal, the other participants readily acknowledge that the interpreter takes personal "ownership" of these words (2008, p.189). However, Wadensjö is talking about professional interpreters and the untrained interpreters may not signal the role switching, which can go unnoticed by the police officers as can be seen in the example below:

S1(29-30): I broke, <u>I don't know what you call it, something you use to open the window.</u>
---

Role-switching is not recognised by the police probably due to the interpreter's lack of training and professional experience. In this case, the shift of roles is related to the poor language proficiency of the interpreter, who cannot come up with an English word "handle" and shifts her role to that of a principal in the middle of her regular animator role. It is unlikely that the witness did not know the Polish word for 'handle' and the fragment "I don't know what you call it" is clearly a moment when the interpreter shifts from being an animator to principal. This shift of role is, however, not recognised by the police, who attribute the interjection to the witness and write it down in the statement. Thus, the voice of the interpreter is wrongly attributed to the witness and becomes part of the case file.

It has to be noted that even though all three statements (S1, S1a, S1b) use non-standard English grammar, the degree of "markedness" differs between them and while statement S1b does contain some non-standard uses of English grammar, in particular related to the use of past tense and articles, it is clearly more precise than S1 and S1a. The distinct style of S1b, which was written down by a different police officer to the other two, does indicate that the degree of police input is not constant and depends on the particular police officer. In fact, from the court data it transpires that PO1, who took statements S1 and S1a was not trained in investigation techniques and only attended basic training in the Garda Training College in

Templemore. PO3, on the other hand, had the rank of a detective, which would suggest he had undergone more training in interviewing techniques. From the data it transpires that the less experienced police officer (PO1) took the statement in a more verbatim manner than the detective Garda (PO3). While the data are not sufficient to claim that more experienced investigators take a more active part in the co-construction of the statements than the less experienced ones, it could be an interesting topic for further research.

One could wonder why the police would sacrifice the clarity and precision required from a statement and try to make a “verbatim” record of the interpreters’ renditions. Research suggests that the opposite strategy is usually adopted and in fact “most of the transcripts produced in courtroom and police contexts, although they purport to be “verbatim”, are heavily weighted towards readability” (Gibbons 2003, p. 31). As Walker (1990 cited in Haworth 2009, p.102)notes:

A transcript on which a reporter has exercised this kind of editorial artistry – one in which grammar has also been corrected, false starts removed, and syntax rearranged – is undeniably more readable than its verbatim version. It is also a transcript in which reality has undeniably been transformed.

Even though Walker’s quote refers to court stenographers, it could apply in the police context, too. Therefore, it is also possible that the Gardaí did not want to “transform the reality” and did their best to reflect the mode of the interaction and the participation of the interpreters in the process.

Another reason why accuracy was chosen over readability could be the fear that the statement in correct English could be disputed in court as not being made by the witness, or rather by the interpreter, the argument being that the statement is written in a language that exceeds the language proficiency of the interpreters and, hence, cannot have been “produced” by them. Eades (2010, p.153) and Coulthard and Johnson (2007, p.138) cite examples in which the statements taken from speakers of English as a second language were contested because the allegedly verbatim record showed English proficiency beyond the production capabilities of the suspect. If the police had noted the statement in standard English in the analysed case, they might have faced accusations that the English proficiency of the interpreters was insufficient to produce what is recorded in the statement. As a result those statements could have been regarded as authored by the police and deemed unreliable.

#### 4.4.2 Spoken language features in a written record of an interview

As discussed before, the statement is taken in a complex mode. It is a record of a conversation (spoken genre) written down as a monologue (written genre), where the interactional character of the interview has been removed. We could see that by replicating the interpreter's pidgin English, the police shed some light on the mode in which the statement was taken. Apart from the copying of interpreters' mistakes in the transcript, in an attempt to keep the statement record "verbatim", the police managed to record a number of features characteristic of spoken language in the written statement. In her model and the analysis of mode, House uses Biber's corpus-based research into spoken and written language. In his research, Biber distinguished several features that are characteristic of conversation (Biber, Conrad and Leech 2002, pp.430-436) such as involved text production, repetition and short clauses.

Due to the fact that the written statements are derived from a spoken genre, they include some of Biber's features of spoken language. One of them is 'involved text production' (House 1997, p.109). In spoken conversation, speakers usually express their personal stance, i.e. feelings, attitudes and evaluation (Biber, Conrad and Leech 2002, p.433). While the text is mainly informational, the marked involvedness of the author in the events described is obvious from a situational context, but also realised in language, i.e. lexical groups relating to the fear discussed under the dimension of field, as well as an expression of the witness's opinion or belief:

S1(34): I was afraid for my life.

S1(111-112): They were worried to hit or kick me cos they think everyone know now, something about this.

S1a(35-37): Bartek I think came to Mullingar because he say it was a safe place, that it was safe for him. He say Police would not bother, cause trouble for him here. Now I know why.

S1a(94): Bartek and Artur were ready to kill someone.

The 'involved text production' results from the original oral mode of text production, but can also be linked to the requirements of genre. The main focus of each interview is the collection and synthesis of evidence. The police are trying to elicit information that will establish whether a crime was committed. Therefore, we can expect a witness narrative to be mainly informational. However, a text is never comprised of just one function, it is always a continuum on the ideational-interpersonal scale. As

Gibbons points out (2003, p.154), witness narratives consist mainly of the ideational function (content) but also include elements of the interpersonal one, expressions which will ‘convince’ the audience that the story is true. Rock (2001, p.44) also lists the use of both emotional and factual information among the goals of each interview. Hatim and Mason refer to it as the multifunctionality of texts and also highlight the fact that each text has a single, overall purpose and the coexisting functions of the text are subordinate to a dominant contextual focus (Hatim and Mason 1990, p.146). Therefore, from the genre discussion we expect the statement to be mainly ideational in function with certain features of an interpersonal or even persuasive dimension, which would make the story more believable and convincing.

Another difference between spoken conversation and written text is that conversation takes place in real time. Therefore, there is pressure on the speakers to produce language quickly, which is reflected in their language behaviour (Biber, Conrad and Leech 2002, p.434). One behaviour is called ‘repairs’. This happens when the speaker stops in the middle and repeats what was said with some correction. The analysed statements include the frequent use of repetitive paraphrases within the same utterance, which Wadensjö (1998, p.147) also identifies as a typical feature of spoken interaction, e.g.:

S1(25-26): I was trying to stop the car, to get out of the car.

S1a(38-140): I had keys to house. Bartek took the keys.

The pressure to produce language “on the spot” is also reflected in the repetitiveness of language. The speakers tend to use well-practised forms and there is a small repertoire of syntactic items (Biber, Conrad and Leech 2002, p.434). The language of the statement is quite simple and vocabulary is related mainly to the nature of the accusations. This includes lexical fields connected with physical violence, e.g.: *kick, hit, beat, bleeding, bruises, hurt*; mental harassment: *curse, shout, call names, bitch, threaten, scream*. Moreover, the complainant described herself as feeling *frightened, scared, afraid, terrified*, and the defendants as *furious* and *angry*. The descriptions of feelings and powerful verbs contribute to the interpersonal function of the statement and are aimed at “convincing” the readers that the story is true, which is one of the goals of a statement (Gibbons 2003, p.154). Furthermore, due to the fact that some of the accusations included rape, there is a group of lexical items related to these

charges: *penis, orgasm, condom, make love, oral, anal* and *vaginal sex*. These lexical items are the only instances of what we could label ‘technical’ vocabulary. Other than that, the text is characterised by simple lexical items used to describe, for instance, items of clothing (*jumper, trousers, top*) or parts of the house (*bedroom, kitchen, stairs*). It also contains colloquial lexical items such as *guys, bum* or *knickers* and vulgar expressions such as *bitch, have shit* or *ass*, so overall the language does not seem to have been “upgraded” (Komter 2003, p.202).

Another characteristic of spoken language related to the pressure of producing language quickly are reduced forms, which are used by the speakers to save time (Biber, Conrad and Leech 2002, p.434). The analysed statements include contracted forms, e.g. *can’t, ’cos, didn’t, don’t, aren’t, wasn’t, till, what’s*. Interestingly enough, no reduced forms appear in statement S1b (see table below), which was written down by PO3 while S1 and S1a were written by PO1. S1b also contains the highest number of full forms despite being significantly shorter (390 words) than the other two statements (2390 and 1800 words). This is yet another indication of the distinct style in which S1b has been written and an indication that the degree of the PO’s participation in the co-construction of the statement is not constant.

Statement	Contracted forms ( <i>didn’t, don’t, couldn’t, can’t, I’m, that’s, aren’t, wasn’t, it’s, what’s</i> )	Full forms ( <i>do not, did not, would not, could not, there is, it is</i> )
S1	20	2
S1a	14	4
S1b	0	5

**Table 4.2 Number of contracted and full forms across statements**

Third, as far as syntactic means are concerned, the statements are characterised by simple structures and relatively short clauses. This is again consistent with Biber’s findings about a small repertoire of syntactic terms in spoken interaction, but stands in contrast to Shuy’s findings quoted above that subsequent versions of the same narrative are usually characterised by longer and more complex sentences.

Again, there are visible differences in the syntax used in S1 and S1a compared to S1b. In S1 and S1a, the average sentence length in the first ten sentences was 8.6 and 8.7 words, respectively. Sentences in statement S1b are nearly twice as long with an

average of 16.1 words per sentence. This can be clearly illustrated by quoting the first sentences from each statement:

S1(10): I came to Ireland a month ago from Poland.

S1a(11-12): Further to statement made on XXXXXX I went to primary school in Mońki for eight years. I go to Secondary school in Mońki for four years

S1b(9-10): On this date at Mullingar Garda Station I have been shown and given a Sim card for mobile phone marked in plastic bag [exhibit 1].

Moreover, S1b is characterized by a higher proportion of complex sentences. The percentage of complex statements amounts to 30.3% in S1, 33.3% in S1a and 45.5% in S1b. The numbers show that in S1b nearly every second sentence is a complex one compared to every third one in S1 and again shows that PO3, who took S1b, had more input on the linguistic makeup of the statement than PO1, who took S1 and S1a.

As mentioned before, witness statements are written down in the first person and not in the question and answer format they are conducted in. They are overt monologues, but there are a number of clues in the text which reflect the interactive character of the original encounter. A straightforward trace of participation is the use of direct addresses to the other participants, e.g.:

S1a(71): The cola bottle I told you about, (...)

S1a(79): These are the clothes I hand you, Declan, today.

S1b(16-17): I have been shown by you two litre plastic Cola bottle by you from paper bag marked [exhibit number].

S1b(21-23): I wish to add that I have been brought by car out Dublin Road with you and have shown you garage on right outside Mullingar that we stopped at on Friday night at about 8 p.m. or 9 p.m.

The use of direct address to the participants of the interaction is one clue which demonstrates that there may be more people present during the construction of the statement.

Another, more indirect trace of the participation and interactional character of an interview can be the use of negatives. While giving a free narrative we tend to say

what happened rather than what did not happen. Coulthard gives an example of a justified negative, which is a logical following of the preceding sentence: *The guys came. I didn't talk to them.* The negative could be termed “justified” because “the guys” were introduced in the witness’s narrative first and the following sentence does not introduce an entirely different topic, but still refers to “the guys”. On the other hand, the following sentences are more likely to have been elicited by a question: *Chris climbed the roof and I followed. Up to then Chris had not said anything.* (Coulthard 2002, p.32). It would be unusual for a person to recall that “Chris had not said anything” so it was probably an answer to a question. In fact as Jonsson discovered, 18% of the suspect turns in a monologic statement were in fact answers to police wh-questions and 19% were confirmations of yes/no questions (Jönsson 1988 cited in Linell and Jönsson 1991, p.424). In the analysed statements, we can find examples of what we could call justified negatives such as:

S1(81-82): He got them because we were going to church. <u>We didn't go to church.</u>
S1a(101-102): After shopping on Sunday in Lidl we give lift to Joanna, Barbara and Jan. <u>I not go into Joanna house.</u>

However, there are also a number of sentence sequences in which the negative is hard to justify and, hence, we can surmise that at least some of the following examples result from the mode of the statement-taking session and could have been simple confirmations of yes/no answers:

S1a(37-38): On Friday after I was beat Bartek took my Sim card. <u>I can't remember the number of my phone.</u>
S1a(64): Bartek tell me that he look for cheap hostel. <u>I can't remember streets.</u>
S1a(95-96): On Sunday I was forced to drink white wine, <u>I can't remember the name,</u> two bottles between three.
S1(35-36): When we arrived in Dublin the bus station was closed. Bartek was furious. <u>I can't remember the journey back</u> from Dublin.
S1(114-115): At 8.30am Bartek made me phone Wanda on his phone. <u>I don't remember the number of either phone.</u>

It is more difficult to trace answers to wh-questions, but apart from unjustified negatives, Hall identifies traces of underlying police questions in confirmation

questions (2008, pp.80-81). For instance, the police may ask the witness: *Do you agree that...? Is it correct that...?* The latter version is characteristic of the British police and is a common formulaic expression (Hall 2008, p.81). It seems to be used by the Gardaí in the analysed data in a particular context – to confirm that the statement was read over to the witness and that it was correct.

S1(132-133): This statement has been read over to me and is correct.

S1a(106): This statement is correct.

S1b(20-21): This statement has been read over to me and it is correct

All of the above examples come from the closing of each statement, in which the Garda asks the witness to read the statement and sign it if it is correct. In an interpreter-mediated interview, the interpreter usually performs a sight translation of the statement at the end and the witness is invited to sign it. Therefore, the sentences above are an important part of an interview, in which the mode of the statement-taking session is confirmed and the Garda officer puts down in writing that the protocol of reading the statement back to the witness was followed. However, S1a does not indicate that the statement was read back and it only mentions that the statement is correct. Interestingly, the witness in this case later testifies in court that not everything had been read back by the interpreter for her.

TRIAL, DAY 7, p.79-81

W<sup>7</sup>: Yes, that's where my signatures that I've signed under the English version that weren't translated to me into Polish.

(...)

DC: When you had finished describing everything in Polish and after that had all been written down in English, did the policeman read it back sentence by sentence in English?

W: No.

DC: Was each sentence that they had written on the page put into Polish for your benefit by INT1 or INT2?

---

<sup>7</sup> Both the complainant and the defendant spoke in court through the interpreter and it is the interpreter's words that are recorded in the official court transcript.



W: I don't know if all of it was read to me. INT1 decided that everything what I had said was written down. She didn't read everything what was written down in English, she didn't read it word by word. She didn't interpret it into Polish.

In the above fragment the witness says that not everything was interpreted back to her at the end before she signed the statement in English<sup>8</sup>. However, PO1, who took S1 and S1a says that the protocol was followed and the statements were read back to the witness (TRIAL, DAY 17, p.20). Therefore, we have two opposing versions, but the fact that S1a does not say that the statement was read back to the witness supports the witness's version. However, in the absence of a recording, it is impossible to verify this, which highlights the drawbacks of the procedure and may negatively impact the credibility of the witness in the eyes of the jury.

To sum up, this part of the analysis focused on the mode in which the statements were taken and demonstrated the attempts of the police to record the statement in a verbatim manner. Evidence of this includes the preservation of interpreters' grammatical and lexical mistakes, as well as features of spoken language. The written statements contained typical features of spoken language as outlined by Biber and analysed by House in her analysis of mode, i.e. involved text production, repetition, vocatives, ambiguities, colloquialisms, the use of contracted forms and short, simple sentences. The spoken features of the statements were manifested mainly in S1 and S1a while S1b was more formal, precise and had visibly longer sentences, as well as a significantly higher percentage of complex ones written in standard English. As S1b was taken by a different police officer (PO3), this could indicate that he took a more active role in the co-construction of the record than PO1.

#### **4.5 Influence of genre on the language used in an interpreted witness statement**

As discussed at the beginning of the chapter, there is a constant “tension between two incompatible and competing criteria for transcription, namely ‘readability’ and ‘accuracy’” and it is impossible to reconcile the two (Gibbons 2003, p.30) due to the

---

<sup>8</sup> On 25<sup>th</sup> September during ITIA CPD seminar, Superintendent Healy reported about plans to change the current procedure in which the interpreter would write down a foreign language version to be signed by the witness. However, the author received no reply as to how often the new system is used and which language version will be counted as primary evidence by the court.

differences between speech and writing. Moreover, due to the nature of the witness statement as a genre, and its purpose – to collect evidence – the statement needs to contain legally relevant information, too. Consequently, there is an added “tension between the recording of the suspect’s<sup>9</sup> ‘own words’ and the inclusion of legally relevant information” (Komter 2003, p.209). This section will discuss how the need to comply with the genre requirements of the statement and include “legally relevant information”, on the one hand, is reconciled with the need to record the statement in a verbatim manner, on the other. In the previous section we pointed out features of conversational grammar in the apparent monologue of the witness. Additionally, we described the features of pidgin English which indicate the police officers’ strategy to reflect the interpreters’ poor English as closely as possible. This section will focus on the requirements of a witness statement as a genre and on the traces of police officers’ participation resulting from the goals a witness statement has to fulfil.

#### **4.5.1 Legally relevant perspective in a “verbatim” statement – constraints of genre**

This section will focus on the "deblurring" of source distinctions and will try to find the traces of police participation in the analysed data. Because a witness statement is a genre with a clearly defined purpose, it is the responsibility of the police to make it clear in the statement that an offence was committed. This leads us to believe that the verbatim statement analysed above will possibly contain a legally relevant perspective introduced by the police. In order to find the underlying police participation in the statement written in the first person, the requirements of the genre of a witness statement will be discussed first.

#### **4.5.2 Genre in House’s analysis**

In her translation quality assessment (TQA) model House defines genre as a term that is superordinate to register. Consequently, certain genres are characterised and realised by certain registers. As Martin says (1992), genre constrains register and, for instance, not all registers are appropriate for a witness statement. The importance of

---

<sup>9</sup> Komter talks about the suspect’s own words as in the Dutch legal proceedings, suspect interviews are written down as monologues, which is how witness statements in Ireland are taken.

genre for translation quality assessment lies in the fact that the assessment of each text will be related to our expectations as to what such a text type should look like, based on our experience and knowledge of other examples of a given genre. As House says, “genre is a socially established category characterised in terms of occurrence of use, source and a communicative purpose or any combination of these” (House 1997, p.107). To sum up House’s discussion, we can say that the choice of genre is typically realised in the form of register, which in turn is realised in the language use.

#### **4.5.3 Genre as a prototype**

Thompson describes genre as “register plus purpose” (2004, p.43). What he means is that genre looks at the language and how it is used to achieve a specific purpose. The purpose is usually achieved in recognizable stages, in a highly structured manner. This would include for instance, the separate stages of a witness-statement-taking session that the police officer follows in order to collect the evidence. Gibbons describes genre in a similar manner as an “overall plan for a discourse type involving a series of steps/stages” (2003, p.11). Swales (1990, p.51) as well as Coulthard and Johnson (2007) pinpoint the fact that genres are like prototypes, i.e. they include certain characteristic features of a given text, typical lexis or particular sections, but they can be either followed or modified. Similarly, Halliday and Hasan (1989, p.52) say that an individual text is only a manifestation of a certain genre and because of that may involve some but not all the features of a given text type. The same point is described by Gibbons who calls this idea “the flexibility of genres” (2003, p.130), and Trosborg (1997), who points out that genre analysis has been concerned with establishing characteristics of particular types of text (Trosborg 1997, p.vii).

#### **4.5.4 Legal genres**

In his work on legal genres, Bhatia (2006) states that the function of legal genres is to maintain a model world of rights and obligations (2006, p.1). He distinguishes between primary, secondary, enabling (pedagogic) and target legal genres.

Legislation belongs to the first group, judgements and cases are examples of secondary genres and agreements, contracts or affidavits belong to target genres. In addition, we have a category of legal textbooks and other legal texts written and used for pedagogical purposes in law schools, for instance, which are examples of enabling genres. Bhatia does not specifically mention witness statements in his genre system but they appear to fit into the secondary genre, together with courtroom interaction. According to Bhatia, all legal genres should be precise and clear and the language should be used in an unambiguous manner (2006, p.4). This is in line with Johnson's list of necessary features of a witness/suspect interview, which include paraphrase, near paraphrase and repetition. By using paraphrase and repetition the author of the text confirms the offence and linguistically facilitates achieving the goal of the interview (Johnson 2006, p.666). These features of a statement remind us that witness statements, along with courtroom interaction, are legal genres "embedded in a formalized professional legal setting" (2006, p.5). Gibbons (2003) presents a comprehensive discussion of legal genres and includes the witness statement in his typology. Witness statements, together with suspect interviews are classified as "dynamic pre-trial genres" (Gibbons 2003, p.131). They are dynamic genres because every witness statement is different, unlike a pre-existing codified document such as a statute, whose contents remain the same even though it may be used in a range of different cases.

A police interview is a hybrid genre (Johnson 2006, p.669) and consists of lay, police and legislative language. This hybridity results from the tension between making a verbatim transcript and achieving the intended goal of an interview. Johnson notes that one of the purposes of a police interview is the collection of accurate facts that can be used as evidence (2006, p.662). Similarly, Gibbons (2003, p.95) points out that the purpose of questions is to elicit information and obtain confirmation of a particular version of events. Coulthard and Johnson (2007, p.80) stress that police interviews are goal-focused and their primary aim lies in the collection and synthesis of evidence into a written statement that will be used in court. According to Rock (2001, p.44), a witness statement has multiple goals, such as extraction, communication, use of emotional and factual information. Aldridge (2007, p.65) identifies the gathering of information and the quest to seek out a reliable and credible account of events as the main aims of a police interview. Haworth (2009,

p.91) distinguishes two purposes of a police interview: on the one hand an interview is indeed a means of collecting evidence, but on the other it becomes a piece of evidence itself.

To sum up, the genre of the witness statement and its role in the legal process influence its content and the language used. In the previous section we highlighted the police officers' attempts to write the statement down in a verbatim manner. Despite the fact that the police try to use the witness's (or, in this study, the interpreter's) own words, the statement is subject to the constraints of the genre and needs to function as a legal text. The following section will present the evidence of police participation in the statement, which results from the requirements of the genre and from the mode in which witness statements are taken.

#### **4.5.5 Linguistic manifestations of police participation resulting from genre**

Coulthard and Johnson (2007, p.57) discuss the genre of police interviews and witness statements pointing out its hybridity, i.e. on the one hand we have informal chat in the rapport building stage (Aldridge 2007, p.67), in particular in interviews with children, and other vulnerable witnesses, and on the other hand we have the reading of the police caution and formulaic information on recording. Moreover, the police are often obliged to incorporate legislation into the interviews with the future audience in mind because the statement needs to provide sufficient information to establish that an offence was committed and make it clear what charges the person faces (Johnson 2006, p.666).

##### **4.5.5.1 Establishing that a crime has been committed – consent and theft**

In the case of rape accusations, the issue of consent is crucial. As Peter Tiersma observes in his article on the different interpretations of 'consent' in state courts in the United States over the years: "The issue of consent refuses to go away. It probably never will. The reason is simple. If we leave out the cases of underage victims or people with mental problems, consent is what distinguishes rape from ordinary sex." (Tiersma 2007, p.90). In the legislation relating to rape, consent is

always present. For instance, the Irish Criminal Law (Rape) Act, 1981 defines the meaning of rape in the following manner (my underlining):

2.—(1) A man commits rape if—  
( a ) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, (...)

Moreover, section 9 of the more recent Criminal Law (Rape) (Amendment) Act, 1990 provides further specification of the meaning of consent:

9. —It is hereby declared that in relation to an offence that consists of or includes the doing of an act to a person without the consent of that person any failure or omission by that person to offer resistance to the act does not of itself constitute consent to the act.

Therefore, to make the statement “legally relevant” the police officers need to make sure that the statement clearly says that the witness did not consent to having sexual intercourse and, second, that the defendant knew that the complainant did not consent. Having analysed the statements, we note that the issue of consent, or rather the lack of consent, is spelled out numerous times in the first statement. If the record was indeed verbatim, the witness would not repeat the lack of consent numerous times as it would have been presumed obvious and not something that needs to be repeated over again.

S1(45): I didn't want to do it, I was afraid to say no.

S1(101): I didn't not [sic] want to have sex. I was so afraid to say no.

S1(105): I did not want to. I never said yes.

S1(128-129): The last time I made love with Bartek when I want to was a week before what happened on Friday because I was getting afraid of him.

S1(131-132): I was always afraid to say no to sex since Friday cos the [sic] beat me so much in car.

If the police conduct a series of interviews with the same witness, each of them usually has its own purpose (Gibbons 2003, p.131). The first interview can be an explanatory one, followed by more detailed ones and a final, confirmatory interview. Each of the interviews forms part of a larger more purposeful sequence. If we considered S1 as a part of an interview series, we could say that the purpose of this particular one was to establish whether an offence occurred. The main body of S1 is 133 lines long and we can see that in the closing of the interview (lines 131-132)

quoted above, the police officer confirms the offence and “packages” the charges to reinforce the purpose of the interview. The closing passage clearly describes the complainant’s lack of consent for sex, indicated by the underlined phrases “made love when I want to” and “I was afraid to say no to sex”. Taking the above into consideration, we can see that the first statement has a very clear conclusion, which refers to the accusations being investigated and fulfils the goal of the interview. In this way, the police officers clearly defined the purpose of the interview, bearing in mind the next stages of the investigation, such as formulating the charges.

If we focus on the fact that each statement needs to have a clearly defined purpose, statement S1b was taken by PO3, who acted as an exhibits officer. Exhibits officer collects and manages all the exhibits for the purpose of the trial. Consequently, PO3’s statement deals mainly with the exhibits and in particular focuses on a SIM card and money that were taken from the complainant:

S1b (11-12): It has to be my Sim card that Bartek steal from my phone in the house O’Connell Street before we travelled to Dublin.

S1b (13-14) In earlier statements to Police I said the two men steal money from me, this happened on Friday at the house.

In the second example, the witness mentions that she told the police that the money was stolen from her. As a matter of fact, the words “steal” or “theft” were never used in the previous statements:

S1a (39): He also took the money I earned on Friday, €40.

Similarly, the story of the SIM card being taken from the complainant has been mentioned before in a more neutral way, using the same verb “to take”:

S1a (38): On Friday after I was beat Bartek took my Sim card.

The clear shift from “taking” to “stealing” is in line with the previous discussion on “legally relevant perspective” and establishing that a crime has been committed. It is possible that having reviewed the previous two statements, the police officers concluded that the incidents with the SIM card and the money did not clearly say that the items were taken without the witness’s consent and wanted to clarify it in the last statement. This discussion shows that despite the fact that witness statements deal with past events, they also look forward, anticipating the scrutiny of the legal

professionals in the criminal law process (Komter 2001 cited by Komter 2002, p.174). It also indicates that what may seem as a verbatim transcript written in pidgin English is a narrative co-constructed by the police, who are trying to comply with the requirements of the genre.

#### **4.5.5.2 Policespeak**

Furthermore, the participation of the police can be traced in the use of what Fox calls “policespeak” (1993, pp.192-194), i.e. the use of characteristic, formal vocabulary and set phrases, often taken directly from legislation. An example of policespeak could be the use of the word *vehicle* instead of *car*. Policespeak usually reflects the purpose of an interview, which needs to be exact and precise. However, the focus on precision often results in over-elaboration such as in the use of the expression *male person* in relation to a man (Eades 2010, p.154). The hybrid style of police interview records and different features of policespeak are widely discussed by researchers of monolingual police interviews (Linell and Jönsson 1991; Coulthard 1994, 2002, 2004; Coulthard and Johnson 2007, pp.173-180; Gibbons 2003; Berk-Seligson 2009, pp.179-2000; Hall 2008; Eades 2010, pp.154). While researchers agree that policespeak is present in witnesses’ and suspects’ statements, the implications for the criminal justice system have not been studied due to the difficulty of obtaining court data from the corresponding trials (Haworth 2009, p.62). Therefore, the present project may make a valuable contribution to the field as the data collected allow us to study the statements in relation to the corresponding trial (see Chapter 6).

##### **4.5.5.2.1 Postpositioning of temporal “then”**

One of the features of policespeak is the postpositioning of temporal “then” (Eades 2010, p.153), i.e. when the temporal adverb “then” is placed after the subject, such as in the sentence: *He then left the house*. This feature is related to the purpose of the interview and the focus on the sequence in which the described events occurred. Hall notes that such a use of ‘then’ is grammatically marked in general English, but not as marked in police reports, where it is used to highlight the importance of a particular sequential placement of events (2008, p.81). Corpus-based analysis of *then I* and *I then* occurrences carried out by Fox (1993, pp.186-187) revealed that *I then* appeared



24 times in a written corpus and 9 times in a spoken corpus compared to as many as 235 and 202 occurrences of *then I*. Fox concluded that “you would not expect [the postposition of temporal “then”] to occur in statements given by lay witnesses, as they have not been trained in ‘policeseak’ of this kind” (1993, p.186).

We could assume that it would be even less likely to find a subject immediately followed by ‘then’ in a statement given by a lay witness who does not speak English and who gives her account through interpreters, who in this case are clearly not fluent in English either. However, such a structure does occur in S1b:

S1b(16): Bartek then grab the money €40, two twenties.

Again it is worth noting that it occurs in the statement taken by the detective (PO3), who took a more active part in the co-construction of the statement S1b taken by him, which has been discussed in the previous sections. Moreover, the temporal adverb “then” occurs ten times in the three statements given by the witness, including five times when it comes after, but not directly after, the subject.

S1(33): Artur drove and I had to do it to Bartek then.

S1(49-50): I was in the kitchen first, then after breakfast was ready the [sic] came down.

S1(122): I go then to meet Bartek for lunch, I cycle.

S1(126-127): Joanna and Barbara call then, with them was Jan Gradoń.

S1a(12): I go to studies then in Białystok.

This clearly indicates that the statement may not be as verbatim as it may appear and that the overt monologue is a collaborative narrative. As the researcher had access to the entire book of evidence, it was possible to check if any *subject + then* phrases occur in the statement of PO3, the police officer who took down S1b. The statement made by PO3, marked S21, contains three instances of *he then*, which only confirms that this form is frequently used in the police reporting style of PO3:

S21: Sgt. Collins then cautioned the prisoner Bartek Kowalski in the usual manner.

S21: Sgt. Collins then asked Bartek Kowalski a number of questions in my presence and when interpreted the prisoner made no reply.

S21: The prisoner then signed the memo.

The table below compares the occurrences of “then” in a lay witness’s oral statement and a written statement of a police officer, as reported by Coulthard (1994) with the data from S1, S1a, S1b (table adapted from Eades 2010, pp.154 based on Coulthard 1994).

Corpus	Police record of W’s interpreted statements (S1, S1a, S1b)	Ordinary witness oral statement (Coulthard, 1994)	Police officer written statement (Coulthard, 1994)
Total words	4613	930	2270
Temporal <i>then</i>	Once every 461 words	Once in 930 words	Once every 119 words

**Table 4.3 The use of temporal “then” across statements**

We can see that the temporal *then* occurs once every 461 words, which is approximately twice as often as in a lay witness oral statement. This is a clear sign that the apparent accuracy of the statement and the faithful copying of all the linguistic features does not necessarily mean that the statement is “verbatim”.

#### 4.5.5.2.2 Passive voice

Another grammatical feature of policespeak identified by Fox is the frequent use of passive, in particular accompanied by a prepositional phrase indicating the agent. This feature again reflects the desire to achieve precise information. And yet again, we can find two examples of *passive + agent* structure in the complainant’s statements:

S1(76): There was never condom used by anyone.

S1b(16-17): I have been shown by you two litre plastic Cola bottle.

The use of the passive voice with prepositional phrases would in ‘normalspeak’ be replaced by the active voice and would be uncommon for a lay witness. Apart from the marked use of passive with a prepositional phrase, there are examples of regular passive use. The table below presents the use of passive voice in each of the statements taken from W.

Statement	S1	S1a	S1b
Total words	2395	1828	390
Passive+agent	1	0	1
Passive (other)	3	8	3
Passive occurrence (both)	Once every 598 words	Once every 228 words	Once every 97 words

**Table 4.4 The use of passive across statements**

It can be seen from the table that the passive occurs most frequently in S1b – once every 97 words compared to once every 598 words in S1. This is yet another distinctive feature of S1b, which uses the passive significantly more. Moreover, the data from the W's statements has been compared with the statement S21, given and written down by PO3, who took the statement S1b. Passive constructions – both with and without prepositional phrases occur regularly in the statement he has taken down, e.g.:

At the termination of the interview, the contents of memo were read over to Bartek Kowalski by Sgt. Collins through the interpreter.

It was pointed out to him that they had recently been cut (...)

This confirms the general findings of previous research that passive constructions are a common feature of police language. Secondly, the frequent occurrence of passive constructions in an interpreted statement taken from the non-English speaking complainant may be another reason to shed doubt on whether the transcript is verbatim. Finally, the finding that the passive is more common in S1b, corroborates previous findings that PO3 took a more active part in scripting the statement than PO1 and PO2.

#### **4.5.5.2.3 Formal language**

Fox also discusses the differences in vocabulary between police style and lay witness style, indicating that policespeak vocabulary often includes such words as 'commence', 'continue', 'tender' (in evidence), 'undergo' and 'enumerate'. None of the items listed by Fox appear in the complainant's statements, but some of the lexical items may seem of significantly higher, formal register compared to the simple vocabulary used throughout the text and the poor English of the interpreters.

S1(73): He was covered, a cover pain or coverlet.  
S1(75): I did it cos I was always scared to disobey.  
S1(132): I give permission to hospital to give my records to police in this case

S1a(11): Further to statement made on [date]...  
S1a(48-49): I wasn't allowed to get anything else.

S1b(10): I have fitted this card to my Siemens mobile phone.  
S1b(10-11): I have entered my secret pin code to my phone and this card words on my phone.  
S1b(21): I wish to add that I have been brought by car out Dublin Road, (...)

It is worth noting that S1b contains most of the formal vocabulary, as well as relatively complex grammatical structures such as the use of passive voice in the present perfect tense with irregular verbs as quoted in S1b(9-10) and S1b(21) above. The correct use of the past participle in a passive construction seems inconsistent with the previous example, which indicated that the interpreters were not familiar with past forms of verbs, in particular the irregular ones, as in S1(30-31):

S1(30-31): They said to me if I don't find it, I will be hitted more

The inconsistencies in the use of grammar serve as another indication of collaboration during the taking of the statement. The above discussion of policespeak demonstrated the peculiarities of the police record of the interpreted witness statement. All statements, despite being apparently verbatim, demonstrate a hybrid linguistic style, which suggests that the record was authored by more than one person.

#### **4.5.5.2.4 Policespeak and accommodation theory**

As far as policespeak is concerned, we need to take into account the effects of the “accommodation theory” of style variation (Giles and Powersland 1975, p.157). In principle, the theory says that speakers change their style of speaking depending on their intended audience and in order to gain social approval (Haworth 2009, p.36). Therefore, it is possible that some of the features of policespeak were in fact produced by the witness or by the interpreters themselves. But accommodation theory works both ways and it is also possible that the police adapt their style to fulfil certain goals.

For instance, in his description of the structure of a witness statement, Gibbons (2003, p.145) states that the interview starts with a rapport-building stage. The main objective of this stage is to help the witness feel comfortable and relaxed, which may be crucial for the successful gathering of information. This part usually involves questions unrelated to the case and may include offering the witness a cup of tea and engaging in small talk; it is not usually included in the notes from the interview. To build a rapport police may also use more informal language, which conveys an impression of closeness and solidarity (Berk-Seligson 2009, p.122). Hall (2008) gives an interesting example in which the police call the suspect “mate” to build a rapport, which is then picked up by the suspect, who accommodates and addresses the police in the same way (Hall 2008, p.88). Therefore, traces of policespeak or colloquial speech in a written statement may not necessarily come from the expected source, but may be a result of accommodation. In the analysed data, a possible example of accommodation may be when the Garda officer is being addressed by his first name:

S1a(79): These are the clothes I hand you, Declan, today.

It is possible that the Gardaí were calling the witness and the interpreters by their first names to relieve the tension and build a rapport. This term of address is then reciprocated by either the witness or the interpreter. Due to the blurring of source distinctions it is impossible to say who was the author of this form of address. However, in Poland the custom of calling people by their first names is only acceptable among friends and in highly informal settings. Therefore, it is more likely that the familiar form of address came from the interpreters, in particular when we take into account the fact that the events took place in a small town and it is possible that the participants had met or known each other before.

Hall gives us another interesting example of accommodation in which the suspect uses the word “sustain” in a marked way, which suggests it is not part of their usual vocabulary (Hall, 2008:91):

*Police officer: Can you tell me what injuries she received as a result of that fall?*

*Suspect: (...) I said, “What...,” I said, “What did you **sustain**?”*

It appears that by using the word “sustain” the suspect is trying to accommodate to the style used by the police, but does so in an awkward way. It appears that a similar

example of accommodation occurs in the analysed data when the witness or the interpreter mixes the formal and informal terms of address:

S1a(105-106): The bars “Prety” I see Bartek and Artur with, these are the bars that Garda Declan has shown me.

The expression “Garda Declan”, which resulted from mixing the rank and the first name together sounds unnatural and awkward. Again, it is impossible to establish whether it was the witness’s or the interpreter’s contribution.

#### **4.6 A police record of an interpreted witness statement within House’s model**

To sum up the present discussion, let us return to House’s model, which formed a theoretical framework for the discussion. In the analysed case we can observe the tension between conflicting constraints of mode and genre. On the one hand, the police were trying to reflect the mode of the statement and note the pidgin English of the interpreters. On the other hand they were aware of the need to comply with the requirements of genre and to make sure that the witness statement they were taking would fulfil its overall goal. As a result, the text is an apparent verbatim record of a spoken conversation transformed into a written monologue. We can trace the features of the spoken genre in the language used, as well as the participation of the interpreters (non-standard English) and police officers (direct address forms). We can also trace the language features of policespeak and overelaboration, which reflect the pressure to give the statement a legally relevant perspective. As a result, the statement is a curious mix of language, which can be understood when we analyse it in relation to the situational context of the interaction.

The dimension of field (see section 3.2 in Chapter 3 for details) feeds into the ideational function as the witness narrative clearly focuses on ‘telling the story’. On field, the ideational component is strongly marked as the story is a description of the events. The account is largely informative with some examples of interpersonal comments, though these are consistent with the genre of the witness statement. However, the personal narrative is not easily comprehensible due to mistakes and non-standard English with its numerous grammatical and lexical mistakes, which

weaken the ideational function of the text and provide us with the clues about the mode of text production.

Certain components of the dimension of field contribute to the interpersonal function. The lexical items connected with the feeling of fear on the part of the complainant make the reader feel for the author and the story is, as a result, more convincing. The message that the complainant was scared and afraid and that the defendants were angry or furious is repeated a number of times, which reinforces the information for the reader and contributes to the interpersonal function of the text. The simple and short clauses, in particular in statements S1 and S1a, should make the text easier to read. This goal is not achieved due to the interpreters' grammatical and lexical mistakes.

The dimension of mode is crucial in the analysis of the present data. The complex mode and monologue character of the statement contribute to the ideational function. The text does not try to engage the reader in any sort of interaction, the direct forms of address are rare and, while they reveal the presence of police officers in the creation of the text, they do not involve the reader. However, the mode in which the statement was taken influences all the other dimensions. Due to the poor English of the interpreters and the attempts of the Garda officers to write the statement down as verbatim as possible, the statement is not unambiguous, as would be expected from the genre requirements. It is also due to the dimension of mode that the ideational function of the text is weakened because, due to the mistakes, the reader needs to put more effort into following the story. Finally, the dimension of mode influences the tenor of the text, in which the familiar forms of address in relation to the police officer (*Garda Declan*) are most likely due to the interpreters' input. Therefore, the complex mode in which an interpreted statement is taken and the fact that it is designed for a future audience in the courtroom greatly impacted on the linguistic makeup of the text and on all other dimensions used in the analysis.

#### **4.6.1 Statement of function**

To sum up, a careful analysis of the witness statement shows that the text consists of both ideational and interpersonal components. The genre of the text – a witness statement – determines the priority of the ideational function. But the interpersonal component is also present, particularly in the emotionally involved comments made by the witness about the feelings of fear and being threatened. To make the story more believable and convincing the witness repeats a number of times that she was scared and that the defendants were dangerous and angry.

However, the analysis shows that the mode in which the statement was taken significantly distorts the functions of the analysed statements. First of all, the informal style, colloquial expressions and familiar forms of address strengthen the interpersonal function. At the same time, the non-standard use of English also results from the mode and this feature weakens the interpersonal function. The interpreters' pidgin English, which the Gardaí tried to retain in the record of the statement, make the story less comprehensible. A greater effort on the part of the reader is required to understand the message and even with the reader's cooperation, parts of the statement remain unclear.

To conclude, the analysed records of interpreted witness statements are not typical examples of the genre, but clearly reflect the difficulty in writing a verbatim record of a witness's words. The police record is the third generation of the witness's oral story, which has been de- and recontextualised by the interpreters first and then by the police before it was transformed into a written narrative. In the process of taking the statement, the three voices were merged into a first-person narrative, which is attributed to the witness. The textual analysis in this chapter clearly demonstrated that an interpreted witness statement is a collaborative story with clear linguistic evidence of police and interpreters' participation.



#### **4.7 Conclusion**

As seen from the above discussion, recording a witness statement in writing in a verbatim manner is subject to the constraints of the genre. The constant struggle of the police to construct a verbatim yet readable statement which will fulfil the interview goal, becomes even more challenging when an interpreter is involved. Another level of de- and recontextualisation takes place and the resulting statement contains a “curious mix of legal phrases and colloquialisms” (Komter, 2003, p.201) with the overlapping voices of the witness, the interpreter and the police officer. The three sources of information are blurred in one statement.

A considerable body of literature has been written on monolingual witness statements and the distortion that may occur when the story is constructed. In this chapter we have also tried to demonstrate that co-construction takes place during interpreted witness interviews as well. However, little research has been done on the impact of these distortions on the legal process. Rock (2010, p.137) stresses that so far mainly the potential effect of co-construction in cross-examination has been examined and this has not been backed up by real examples. In fact, some degree of co-construction may be legitimate and desirable. A story produced freely by a witness may be unusable for the purpose of the investigation. Therefore, once we have established that the statement is co-constructed, the challenge is to extend the investigation into the courtroom and establish whether the co-construction of the statement by the police and the interpreters has an impact on the examination of the witness in court.

To find out whether different story generations have any impact on an actual trial, it would be necessary to trace the data from an interview room to the courtroom. As Haworth notes, there is a major difficulty in collecting data from all relevant stages of a single case (Haworth 2009, p.62). Even if one gained access to police statements, it would be very difficult to gain access to the court data from the corresponding trial, presuming that a trial even took place. On the other hand, one could start by observing trials and then try to access the police statements afterwards. It would again be challenging to obtain access to the data from the courts and from the police about a given case, but even if that were successful, it could take a considerable amount of time to come across useful data (Haworth 2009, p.62).

In terms of data access, the author of the present study was extremely fortunate to gain access to both the interview data and the transcripts from the corresponding trial. So far, in terms of implications for the trial, we have managed to show in section 4.4.2 that the written statement is treated by the court as a direct representation of what was said by the witness to the police even though we have proven that it is a collaborative narrative. Further implications of this collaboration for the criminal justice system will be discussed in Chapter 6. However, before that, the next chapter will discuss another instance of recontextualisation of the data discussed in this chapter, which takes place during the translation of these witness statements into Polish. The Polish translations of the statements were provided for the accused in order to comply with the provisions of the the Council of Europe 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR). In the next chapter, the recontextualisation of the witness's story will be further discussed following the framework of House's translation assessment model. Similarly to this chapter, the discussion will focus on the presentation of results rather than on the method itself.

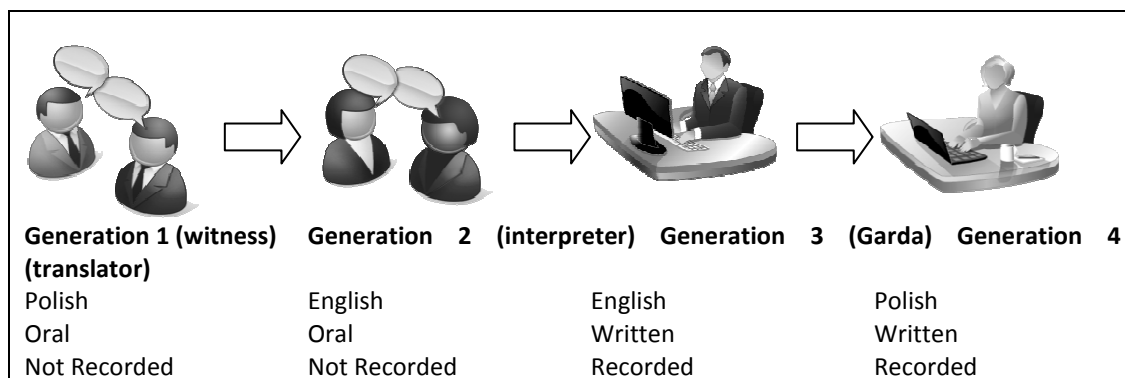
# Chapter 5: Translations of interpreted records of witness statements

## 5.1 Introduction

This chapter follows the police interview data in its journey through the legal process. In the previous chapter, the record of the interpreted statement was analysed. Now we know that on the basis of all the evidence collected in the pre-trial stage, including S1, S1a and S1b, it was decided that there was sufficient evidence for the case to go to trial. But before we move to the courtroom, let us look at one more level of recontextualisation, i.e. the translation of the English language statements in English into the defendant's mother tongue, Polish.

## 5.2 Translation of documents

As in section 2.2, the right to the free assistance of an interpreter was extended in 1980 in the judgement of the European Court of Human Rights in the case of Luedicke, Belkacem and Koç v. Federal Republic of Germany to include translations of necessary documents. In Ireland, the collection of written evidence, called the book of evidence, is usually translated for non-English speaking defendants. This creates another generation of the same story, in this case in the same language as the witness's original narrative. The process of story generations is presented in figure 5.1.



**Figure 5.1 Recontextualisations of the witness's story**

According to the DPP's Office<sup>10</sup> the translation of the statements is organised by the defending solicitor, but the translation is not included in any official case files and the English version stands as an exhibit in court. The process of translating the statements and the fact that the witness signs a version in English seems to be unclear even for the judge and prosecution in court. On day seven of the trial, the judge and the defence counsel demonstrate their lack of knowledge regarding the exact procedure:

TRIAL, DAY 7, p.77-78

J: Well, produce them to her. At least have them produced physically to her and ask her, did she make these statements, the Polish versions and the English versions. The English version won't be - they'll have a signature on the original.

DC: Can we have the original of the statements as signed? Perhaps we'll just get that out of the way at this stage.

EXHIBIT'S OFFICER: I don't have the Polish version My Lord.

J: Is there a Polish translation do you know?

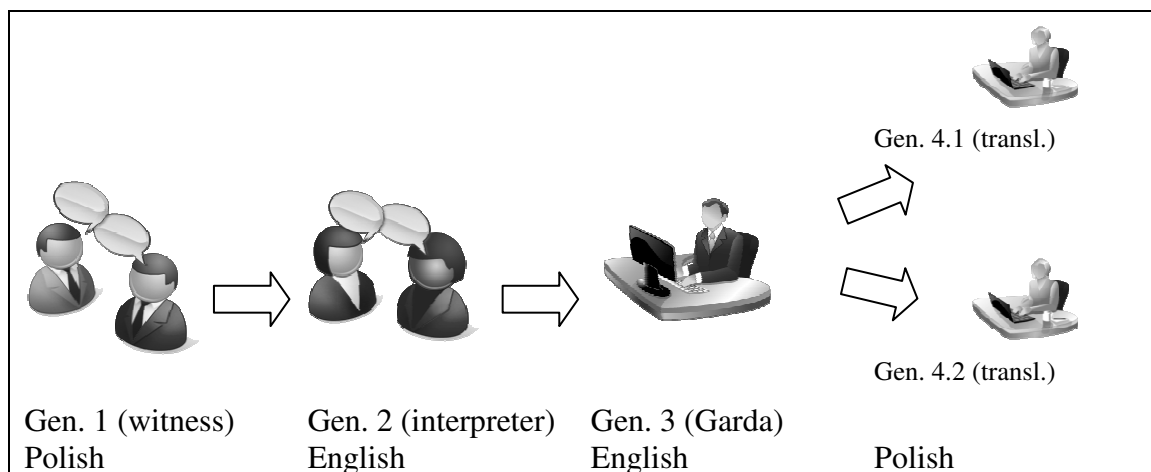
EXHIBIT'S OFFICER: I can ask.

DC: There are written copies, typed written Polish versions.

It is clear from the above excerpt from the trial that the Polish statements are not part of the exhibits because the exhibits officer does not have them on file. Moreover, the judge does not seem to be familiar with the procedure of taking the statement and the fact that only statements in English are available to the witness at the police station. However, as mentioned before, to comply with ECHR, the statements need to be translated into the defendant's mother tongue, in this case into Polish. This is the fourth generation of the story, which is de- and recontextualised by the translator, usually without access to the context of original encounter or the authors of the text. In the analysed case, however, two sets of translations were provided for the defendant.

---

<sup>10</sup> As stated in a telephone conversation with the DPP official on 4th December 2008.



**Figure 5.2 Recontextualisations of the witness’s story in the analysed case**

Consequently, two fourth generation narratives were created. The translations of the book of evidence are provided to the defendant by their solicitor and in the analysed case two separate sets of translations were made for the defendant. One set of translations (T) was part of the book of evidence bound together with translations of all the other witnesses’ statements and the other translation of S1, S1a and S1b (marked T1, T1a, T1b) was given to the defendant on separate sheets of paper. The exact reason why this happened is unknown, but we know that the defendant had two legal teams before he decided to represent himself. Therefore, it is likely that one of the defence teams had a separate translation made for him, unaware that the statement was already translated.

Consequently, we have the three statements in English, which were analysed in Chapter 4, marked S1, S1a and S1b. We also have two sets of Polish translations now, which are marked T for the translation included in the book of evidence and T1, T1a, T1b for the translations supplied on separate sheets of paper, which correspond to S1, S1a and S1b. The translation in the book of evidence is marked as a single text (T) because it merges all three English statements into a single text, while T1, T1a and T1b are translations of the corresponding statements in English. Quotations will be organised in the same way as in the previous chapter, i.e. the line number of the given text appears in brackets. For instance T(23) refers to line 23 of the translation in the book of evidence and T1a(50) refers to line 50 in the translations of S1a provided to the defendant on individual sheets of paper.

### 5.3 Fourth story generations

In the previous chapter, we analysed police records of interpreted witness statements, which were the third generations of the original witness's story. Due to the lack of recording, we were looking for police and interpreters' participation in the apparent verbatim statements to subsequently draw clues from the distinctive features of policespeak, spoken language and the interpreters' own struggles with the English language. It was, however, not possible to compare our findings with the original witness's words or the interpreters' renditions as neither the witness's voice nor the interpreters' renditions were electronically recorded. This time, as both the third generation and two sets of fourth generation stories are recorded in writing, we can look into the translation process in more detail. The methodological tool used to analyse the mismatches will again be House's translation assessment model (1997). As was the case in the previous chapter, the results, rather than the method itself, will be the focus of the investigation. Therefore, only selected, relevant mismatches will be discussed in the present chapter.

### 5.4 Non-standard use of English

As seen from the analysis in the previous chapter, in S1, S1a and, to a lesser extent, also in S1b, non-standard English was used. It was concluded that the non-standard English resulted from the interpreters' poor knowledge of English and the police officer's attempts to write everything down as accurately as possible. Therefore, the pidgin English used reflected the mode in which the statement was taken and conveyed the message that it was taken with the assistance of *ad hoc* interpreters who were not fluent in English.

What transpires immediately from the analysis of T and T1, T1a and T1b is that they all use standard Polish. Consequently, Polish statements are more readable, which is in accordance with the results of previous research stating that subsequent story generations are more coherent and precise. To illustrate this point, let us look at the example from the previous chapter, where a fragment of the statement was quoted in which a house is described:

S1a(40-44): The house at O'Connell Street has small hall, on the left a bathroom, kitchen on the right, sitting room opposite the kitchen, stairs on the left. Upstairs bedroom of Artur in front, on the right is bedroom of Bartek and me, this face to
---

back of house. Front door is wooden, brown, with glass in the middle, big glass. Windows aren't the same all through the house. Open on top.

The above description of the house was translated into Polish in T in the following way (back translation into English mine):

T(185-189): Dom na O'Connell St. ma maly przedpokoj, na lewo jest lazienka, kuchnia na prawo, salon naprzeciwko kuchni, schody na prawo. Na gorze z przodu domu jest sypialnia Artura, na prawo jest sypialnia moja i Bartka, okna wychodza na tył domu. Drzwi wejsciowe sa drewniane, brazowe, z szyba w srodku, duza szyba. Okna nie sa takie same w calym domu. Mozna otworzyc ich gorna czesc.

[The house at O'Connell St. has a small hall, on the left there is a bathroom, kitchen on the right, living room opposite the kitchen, stairs on the right. Upstairs, in the front of the house, there is Artur's bedroom, on the right there is mine and Bartek's bedroom, windows face the back of the house. The front door is wooden, brown, with a pane inside, big pane. Windows are not the same in the whole house. It's possible to open their upper part.]

And the same fragment was translated in T1a in the following way:

T1a(47-52): Dom przy O'Connell Street ma maly przedpokoj, lazienke po lewej, po prawej kuchnie, salon na przeciwko kuchni a schody po lewej. Na gorze sypialnia Artura jest z przodu a po prawej znajduje sie sypialnia moja i Bartka, ktora wychodzi na podworze. Drzwi wejsciowe sa drewniane, brazowe z duza szyba na srodku. Okna nie sa takie same w calym domu. Otwieraja sie na gorze.

[The house at O'Connell Street has a small hall, a bathroom on the left, a kitchen on the right, a living room opposite the kitchen and stairs on the left. Upstairs, there is a bedroom of Artur from the front and on the right, there is a bedroom of me and Bartek, which faces the courtyard. The front door is wooden, brown with a big pane in the middle. The windows are not the same in the whole house. They open on the top.

We can see from the above examples that the description is much clearer and understandable in the translated versions compared to the original. Generally in both

translations the pidgin English has been transformed into standard Polish. The past forms quoted in the previous chapter were corrected:

S1(122-123): After I meet Bartek I go home to O'Connell Street.

T(138): Po tym, jak spotkałam sie z Bartkiem, poszłam do domu na O'Connell Street.

[After I met Bartek, I went to the house at O'Connell Street.]

T1(132-133): Po spotkaniu z Bartkiem wróciłam do domu przy O'Connell Street.

[After the meeting with Bartek, I came back to the house at O'Connell Street.]

The interpreters' problem with the English word "bars" discussed in the previous chapter has been obscured in translation and is no longer recoverable to the reader of T and T1a:

S1a(89-90): On Monday, xxxxxx afternoon at home I first see Bartek preparing "prety" iron bars.

T(241): W poniedziałek, xxxxxx, po raz pierwszy zobaczyłam jak Bartek przygotowuje żelazne prety.

[On Monday, xxxxxx, I saw for the first time that Bartek was preparing iron bars.]

T1a(102-103): Po południu w poniedziałek XXXXX po raz pierwszy zobaczyłam jak Bartek przygotowuje metalowe prety.

[In the afternoon on Monday, xxxxx I saw for the first time that Bartek was preparing metal bars.]

The translations are undeniably more readable, but they are also versions "in which reality has undeniably been transformed" (1990 cited in Haworth 2009, p.102). They do not reflect the mode in which the statements were taken and the communication difficulties involved. Moreover, by making the statements more precise and clear, the translator possibly "transformed reality" because most likely they did not have access to the witness or the interpreters and clarified any ambiguities without any context provided. In addition, due to the further blurring of source distinctions (Linell and Jönsson 1991, p.435), the reader of the translations receives all four voices merged together, i.e. of the witness's, the interpreters', the interviewers' and the translator's. Consequently, the reader of the translation, i.e. the defendant, does not have full access to the text because the translator's voice overpowers the other participants' contributions. As already mentioned in the previous chapter, during the trial the



defendant did not cross-examine the witness or the interpreters in relation to the statement-taking session and any possible difficulties involved. Clearly, reading the Polish translations only, he did not have any clues that would suggest such difficulties existed.

### 5.5 Interpreter's shift into principal role

The examples above demonstrate how the translators obscured the language deficiencies of the interpreters. The following example is going to demonstrate how challenging the translators' task was due to the pidgin English used in the statement. In the previous chapter we briefly discussed the roles of an interpreter within Goffman's participation framework (see section 4.4.1). We used Wadensjö's findings, which suggested that the interpreter is usually an animator and sometimes an author, but rarely a principal. However, we identified an example in which the interpreter took the role of a principal, but that role shift was not recognised by the police officer, who attributed the statement to the witness:

S1(29-30): I broke, I don't know what you call it, something you use to open the window.

This role shift was recognised by the translator of T, who understood the underlined passage was the interpreter's contribution. The translator of T also decided to "fill" the lexical gap for the interpreter and insert the missing word "knob" in the translation:

T(39): Złamałam, nie wiem jak się to nazywa, gałkę do otwierania okna.

[I broke, I don't know what you call it, a knob for opening the window.]

The translator of T1, however, did not recognise the sudden role shift of the interpreter from an animator to a principal and, as a result, mistranslated the first part of the sentence:

T1(34-35): Nie wytrzymałam. Nie wiem jak to się nazywa, służy do otwierania okien.

[I couldn't bear/stand it. I don't know what you call it, it is for opening windows.]

In the translation above, “I broke” was understood as a nervous breakdown of some sort and translated as “I couldn’t bear/stand it”. It turns out that it was not only the police officers who did not recognise the role shift, but also the translator of T1, who did not read the meaning of “break” in relation to the rest of the message and divided the sentence into two separate ones. This is a clear mistranslation, which will be discussed again in Chapter 6, where we follow interview data and discuss their further recontextualisations in the courtroom.

## **5.6 Choosing readability over accuracy - the role of the cultural filter**

The discussion so far demonstrates that both translators produced more precise and readable versions of the statements. By correcting the grammar used in the English version in the Polish translations they obscured the participation of the interpreters in the interviewing process. By doing that they also obscured the differences between the first two statements (S1, S1a) and the last one (S1b), which was more precise and written to a large extent in standard English. In the previous chapter we discussed the possible reasons as to why police officers decided to imitate the interpreters’ style, sacrificing the readability and precision required from a witness statement. We concluded that the police may have been wary of the interpreters’ limited proficiency in English and retained their English in fear of being accused of falsifying the statement if they improved the style beyond the production capabilities of the interpreters. By including the interpreters’ mistakes, they conveyed information about the process itself and gave the readers clues that it was not a straightforward task. In the next section we will discuss possible reasons why the translators adopted a different, TT-oriented approach and decided to improve and polish the style of the statements.

### **5.6.1 Lexical mismatches**

In addition to the correction of non-standard English in the Polish translations, the set of translations provided on loose sheets of paper (T1, T1a and T1b) exhibit a register shift when vulgar expressions are used in the English statement. The strategy employed by the translator was to use more formal, specialist medical terms instead.

For example, the already quoted phrase *to have shit* and *make shit* is rendered by formal *to evacuate* on three different occasions:

S1b(18-19) He told me to go to toilet to make shit.

T1b(331) Kazal mi pojsc do lazienki i wyproznic sie.

[He told me to go to the bathroom and evacuate]

and:

S1(64-65): They told me to go and have shit, they said if I didn't do it they would clean my ass(...).

T1(72-73): Kazali mi się wypróżnić. Powiedzieli, że jeśli tego nie zrobię to zrobią mi lewatywę (...).

[They told me to evacuate. They told me that if I don't do it, they will give me an enema (...)]

Similarly, the example above shows the shift of register in the expression “clean my ass” which is translated as implying being an enema. Clearly, the reader of T1 is going to get a different picture of the story compared to the reader of S1 and even T, where this particular fragment is toned down, but still closer to the original register than the formal version conveyed in T1:

T(75-76) Powiedzieli mi, żebym sie wysrała, bo jak nie, to oni wyczyszcza mi tyłek (...)

[They told me to shit and if I don't that they would clean my butt (...)]

This threat sounds much more serious in T compared to T1, in which the word “enema” was used. Consequently, the effect of these two versions is dramatically different.

It was the general tendency of the translator of T1, T1a and T1b to use formal, medical terms. Another example is the use of the word *ass*, which appears three times in the English version of the statement and every time is rendered into Polish as *anus* (odbyt) in T1, T1a and T1b. Similarly, four instances of *make love* present in the source text are rendered in translation as *have sex* (uprawiać seks). Moreover, the translator avoids using the word *sex* and on eight occasions chooses to use the word *intercourse* (*stosunek*) instead, despite the fact that *intercourse* does not appear in the source text even once, e.g.:

S1(44): It was normal sex.  
 T1a(51): To był normalny stosunek płciowy.  
 [It was a normal sexual intercourse.]

The first set of translations (T) also demonstrates the toning down of vulgar language, which could be illustrated by the example below:

S1(43): He said I was rubbish, I was bitch.  
 T1(53) Mówił, że jestem śmieciem, że jestem głupia.  
 [He said that I was rubbish, that I was stupid.]

However, the register of T is closer to that used in the English version of the statement. The shifts of register in rendering the vulgarisms and terminology related to the nature of the charges is best illustrated in Table 5.1.

English lexical item (S1, S1a, S1b):		Translated into Polish as:	T	T1, T1a, T1b
make love	5	kochać się [make love]	3	0
		uprawiać seks [have sex]	2	5
sex	17	seks [sex]	17	9
		stosunek [intercourse]	0	8
have shit/make shit	2	wysrać się [to shit]	2	0
		wypróżnić się [to evacuate]	0	2
ass	2	dupa [ass]	0	0
		tyłek, pupa [bottom, bum]	2	0
		odbyt [anus]	0	2

**Table 5.1 Register shifts in lexis**

The table demonstrates that the register of the translated statements, in particular T1, T1a and T1b has been raised, vulgar expressions have been toned down and the rape terminology has been rendered in medical Polish. This may signify that the translators applied a cultural filter and strived to reflect the realisation of the witness statement genre in Poland, where the police officer has an active part in co-constructing the statement on the level of register.

### 5.6.2 Written statements in inquisitorial and adversarial systems

Polish witness statements are usually written in quite a high register and visible policespeak. This is characteristic for countries based on the civil law system in which evidence is evaluated more freely (Olsson 2008, p.67). These systems are types of inquisitorial systems, where the legal process is based on the collection, processing and analysis of written documents (Komter 2002, p.168). Komter provides a good example of how the suspect's written statements are treated in Holland. Because suspect statements given in the Netherlands are written down like monologues, just like witness statements in Ireland, the Dutch example, even though it deals with suspect statements, resembles the situation of an Irish witness. Komter shows in her article how the statement, which is meant to be written in "the suspect's own words" is created.

<p>1 P: Do you realize that it is forbidden in the Netherlands to uh have 2 cocaine on you, or to deal in it? 3 S: ((nods)) 4 P: ((types:)) <i>I know that it is forbidden in the Netherlands to possess cocaine or to deal in it.</i></p>
--

**Table 5.2 The construction of a suspect's statement (adapted from Komter, 2002, p.173)**

We can see from the above example, that what actually gets written down into the statement may be far from the suspect's own words. This reflects the realisation of this genre in civil law systems. The statements in the Netherlands, which is, like Poland, governed by the civil law system, are produced with a more visible participation of the police compared to common law systems. Consequently, Polish witness statements are written in a formal language and contain many formulaic expressions. This also applies to witness testimony in court, which is dictated to the stenographers by the judge in formal judicial language as described by Katarzyna Spiechlanin<sup>11</sup>, a sworn translator and interpreter working in Polish courts.

The differences in the style of statements reflect the differences of the legal systems in a sense. While in Ireland the adversarial system focuses on the oral arguments of the two opposing parties and the rigorous testing of evidence during cross-

---

<sup>11</sup> Personal communication during a meeting on 17th December 2008 in Krakow, Poland

examination, the inquisitorial system used in Poland focuses on the analysis of written documents, which are not scrutinised in court but read and analysed by the judge before the trial. Moreover, the overwhelming majority of police interpreters working in Poland are Polish nationals. In contrast, police and court interpreters working in Irish courts and at police stations are mainly foreign nationals. Therefore, in Poland the language used in interpreted statements will be that of a native speaker and it is unlikely that ambiguities could arise from the poor quality of the language in which the statement was written. Consequently, we could conclude that by correcting the mistakes of the interpreters and raising the register of the narrative, both translators applied a cultural filter and were trying to conform with the expectations of the Polish reader and to adapt to the realisation of this genre in Poland.

## **5.7 Solving ambiguities**

As seen from the discussion so far, both translators decided to make the statements more readable and comprehensible, as well as more “appropriate” in style. This section will demonstrate how they handled some of the ambiguities, which were discussed in the previous chapter. In particular, focus will be put on those examples when each of the translators chose a different interpretation of the source text, which results in two different versions of events in the Polish statement.

### **5.7.1 A telephone call or a visit - “call to”**

One example of disambiguation by both translators involves the expression “call to” in the following sentence:

S1(119-120): Before I meet Bartek I <u>call to</u> John Madden butcher.
---

Here, “call” is used in an unusual fashion. It is used as a verb together with a preposition “to” followed by a noun phrase, which functions as an object. The preposition “to” is of crucial importance here. Otherwise we would deal with a straightforward “call John Madden”, which would mean a telephone call. The preposition “to” changes the meaning, however, as the phrase to “call to somebody” or “call to somebody’s house” means simply a visit. The phrase is used in this

meaning rarely and mainly by Irish speakers. This is confirmed by a search of the British National Corpus (BNC). Among the queries submitted was “[pn\*] [call].[v\*] to” which searches the BNC for the relevant string. In the above search query [pn\*] denotes any pronoun, [call].[v\*] stands for any instance of “call” used as a verb in any available form, i.e. “called”, “calling” and “calls”. Other queries included “[call].[v\*] to the”, “call to the” or “[call].[v\*] to [nn\*]”, where [nn\*] stands for any noun in any inflected form.

From a combination of the above queries submitted to the BNC, majority of results indicated a telephone call and some were ambiguous, i.e. meaning either a phone call or a personal visit, such as the example below.

(W\_fict\_prose) He agrees with me whole-heartedly. So much so, he intends to call to the War Office to explain the situation himself.

The context provided in the corpus does not allow us to say with certainty what the phrase “call to” means in the above fragment. However, all in all, the search results yielded only three instances, where we can say that “call to” clearly means a face-to-face encounter and not a telephone call or calling or shouting at someone within the hearing distance. Those examples are the following:

1. (W\_fict\_prose): You should call to the house some evening, Michael. I know they'd like to meet you.
2. (W\_pop\_lore): Journalists who call to the farm to interview me do see us in that setting and describe it as they will but those really are only momentary glimpses into what must remain, fundamentally, my private life
3. (S\_conv) Charlie Sheen is like an indian, and he's in this tent and this bloke calls to thingybob and he presses this bloody doorbell on it on this tent, it's funny, I tell you it is funny when you wa er when you actually watch it

In the first example we can say the phrase means a personal visit because “meeting someone” is mentioned. In the second example, the verb “see” in the second part of the statement indicates that the journalists visit the farm personally. Finally, in the third example, “pressing the doorbell” indicates that a personal visit is involved and not a telephone call.

Interestingly, examples one and two come from Irish speakers of English. The first one comes from the novel “Amongst Women” by Irish novelist John McGahern and

the second one from an interview in Irish magazine *Hot Press*. The third example comes from a recorded and transcribed face-to-face spontaneous conversation (marked S\_conv in the corpus), but there is no detailed information on whether the speaker was Irish or not. The above analysis leads us to conclude that the phrase “call to” is rarely used to indicate a visit to the house in the UK and is characteristic of Irish speakers of English.

Consequently, we could expect that the low frequency of this phrase could mislead the translator. Moreover, given the fact that the statement is full of grammatical and lexical mistakes, the translator could have assumed that the preposition “to” is a mistake and the phrase “I call to John Madden butcher” means a “I call John Madden butcher”, i.e. make a telephone call to John Madden. When we take into account that the rest of the statement is written using very simple vocabulary and structures, it would be unlikely that the rare colloquial expression “call to” appears in the statement. There could be two explanations to account for the fact. One is that it was the police who included it in the transcript. As shown above, it is a typically Irish phrase which occurs in samples of speakers from Ireland. The policemen, who took great care so as not to interfere with the interpreters’ English, may not have realised the oddity of the phrase. The second possibility is that the interpreters were the authors of this phrase. Given the fact that they are not familiar with standard grammar rules and basic vocabulary, the use of “call to” in the analysed sentence may indicate that they learnt most of their English after they arrived in Ireland. This could explain why they did not master all past tense forms but are familiar with the expression that was probably used by friends or neighbours on an everyday basis. Whatever the reason for the appearance of this phrase in the statement, taking into account the overall quality of English in the statements, the translator could have interpreted it as meaning “telephone call”.

On the other hand, there are clues that suggest that a face-to-face meeting was the intended meaning of the analysed sentence. Even though the immediate context of this sentence does not indicate whether the witness visited or telephoned Mr Madden, there are two other instances when the phrase “call to” is used in the witness’s statements:

S1a(29-30): On Friday when I finish work in Hostel in Waterford I <u>call to</u> Wanda in Pearse Street.
--



and:

S1a(32-33): I meet Wanda she say she was looking for me and that they call to house.

The first example mentions Wanda's address in Pearse Street, which could lead us to believe that the phrase "call to" means a visit too. The second example mentions calling "to house", which could indicate that a personal visit to the house is meant. In both examples, however, it is not fully clear which interpretation was meant – telephone call or personal visit. While the examples are less ambiguous than the first instance of "call to", they could still be interpreted and thus translated in two different ways. Interestingly, in both T and T1 the two examples are translated as meaning personal visits:

T(172): W piątek kiedy skończyłam pracę w hostelu pojechałam do mieszkania Wandy na Pearse St.

[On Friday when I finished work in the hostel I went to Wanda's apartment at Pearse St.]

T1(204-205): W piątek po pracy w schronisku w Waterford odwiedziłam Wandę przy Pearse Street.

[On Friday after work in the hostel in Waterford I visited Wanda at Pearse Street.]

And:

T(175-176): Spotkałam Wandę a ona powiedziała, że mnie szukała, bo oni byli u niej w domu.

[I met Wanda and she told me that she was looking for me, that they had been to her house.]

T1(207-208): Kiedy spotkałam się z Wandą powiedziała, że szukała mnie i że oni byli w domu.

[When I met up with Wanda, she told me that she was looking for me and that they had been at the house.]

Let us now come back to the original sentence which is the main focus of this analysis.

S1(119-120): Before I meet Bartek I call to John Madden butcher.

We have discussed the reasons which might have led the translators to render it as a telephone call. We have also discussed other examples of “call to” in the next statement, which were translated as “to visit” and could support the fact that a visit was meant in S1(119-120) as well. However, the two translators made different choices as to how to interpret this phrase. While the translator of T1 was consistent with the previous choice to translate it as a visit, the translation in the book of evidence presents it as a telephone conversation:

T(133-134): Zanim spotkałam Bartka, zadzwoiłam do Johna Maddena, właściciela masarni.

[Before I met Bartek, I rang John Madden, the owner of the butcher.]

T1(128-129): Zanim spotkałam się z Bartkiem poszłam do rzeźnika Johna Maddena.

[Before I met up with Bartek I went to John Madden, the butcher.]

In choosing one interpretation over the other, the translator decided to add their own “voice” to the statements and disambiguate the above sentence. The problem is that they were not able to consult with the authors and, consequently, chose two different interpretations and created two different realities. The consequences of these decisions will be discussed in the following chapter, in which we will observe further recontextualisations of the story in the courtroom.

### 5.7.2 Two meanings of the verb “to come”

Another instance of an ambiguous sentence, in which each translator chose a different meaning, is the following example:

S1(130): I only make love to Bartek since I come to Ireland.

The sentence is ambiguous in the English version and can mean that the witness only started a sexual relationship with Bartek after their arrival in Ireland or that Bartek was her only sexual partner since the arrival in Ireland. This fragment of the statement is crucially important due to the nature of the accusations in the case. When we look at the translation in the book of evidence, this sentence is rendered in the following way:

T(145-146): Zaczęłam uprawiać sex z Bartkiem po moim przyjeździe do Irlandii.

[I started having sex with Bartek after my arrival to Ireland.]

The translated sentence is no longer ambiguous and could be important in the context of a rape case, in which no questions about the previous sexual history of a complainant are admissible in court. In this interpretation, the witness herself talks indirectly about her previous sexual history and the fact that she did not have sex with Bartek back home. In order to clarify this sentence, then, one simply has to ask about previous sexual history, which is, as mentioned before, not possible. It is a vicious circle and by solving this ambiguity, whether on purpose or through an oversight, the translator significantly changed the meaning of the English version. If we now look at T1, it turns out that it was recontextualised in a completely different way:

S1(130): I only make love to Bartek since I come to Ireland.

T1(141): Uprawiam seks z Bartkiem tylko wtedy, kiedy sama osiagam orgazm.

[I only have sex with Bartek only when I reach orgasm myself.]

In the above example, the verb “come” was mistranslated into “reach orgasm” and the object of the verb (“to Ireland”) was omitted altogether. While in T, the original message was disambiguated, T1 is a clear mistranslation of a crucial sentence in the statement. The implication of both translators’ decisions will be discussed in the following chapter.

## 5.8 Genre requirements

In the previous chapter we discussed the constraints of genre that influence the content of the statement. In particular, we discussed the future orientation of the statement and the fact that it is the judge and jury, and not just the immediate participants present in the interview room, who are the main, yet invisible, audience of the statement. Our discussion in the previous chapter was based on the issue of theft and how the word “steal” was introduced in S1b in order to make it explicit that the item was taken against the witness’s will and, thus, constitutes an act of theft. As far as the translations are concerned, there are no mismatches and both TTs explicitly

mention the lack of consent and the act of stealing, thus fulfilling the goal of the statement. However, there are two other examples, in which the translations shift from the requirements of the genre.

### 5.8.1 Lexical mismatches and genre: vaginal

As far as lexical mismatches in T and T1, T1a and T1b are concerned, we have discussed the topic of register shifts in the translation of vulgarisms in section 5.6.1. This section deals with the evidence-gathering goal of an interview and lexical mismatches that could hinder the evidentiary value of the statement. In T, we can notice that the translator has difficulty in rendering the word “vaginal”:

S1(44-45): It was normal **vaginal** sex.

T(54-55): To był zwykły sex **wewnątrz**.

[It was normal sex **inside**.]

and

S1(100): During the night we have three kinds of sex — oral, anal and **vaginal**.

T(112-113): Podczas tej nocy mieliśmy trzy różne rodzaje sexu: oralny, analny i **wewnątrz-maciczny**.

[That night we had three different types of sex: oral, anal and **intrauterine**.]

The word “vaginal” occurs in the ST three times. In T each of the three instances is handled differently. As seen from the two examples above, “vaginal sex” is translated as “sex inside” and “intrauterine sex” and the third instance of “vaginal” from ST is simply omitted by the translator. Hence, we have three different ways of rendering *vaginal* in T1: *sex inside*, *intrauterine sex* and  $\emptyset$ . It is clear from the above examples that the translator did not know the word “vaginal” and the lack of translation for this term may suggest that the translation was done without consulting a dictionary or other resources. This mismatch also has implications for the cohesion of the text realised mainly by lexical chains. It also confuses the reader, who struggles to understand the phrase “intrauterine sex”.

The omission of the word *vaginal*, however, can have further consequences for the judicial process related to the purpose of an interview. As mentioned in the ST

analysis, a witness statement is clearly a goal-oriented genre. Its main objective is to obtain an account that would spell out the offences or crimes committed and often initiate further investigation of the matter. Witness statements are a vital piece of evidence, on the basis of which the charges are formulated. Therefore, the explicit spelling out of each type of sex is crucial and has to be included in the statement. Each incident of non-consensual sex is then written as a separate count on the indictment. Consequently, looking only at the Polish translation (T) of the statement, where the word *vaginal* was either omitted or mistranslated, the statement may not be precise enough to formulate the charges. Naturally, the police rely on the English version of the statement and only the English version of the statement is the official exhibit, but the principle of providing the translations for the defendants is to make sure they can prepare their defence and fully understand the case brought against them. It could be argued that one of the reasons this requirement is not fulfilled is the absence of the word “vaginal” in the text.

### 5.8.2 Lexical mismatches and genre: dirty vs not washed

The next example concerns another lexical infelicity that may appear minor in a general text but could be highly significant in the context of a complainant statement in a rape trial. In the following example, the witness says that the clothes given to the Garda were not washed. The implication is that they can be examined for any DNA traces and it could be expected that DNA material will be found. Consequently, if the defendant’s DNA is not found on the clothes, which were unwashed, this may favour the defence. However, this implication is lost in translation:

S1a(77-80): I got [the clothes] back on Sunday. **They were not washed.** These are the clothes I hand you, Declan, today.

T(225-228): Dostałam je z powrotem w niedzielę. Były brudne. To są te ubrania, które Ci teraz wręczam, Declan.

[I got them back on Sunday. **They were dirty.** These are the clothes that I am giving you now Declan.]

The translation in the book of evidence (“they were dirty”) suggests that the clothes were taken from the witness and given back dirty. The message of the original that they were not washed and can be tested for DNA is completely lost. This highlights the wider context that needs to be taken into account when translating witness statements. It was noted before that the statements are made with a future audience in mind and while the police are well aware of this fact, the witness or the suspect are usually not. Lay participants in the police interview usually are not aware of the goal orientation of the interview process and the special constraints on what can be included in the statement (Drew and Heritage 1992 cited in Heffer 2005, p.15). While the lay witness or suspect may not be aware of the future audience and constraints of institutional discourse, it is important for the translator of witness statements to be aware of that audience and take it into account while translating statements. Because a witness statement is a written record of a spoken conversation, it may be difficult for the translator to recontextualise it in isolation from the original spoken interaction. Therefore, familiarity with the wider legal context, in which the witness’s narratives are embedded, may help the translator to reinstate that context and adopt a suitable translation strategy.

### **5.8.3 Structure of a witness statement: primary and secondary reality**

Another example of a mismatch in translation in reference to genre results from the formal structure of each witness statement. To discuss the mismatch in translation, the structure of a witness statement will be discussed first in relation to Gibbons’s primary and secondary reality framing. Gibbons uses the genre framework and the concept of primary and secondary reality to describe the legal process and its specific stages. The structure of a statement within the reality framing is presented in Table 5.3.

<p><b>FORMAL POLICE INTERVIEW GENRE</b></p>
---

<p><b>Primary reality framing</b></p>
---------------------------------------

<p>Place, Date, Time of interview</p>
---------------------------------------

<p>Persons present</p>
------------------------

<p>Interviewee’s Name, Address, Date of birth</p>
---

<p>Caution</p>
----------------

<p>Interpreter present/not required</p>
---

**Secondary reality core**

Orientation

Subject of interview

Date and time of incident

Questioning

**Primary reality framing**

Content issues (reading back of statement)

Invitation to sign

Further actions

Closure (Time)

**Table 5.3 Formal police interview genre (adapted from Gibbons 2003, p.142)**

The primary reality, usually recorded in the present tense, refers to the interview room and the immediate context of the statement-taking session. It is mainly introduced in the initial and final formulaic paragraphs of a witness statement. In the analysed data, primary reality is framed in the following paragraph and includes information on the place, date and participants of the interview, and includes cautioning the witness about their responsibility to tell the truth.

S1(3-8) Further statement of Beata Jankowska, D.O.B. XXXXX. of XXXXXX, Poland made to Garda Joe O'Donnell at small town in Ireland Garda Station on XXXXX in the presence of Joanna Matysek and Barbara Borkowska. I hereby declare that this statement is true to the best of my knowledge and belief and that I make it knowing that if it is tendered in evidence I will be liable to prosecution if I state in it anything which I know to be false or do not believe to be true.

The closing of the interview also belongs to primary reality framing and includes signatures of all the participants and the time when the interview concluded.

S1(135-140): Signed: Beata Jankowska.

Witness: Joe O'Donnel , Gda. [rank number].

Witness: Joanna Matysek

Witness: Barbara Borkowska

Date: XXXXXX

Time: 6.30am.

Primary reality may also be referred to within the witness's story, for instance in fragments relating to the reading back of the statement, which were already quoted in

the previous chapter, as well as the fragment in which the witness grants the police access to hospital records:

S1(133): I give permission to hospital to give my records to police in this case.

The secondary reality is the story told by the witness usually in the past tense. It is the secondary reality that is the main body of every statement. In addition, we can also distinguish a third reality, which consists of all references to the future audience of the statement. The third reality may appear anywhere in the statement rather than in a particular part of the statement. Third reality is primarily used to give the statement a legally relevant perspective. An example of third reality framing may be the issues of consent discussed in the previous chapter. The fact that the witness did not consent to sex may be obvious for all the people in the interview room, but it still needs to be explicitly stated in the statement for the statement to be legally valid in the subsequent stages of the justice process.

#### **5.8.4 Primary reality in translation**

As discussed in the previous section, the genre of a witness statement has a fairly standard structure. It starts with a formulaic opening paragraph, which frames the primary reality. After the standard opening, the secondary reality follows, i.e. the story of the witness. Finally, the statement is concluded by a standard closing paragraph and signed by all participants. The witness in our case gave three statements to the police, which were marked S1, S1a and S1b. However, if we look at the translated book of evidence it transpires that it contains only one statement made by this witness. This translation was marked “T” for the purpose of the current analysis. Moreover, it turns out that the introductory and closing paragraphs, which were framing the primary reality of the interview room, have been omitted and all three statements were merged into one text in the Polish translation. Every initial paragraph, i.e. S1(3-7); S1a(3-8) and S1b(2-6), has been omitted in T. Similarly, the translator did not translate any of the closing paragraphs, i.e. S1(134-139), S1a(108-114) and S1b(26-29). Consequently, all the information about the primary reality, including the names of the interviewers, interviewees and the interpreters, is not available to the reader of T. The translation makes no mention of the fact that the statement was taken with the assistance of interpreters, nor is it possible to find out



which police officer took which statement. Furthermore, there is no indication when one statement starts and another begins. This creates a major difficulty in navigating through the statements. Because all three statements were merged into one, in the following sentence, it is unclear which statement is being referred to:

T(150): Nawiązując do zeznania, które złożyłam xx xx xxxx roku, uczęszczałam do szkoły podstawowej w Mońkach w Polsce przez osiem lat.

[Further to the statement given on xx xx xxxx I attended primary school in Mońki in Poland for eight years.]

The sentence appears in the middle of the body of the text and is in no way separated from the preceding and following parts. The dates when the statements were taken had not been translated in T either. Therefore, it is impossible to guess from T that the fragment in line 150 stating “Further to the statement given on xx xx xxxx” actually refers to lines 15-149 of the same text.

We have to remember that the defendant received two sets of translations corresponding to S1, S1a and S1b. In the second set of translations (T1, T1a, T1b) all the introductory and closing paragraphs were fully translated. These paragraphs also contain the dates on which the statements were taken, which are missing in T. Therefore, reading the fragment "Further to the statement given on xx xx xxxx" from T, it is natural that the reader checks the dates on the other statements to see which one was taken on that date. That date appears in T1, i.e. the second translation of S1. When we take into account that the defendant is only using the Polish translations and that all the dates are missing in T, the only statement with that date is T1. Consequently, the defendant may assume that T is referring to T1 and conclude that T and T1 are two separate statements while, as we know, they are simply different translations of S1. Moreover, it is worth noting that not only the opening and closing paragraphs were omitted in T, but also other references to primary reality, including the information about the reading back of the statement:

S1(132-133): This statement has been read over to me and is correct.

T1: ø

That point has not been translated at the end of S1a either:

S1a(106): This statement is correct.

T1: ø

We can only assume that the translator of T1 wanted to be consistent and follow the decision to create a single statement out of the three. Therefore, only the last assertion that the statement is correct has been translated and the previous two might have been regarded by the translator as redundant. Consequently, we have a single statement, which blurs the source distinction by combining the voices of the witness, interpreters, police officers and the translator. Moreover, the statement merges three separate statements and omits the names of all the other participants other than the witness. As a result, the reader does not know that the statements were taken by police officers with the assistance of interpreters. The implications of such decontextualisation of the statements will be discussed in the next chapter.

### 5.9 Naming conventions

In the previous chapter we discussed the asymmetrical use of naming conventions in the context of the police interview where one of the interviewing police officers was addressed by his first name. Most likely this familiarity was due to the distortion of the interpreters, who may have known the Garda as the events took place in a small town. In the previous chapter we also concluded that the speaker could have tried to accommodate to the informal address forms of the police typically used in the rapport building stage of a police interview. As far as Polish versions of the statements are concerned, both translators followed the naming conventions of the English text and conveyed the familiarity.

S1a(79-80): These are the clothes I hand **you, Declan**, today.

T(228-229): To są te ubrania, które **Ci** teraz wręczam, **Declan**.

[These are the clothes I am giving now to **you (familiar)**, **Declan**.]

T1(258-259): To sa ubrania, ktore przekazuje dzisiaj **Tobie Declan**.

[These are the clothes I am handing over to **you (familiar)** Declan today.]

As seen from the example above, first names have been preserved in both translations. However, the Polish translations are even more informal than the ST for another reason. In Polish, like in German and French, there are two different second person forms – the familiar *ty/wy* and the polite *Pan/Pani/Państwo*. They are equivalent to the *du/Sie* distinction in German. In the sentences above, “Ci” and

“Tobie”, i.e. the informal forms of *you* have been chosen, marked in back translation as “you (familiar)”. This appears like an obvious choice considering that the first name appears directly after. However, there are three more examples in the statement where the choice between the familiar and polite “you” seems less straightforward. The first example appears in S1a, a few lines before the sentence quoted above:

S1a(71): The cola bottle **I told you** about, it's usual big Cola bottle, red with blue, I was afraid of touching bottle.

In both T and T1, the translators found a way of avoiding the choice of which “you” to use by changing the grammatical structure:

T(219): Butelka po Coca-Coli, **o której mówiłam**, to zwykła duża butelka, czerwono – niebieska. Bałam się dotykać tej butelki.

[The Coca-Cola bottle **I was talking about**, it is a regular big bottle, red and blue. I was afraid to touch the bottle.]

T1a(249-251): Butelka po coca-coli **o ktorej juz mowilam** jest typowa, duza, czerwono-niebieska butelka, balam sie jej dotykac.

[The coca-cola bottle, **which I was already talking about**, is a typical, big, red and blue bottle, I was afraid to touch it.]

We can see how both translators used the same solution to avoid making the choice at this stage. Later in the text, however, after the example where the police officer named Declan is called by his first name, both translators decide to use the more familiar term of address:

S1b(16-17): I have been shown **by you** two litre plastic Cola bottle **by you** from paper bag marked xxxx.

T(271-272): Została mi **przez was** pokazana dwulitrowa plastikowa butelka włożona do plastikowej torebki o numerze xxxx.

[I have been shown **by you (familiar,pl)** a two litre plastic bottle put into a plastic bag numbered xxxx]

T1(329-330): **Pokazaliscie mi** dwulitrowa, plastikowa butelke po Coli z papierowej torby oznaczonej numerem xxxx.

[**You (familiar,pl)** showed me a two litre, plastic Cola bottle from a paper bag numbered xxxx.]

And:

S1b(21): I wish to add that I have been brought by car out Dublin Road, **with you** and **have shown you** garage on right outside Mullingar that we stopped at on Friday night at about 8p.m. or 9p.m.

T(276-278): Chcialabym dodac, ze pojechałam **razem z Toba** samochodem drogą do Dublina, **pokazałam ci** stacje po prawej stronie przy wyjeździe z Mullingar, gdzie zatrzymaliśmy się w piątkowy wieczór około 8 albo 9 wieczorem.

[I would like to add that I have gone **together with you (familiar, sing)** by car on Dublin road, **showed you (familiar, sing)** the station on the right hand side at the exit from Mullingar, where we stopped on Friday evening around 8 or 9pm.]

T1b(30-31): Jak również, ze **pokazaliscie mi** garaz po prawej poza Mullingar gdzie zatrzymalismy sie w piątek w nocy około godziny 20:00 lub 21:00.

[I wish to add that **you (familiar, pl) brought me** by car from Dublin Road. Also, that **you (familiar, pl) showed me** a garage on the right outside Mullingar where we stopped on Friday night around 20:00 or 21:00.]

The examples show that in all instances the translators decide to use the informal “you”. This choice may result from the fact that the policeman was addressed by his first name earlier on in the statement. This decision raises the level of informality between the participants and constitutes a mismatch in comparison with the ST, where the English “you” was ambiguous. This choice of the translators can be regarded as a mismatch also because these instances of “you” appeared in S1b, the last and most formally written of the interviews. This interview was not conducted by Declan, the officer who was addressed in an informal manner in the previous example. Consequently, the informal term of address creates the disparity between the formal, formulaic language of S1b and the familiar forms of address in T and T1b. Moreover, this particular interview was taken with the assistance of only one friend of the witness, INT2 while the other two statements were taken in the presence of INT1 and INT2. It was INT1, who, according to the defendant, had good relations with the police officers in town and, hence, the familiar form of address was more likely initiated by her and not by the witness or INT2.

Finally, the English “you” is ambiguous on two levels. First is the level of politeness, discussed above and the other is plurality. The above sentences do not indicate whether “you” should be interpreted as singular or plural. We do not know if the witness went to see the petrol station in the car accompanied by only one police officer or more. While in the first example both translators disambiguated the “you”

in the same way, i.e. as informal plural, the second example was interpreted differently. According to T the witness was taken by one person and the use of plural in T1b suggests there were at least two people who went with the witness. When we add to that certain lexical infelicities between the two versions (“station” vs. “garage”, “I showed you” vs. “you showed me”), the reader of the Polish translations receives two completely different versions and may be confused as to who went where and with whom:

S1b(21): I wish to add that I have been brought by car out Dublin Road, **with you** and **have shown you** garage on right outside Mullingar that we stopped at on Friday night at about 8p.m. or 9p.m.

T1(276-278): (...) pojechałam **razem z Toba** samochodem drogą do Dublina, **pokazałam ci stacje**(...)

[I have gone **together with you (familiar, sing)** by car on Dublin road, **I showed you (familiar, sing)** the station]

T1b(334-336): (...) **przywiezliście mnie** samochodem z Dublin Road. Jak również, że **pokazaliście mi** garaz (...)

[**you (familiar, pl)** brought me by car from Dublin Road. Also, that **you (familiar, pl)** showed me a garage]

It is worth adding that neither of the translations of the lexical item “garage” is correct. The word “stacja” used in T means a station, as in railway station while “garaz” from T1b indicates a garage, but only meaning a sheltered place for parking your car. These lexical mismatches combined with two different translations of “you” can confuse even the most attentive reader.

Coming back to the topic of social distance, the final example of naming conventions refers to the police officer named Declan again. In this example we can see that the author mixed a formal and informal naming convention using the awkward phrase “Garda Declan”. As discussed in the previous chapter, the use of such a term of address could have been an attempt on the part of the interpreters to accommodate to the familiar style of the police. By mixing the formal and informal term of address into a single phrase, the interpreters demonstrate this is not part of their everyday language:

S1a(105-106): The bars "Prety" I see Bartek and Artur with, these are the bars that **Garda Declan** has shown me.

T(261): Te pręty, które widziałam u Bartka, to te same pręty, które pokazał mi **garda Declan**.

[These bars I have seen at Bartek's, these are the same bars that **garda Declan** has shown me.]

T1a(286-287): Pręty z którymi widziałam Bartka i Artura są to te same pręty, które pokazał mi **policjant Declan**.

[The bars I had seen Bartek and Artur with, these are the same bars which, **policeman Declan** has shown me.]

We can see that in both cases, the asymmetry of this form of address has been preserved. The only difference is that in T, the translator preserved his ST-orientedness and copied the word “Garda” in Polish. This is consistent throughout T and on three other occasions the word Garda appears in the text (T(207, 254, 262)). On the other hand, the translator of T1, T1a and T1b was consistent in his or her TT-oriented approach and translated all the instances of Garda as “policjant” or “policja”, also in the example above, where the phrase “policjant Declan” was used. Regardless of the approach chosen, both translators preserved the internal markedness of the phrase “Garda Declan” and left it to surprise the TT reader.

To sum up the discussion of terms of address and social distance, we can conclude that in both sets of translations, there has been a mismatch and social distance has been even further minimised. This is due to two main factors. Firstly, the Polish naming conventions reserve first name addresses for very informal relationships between interlocutors, more so than is the case in English. Secondly, on two occasions in S1b, the translators chose to translate the ambiguous English “you” as informal “ty” in Polish, which in relation to the policeman who was conducting statement S1b may sound overfamiliar. Consequently, the social distance which was lower than expected from institutional discourse of a police interview, has been reduced even further in the TTs.

### **5.10 Translations of interpreted witness's statements within House's model: statement of quality**

In this chapter we presented some of the mismatches between the ST, in this case the English versions of the statement and the TTs - two sets of translations. The discussion was based on the results of the application of House's translation

assessment to the translations. Only mismatches which became relevant in the further stages of the legal process are discussed in the chapter.

The analysis of the statements in English (S1, S1a, S1b) and their Polish translations (T and T1, T1a, T1b) has revealed a number of mismatches, in particular along the dimensions of field and tenor. On field, greater explicitness in the translation was established in a number of cases achieved by disambiguation. Both translators tried to improve the readability of the translation and clarify the meanings. This makes the translations easier to read and understand and reinforces the ideational component of the text. Moreover, the erroneously constructed original sentences were polished and the lexical and grammatical mistakes were corrected. The Polish translations are written in standard Polish, which stands in sharp contrast to the pidgin English of the source text. This affects the mode by obscuring the interpreters' poor command of the English language and concealing difficulties in communication. Consequently, the reader of the Polish translations may develop a false sense of confidence and trust towards the text. The readers of the English statement, on the other hand, may be more understanding of the discrepancies and ambiguities and make their own inferences about the mode in which the statements were taken. The correction of non-standard English used in both translations may indicate that the translators only took the immediate participants of the interview into account when deciding on the translation strategy.

Moreover, it has been observed that the register was shifted to a more formal one, in particular in one set of translations (T1, T1a, T1b), in which vulgar expressions were translated into formal, medical Polish. Furthermore, in the dimension of genre, both translators disambiguated or mistranslated certain parts of the text, which could impact the future recontextualisations of the statements in the courtroom and interfere with the purpose of the interview. Finally, the translator of T did not convey the primary reality framing sections and merged all three statements together, which also affects the function of the statement as a genre.

To sum up, the greater explicitness, disambiguation and explanation suggest both translations are covert ones. A covert translation is manifested in the shifts of register (to more formal) and language (additions, corrections). Both translations read easier than the original, but the statement creates a different image of what actually happened and is inconsistent with the function of the text. Witness statements are

legal texts and in order to apply an appropriate translation strategy two factors should be taken into account. Firstly, the translation is provided so as to make it possible for the defendant to prepare his defence. Secondly, the translation does not function as an exhibit and only the English version is taken into account by the court during examination. Consequently, the Polish translation should allow the readers to “observe” the English statement in as intact form as possible. It could be argued that an overt translation would be more suitable in case of witness statements.

In the analysed case, it is unlikely that the translators received any translation brief outlining the purpose and recipients of the texts. A translation brief could solve some of the translators’ dilemmas and empower them to make choices that were more appropriate for the given genre.

### **5.11 Conclusion**

This chapter presented the next stage of recontextualisation in the journey of interview data through the criminal justice process. In the previous chapter we demonstrated that the apparently verbatim transcript has been authored not only by the witness but also by the interpreters and the police officer. However, due to the blurring of source distinction, the story is still presented as belonging to the witness only and is treated as such in court. In this chapter, we have demonstrated how the fourth generation of the story is produced when the statements need to be (back)translated for the defendant.

We have seen how the translators recontextualise the text without access to the original speakers and how they add their own “voice” on top of the already multi-authored text in the process. We have seen the witness’s story undergo further transformations and become more comprehensible, more precise and unambiguous as a result of the covert translations. As a result, we have seen the translators create two new generations of the story “in which reality has undeniably been transformed” (Haworth 2009, p.102). Yet, despite the distortion and multitude of overlapping voices, in the view of the legal system, the story is still attributed solely to the witness.

Furthermore, the fact that two translations of the same statement were given to the defendant reflects negatively on the procedures of commissioning translations of



evidence in Ireland. Due to the lack of regulation in the field of translation and interpreting in Ireland, the translations do not have to be made by a certified translator. In this case, the translation of statements was subcontracted to a private translation agency. The fact that the same statements were translated twice highlights the lack of policy as regards the translation of legal texts. Moreover, the decision to translate a legal text in a covert manner seems to be inconsistent with the role the translated statements are to play in the subsequent stages of the legal process and may have an adverse effect on the cross-examination during trial.

The following chapter will follow these further into the courtroom to observe what happens when ultimately three different versions of the same story (the English version of the statement and two Polish translations) undergo further recontextualisation during examination-in-chief and cross-examination.

# Chapter 6: Impact on Trial

## 6.1 Introduction

In the previous chapter we observed how the police record of interpreted witness statements undergoes further recontextualisation in the translation process. As a result, by the time the witness's story reaches the courtroom, it has multiplied and three separate stories make their way into the courtroom. The first is the police record of S1, S1a and S1b, the third-generation story co-authored by the witness, the interpreters and the police officer. The second version of the witness's story is T, the translation of S1, S1a, S1b into Polish, which is performed without access to the immediate participants of the original encounter. As a result, T is a fourth-generation story with the translator's voice added to the voices of the witness, the interpreters and the police officers. Thirdly, we have T1, T1a, T1b, i.e. another set of translations into Polish, which are another set of fourth-generation stories with four different voices overlapping within one narrative. The different versions of the witness's story are presented in Table 6.1.

Statement	Story generation	Authors	Owner
S1, S1a, S1b	Third generation	Witness, interpreters, police officer	Witness
T	Fourth generation	Witness, interpreters, police officer, translator	Witness
T1, T1a, T1b	Fourth generation	Witness, interpreters, police officer, translator	Witness

**Table 6.1 Witness story generations in the legal process**

Moreover, as we have found in the previous chapters, both TTs have been translated in a covert fashion (House 1997), which makes the translators' voices hidden and even more blurred with the other authors' voices. Despite the numerous authors, the witness is seen as the sole owner of the narrative in the courtroom due to the blurring of source distinctions in the statement. As presented in Chapter 4, it is treated by the court as a direct representation of the witness's words.

The present chapter will follow the interview data and its different versions into the courtroom. As mentioned before, it was decided that the case was going for trial. Because it was a joint trial which involved two defendants, one of whom decided to represent himself, the data creates a unique research opportunity. While the defence counsel (DC) used the English version of the statement (S1, S1a and S1b), i.e. the third-generation story in their cross-examination, the Self-Representing Defendant (SRD) relied on the Polish translations (T and T1, T1a, T1b) in his defence. Therefore, in the current analysis it will be possible to compare examination-in-chief by the prosecution (P) and cross-examination by the defence counsel (DC), which were both based on the third story generation, with cross-examination by the SRD, who based his defence on the fourth generation of the story, i.e. on the two Polish translations. The table below presents the data and how it is used during the trial.

<b>Data</b>	<b>Story generation</b>	<b>Authors</b>	<b>Owner</b>	<b>Used during trial by:</b>
S1, S1a, S1b	Third generation	Witness, interpreters, police officer	Witness	P, in direct examination DC, in cross-examination
T	Fourth generation	Witness, interpreters, police officer, translator	Witness	SRD, in cross-examination
T1, T1a, T1b	Fourth generation	Witness, interpreters, police officer, translator	Witness	SRD, in cross-examination

**Table 6.2 Witness's story generations used during trial**

This chapter will follow chronologically the journey of the statement during the trial. Firstly, we will discuss the recontextualisation of the statements during the examination-in-chief. Next, we will outline the use of the statements during cross-examination by the DC. Finally, we will deal with the cross-examination performed by the SRD based on the Polish translations. The chapter will describe how the different story generations intertwine during the trial.

It should be noted that both the witness and the SRD were Polish nationals and their questions and answers were interpreted by the court interpreter. The court transcript, however, contains only the English utterances. This may be seen as a disadvantage and we accept that the data has undergone some transformation coming both from the interpreter and from the court stenographer, who made the transcript. While relying on a court transcript is not ideal, obtaining permission to record trials in Irish

courts for research purposes has proven unsuccessful so far, which makes court transcripts the only data available. Moreover, the use of verbatim transcription may have not necessarily improved the depth of analysis because the current discussion draws on pre-trial material, as well as the observations of court participants. Moreover, the researcher was present in court during the trial, which also helps in data analysis. The triangulation of court transcript data with the written statements, their translations and court participant's comments, as well as direct observation of the court hearings will hopefully make up for the limitations related to the use of stenographer's court transcript, which does not reflect intonation, hesitation or pauses.

## **6.2 The use of written witness statements in direct examination**

The crucial component of the Anglo-American judicial system is the fact that only evidence orally given in court is deemed admissible. This means that any evidence collected in the pre-trial stage needs to be repeated by the witness in court. Therefore, a trial in an adversarial system relies heavily on oral evidence. A criminal case starts with the prosecution case and it is the prosecution who calls their witnesses first. The prosecution examine their own witnesses first during what is called the examination-in-chief or direct examination. No leading questions can be asked during direct examination and its goal is only to elicit the information which is likely to support the prosecution case (Drew and Heritage 1992, p.473). In direct examination, the counsel is trying to present a narrative through their witness. Focus is put on telling the story naturally, but at the same time the counsel needs to maintain control over the witness so that nothing harmful or inadmissible is said (Heffer 2005, p.110). In practice, the prosecution counsel maintains close linguistic control over lay witnesses as it is harder to predict how they are going to behave (Heffer 2005, p.44). The questions put to the witness in direct examination are not seeking to find out information that is new to the counsel, but are a means through which the prosecution show their story. The questions are a request to the witness to present to the court what the counsel planned to present (Heffer 2005, p.111). Heffer distinguishes three main purposes of direct examination. The counsel wants the witness to confirm the proposition stated in the question, specify details or narrate what happened (Heffer 2005, p.111). Generally, examining one's own, cooperative

witness is usually done in close consultation with the written statement. The prosecution goes through the statement, trying to elicit the fragments which are relevant for their case. As an example, we can follow a straightforward direct examination in relation to the following part of statement:

S1(22-25): They curse on me, shout, and they called me name, telling me to pack all my clothes, get them packed in the car trunk. I went upstairs to pack. They didn't follow me. They were down stairs and shouting to do this faster. I packed.

The above fragment of the statement is elicited in direct examination in the following way. For ease of reference, the fragments of the statement that the prosecution is trying to elicit are included in italics in brackets after the question.

TRIAL, DAY 5, p.55-56

P: And then what were you asked to do or told to do, if anything? (*They [were] telling me to pack*)

W: Yes, they asked me to pack my things.

(...)

P: And were your things all around the house or were they in the bedroom or were they in any one particular place? (*I went upstairs to pack.*)

W: They were in a few rooms.

P: To pack your things, did you have to go upstairs? (*I went upstairs to pack.*)

W: Yes, I did.

P: And did you go upstairs? (*I went upstairs to pack.*)

W: Yes, I did.

P: And did they follow you up(...)? (*They didn't follow me.*)

W: I can't remember.

(...)

P: And was anything being said to you about whether you had as much time as you needed or whether you were to hurry or anything of that nature? (*They were down stairs and shouting to do this faster.*)

W: Yes, they told me to hurry up.

We can see that the elicitation of the contents of the statement in direct examination closely follows the statement. Yet, even though we can assume that a fully cooperative witness is giving evidence, it takes the prosecution three turns to elicit the fragment "*I went upstairs to pack.*" Moreover, the prosecution is unsuccessful in eliciting the sentence "*They didn't follow me.*" as the witness says she cannot remember. The fact that the witness is unable to recollect such a detail is common or, to quote instructions given to the jury by the judge at O.J. Simpson trial "innocent misrecollection is not uncommon" (Tiersma 1999, p.193). In this case we can see that the barrister does not persist in trying to elicit this particular piece of information. The above fragment is a piece of direct examination by the prosecution in relation to an uncontested part in the statement. Yet, we can see that it may take several turns to elicit the contents of the statement during which the statement undergoes recontextualisation yet again.

### **6.2.1 The examination-in-chief: no evidence**

The previous section quoted a fragment of the examination-in-chief, which elicited a fragment of the witness's pre-trial evidence. The fragment being elicited was not contested by any other party and did not refer directly to the allegations. Yet, we could see that it may take several turns to elicit a given answer and that some fragments of the statement were not elicited because the witness could not remember them. In this section we will look at a less straightforward example of direct examination, in which the prosecution finds it harder to control the witness's testimony.

As mentioned in the previous chapter, the charges against the accused are formulated on the basis of witness statements and material evidence. Each incident of assault or rape is included as a separate count on the indictment and each of them needs to be adduced as evidence during the trial by the prosecution. Therefore, the fact that something is stated in the statement is not sufficient and it needs to be stated in court by the witness. Let us now look at another fragment of the witness statement and the way it is elicited by the prosecution. It is crucial for the prosecution to elicit it as it is one of the instances of non-consensual sex and it is one of the counts on the indictment.

S1(36-40): It was dark when we got back, about 2am on Saturday morning. I slept in the bed with Bartek that night. (...) In the morning I had to get up and do them breakfast. During the night I had to make love to Bartek. I was afraid not to.

The description of the sexual intercourse continues in S1(40-46) and is concluded by the following fragment:

S1(46-47): We fell asleep. I don't remember who fell asleep first. I heard the alarm ring at 7.30.

When we look at the court data and the way this fragment was elicited by the prosecution we can see the difficulties in getting the witness to testify that non-consensual sex happened that night:

TRIAL, DAY 5, p.64

P: When you got back to Mullingar, where did you go in terms of what part of the house? (*I slept in the bed with Bartek that night.*)

W: To our bedrooms.

P: And to what bedroom did you go? (*I slept in the bed with Bartek that night.*)

W: To the bedroom that I used to share with Kowalski.

P: And did anything happen? (*During the night I had to make love to Bartek. I was afraid not to.*)

W: I can't remember.

We can see that the witness cannot recollect what happens next. In the previous example, the prosecution did not try to elicit the answer when the witness said she could not remember whether she was followed upstairs by the defendants. This time, however, the matter is much more significant and the prosecution continues to question the witness about what happened that night. Again, as in the previous section, the part of the statement which the prosecution tries to elicit appears in brackets following the question and the part of the statement to which the witness refers to in her answer appear in brackets after her replies.

TRIAL, DAY 5, p.64

P: But what can you remember next? (*During the night I had to make love to Bartek. I was afraid not to.*)

W: Because it was late we went to sleep. (*We fell asleep.*)

P: And what is your next memory? (*During the night I had to make love to Bartek. I was afraid not to.*)

W: We were woken up by the alarm clock. (*I heard the alarm ring at 7.30.*)

We can see in the above fragment that the witness goes straight to the next sentence in the statement (S1(46-47)) and says that she was woken up by the alarm clock at 7.30. The prosecution then goes on to ask several other questions, but comes back to the incident from that night to try once again to elicit the testimony about non-consensual sex:

TRIAL, DAY 5, p.65

P: Now, you say it might have been 1, 2, 3 in the morning when you arrived back (...) and that you remember the alarm clock going off the next morning? (*During the night I had to make love to Bartek. I was afraid not to.*)

W: Yes.

P: Now, just before we move into the next morning, can you remember anything more of being in the bedroom that night? (*During the night I had to make love to Bartek. I was afraid not to.*)

W: No.

Pros: So the alarm goes off the next morning? (*During the night I had to make love to Bartek. I was afraid not to.*)

W: Yes.

We can see in the above exchange that despite numerous questions by the prosecution, the witness does not recall the incident and does not give evidence about it in front of the jury. The same scenario is repeated in relation to two other counts in which the prosecution is unable to adduce the relevant evidence. In the adversarial system the evidence collected in the pre-trial stage needs to be repeated in front of the jury at the trial. Therefore, the contents of the statement given by the witness need to be confirmed by the witness orally in court. As no evidence in relation to



three counts of rape were elicited during the trial, the judge directed the jury to return a verdict of not guilty in relation to those three charges.

### **6.2.2 The examination-in-chief: additional evidence**

In the previous section, we discussed an example from the trial, in which the prosecution failed to elicit the contents of the statement from the witness. In this section, another difficulty in the examination-in-chief will be discussed, i.e. an example when additional evidence, not present in the statement made at the police station, is accidentally elicited by the prosecution during examination. As mentioned in the previous section, the goal of direct examination is to elicit information which can support the prosecution case (Drew and Heritage 1992, p.473). The prosecution is trying to “tell” their own version of the story through the witness (Heffer 2005, p.104). The story should be told by the witness as naturally as possible, but in reality the counsel has close control over the witness so as to ensure that nothing harmful or inadmissible is said (Heffer 2005, p.110). The purpose of questions in the direct examination is not to find out information the counsel does not know the answer to. Instead, the questions are designed in such a way that by answering them, the witness narrates the story to the jury. In the case of rape complainants, even the direct examination may not be cooperative because the witness needs to talk about distressing events, which are described as revictimisation of rape complainants (for details see Matoesian 1993 and Ehrlich 2001). However, the prosecution’s goal is clearly not to discredit their own witness or challenge their credibility. However, negative inferences can be drawn about the witness’s credibility if new, significant information transpires during the examination, which was not disclosed in the pre-trial interview. The fragment analysed below refers to a situation when new evidence comes out in front of the jury to the surprise of the prosecution and the other court participants. The discussion refers to the following excerpt from the witness’s statement:

S1(97-99): We didn't finish wine, we go into house. Bartek went into his own room. I was sitting in the sitting room with Artur, he forced me to drink the rest of the wine. I tell me [sic] to drink. After the wine, Bartek call me to go to him.

The prosecution is trying to elicit what happened after the wine was drunk, i.e. the fact that the witness was called by Bartek. The topic is approached by eliciting the information about going back to the house. The parts of the witness's statement which the prosecution wants to elicit are quoted in brackets following the question.

TRIAL DAY 6, p.16-17

P: Now, can I ask you whether some of the wine was still left when you moved back inside the house? (*We didn't finish wine, we go into house.*)

W: We drank the rest in the house.

P: Now, when the wine was finished was anything said to you or any instructions given to you? (*After the wine, Bartek call me to go to him.*)

W: I can't remember exactly whether it was then or before Mr. Kowalski told me to take Mr. Nowak's penis into my mouth (...)

DC: There is no notice of this at all My Lord.

The last question of the prosecution inquiring about any instructions given to the witness most likely refers to the part of the statement in which the witness is asked to go to Bartek's room, where sexual intercourse took place. However, the answer given by the complainant refers to being forced to give oral sex to Artur, the other defendant, instead. This incident is, however, not included in the statement and, hence, not included in the indictment. Therefore, the DC raises an objection. After the jury is sent out of the courtroom, a legal argument takes place. The discussion deals with the witness's departure from the original statements given at the police station. The DC raises an objection about the lack of notice about the new pieces of evidence that are coming out in court testimony at the trial.

TRIAL, DAY 6, p.18

DC: Now, (...) this last answer here is something nobody has ever heard before because it's not in any of her (...) statements.

However, when we come back to the discussion on the mode of taking an interpreted witness statement, in particular with the assistance of *ad hoc* interpreters, we can see

there may be a number of different reasons why information may be missing from the statement. Omissions in statements may, among others, be due to the limitations of note-taking. It is impossible for a police officer to listen for detail, non verbal behaviour and make a verbatim written record (Shepherd and Milne 1999, p.132; Komter 2006). Consequently, the police record, the second generation of the story (Linell and Jönsson 1991) presents the gist of the witness's story with only selected verbatim fragments and does not indicate the police officers' contributions. The inadequacy of the police transcript lies also in the fact that it is a written account of a spoken interaction, which in itself poses extra difficulties resulting from the differences between written and spoken language. When we deal with a statement taken with the assistance of *ad hoc* interpreters, as is the case in the present study, the material referred to in court is already the third story generation. Taking into account the interpreters' poor command of the English language and the results of Trinch's study (2003), which indicate that parts of the statement do not get interpreted at all, we can imagine that the third generation of the story may differ in content to the first generation, i.e. the witness's words. However, the distortion factors are not taken into account and the court takes the police record at face value without any consideration of the process in which it was taken and its possible consequences.

In the quoted example, the prosecution tries to explain the unexpected outcome of their direct examination by the fact that the examination is conducted via a court interpreter. The difficulty in controlling a lay witness is aggravated by the fact that the answers are given in full and then interpreted, which makes it more difficult to predict what the witness is going to say. Moreover, once the witness completes their turn, the entire turn needs to be interpreted. This is because the witness's answer in Polish is understood by the SRD and the remaining court participants need to have access to the entire reply. This prevents the counsel from interrupting the witness in the middle of the sentence if they are going off-track with their answer. The difficulties are expressed by the prosecution during the discussion of what to do with the new allegations that just came out:

TRIAL, DAY 6, p.19 and p.23

P: I mean obviously it's a bit more difficult in a situation where I don't know what the initial response I'm getting until I get it translated. If it was a

witness who was giving her evidence normally I would be better able to forestall (...)

And I'm doing utmost, (...) subject to the fact that I'm trying to control the witness whose answers I don't understand.

(...)

There is obviously a particular difficulty in that one doesn't realise what's happening until the answer is completed and you get the translation.

As seen above, the prosecution reiterates several times that conducting an examination-in-chief through an interpreter is more difficult in terms of maintaining control over the witness. What is not mentioned, however, is the method of collecting the statement from the witness, which could have also caused some of the information not to be recorded in the statement.

Regardless of whether it is more difficult to control a witness giving evidence through an interpreter or whether the mode of taking the police statement led to omissions in the statement, the jury heard the witness make new allegations in court. From the police record it seems that the new allegations were never mentioned to the police before. We may only wonder what is the impact on the jury and what inferences they may draw from the situation. We will observe in the following sections that in fact inconsistencies between the witness's live evidence in court and the statement are the DC's main strategy aimed at discrediting the witness in the eyes of the jury.

### **6.2.3 The examination-in-chief: consequences**

The above discussion demonstrates how the recontextualisation of an interpreted witness statement in court can cause difficulty for the prosecution, who is trying to elicit the content of an interpreted statement from a witness, who is giving evidence in court through an interpreter. Because the witness is giving evidence through an interpreter, the prosecution has less control over what the witness is going to say and cannot stop the witness mid-sentence as would be possible in a non-interpreted setting. In the analysed trial we have seen two types of consequences. Firstly, despite

numerous attempts, the prosecution was not able to elicit from the witness that non-consensual sex took place on one of the nights. Consequently, the counts of rape on that particular night were not subject to the jury's deliberations because the judge directed the jury to automatically return a verdict of not guilty as no evidence was presented in court about events from that night. Secondly, during the direct examination, the prosecution accidentally adduced additional crucial evidence about another incident of oral rape that was never recorded by the police in either of the statements taken from the complainant. The fact that this information was not included in the written statement taken by the police may make the jury draw negative inferences about the witness's credibility. This is in fact the strategy used by the DC, whose main line of defence relies on attacking the credibility of the witness.

### **6.3 The use of written witness statements in cross-examination**

In the previous section we discussed the use of an interpreted witness statement in court and its impact on direct examination. In this section we are going to focus on the use of the statement in cross-examination of the same witness by the defence counsel (DC). Like the prosecution (P), the defence counsel (DC) uses the English version of the witness's story (S1, S1a, S1b), which we established earlier to be the third generation of the witness's story.

#### **6.3.1 Inconsistencies between witness testimony and police statements**

As already discussed, the prosecution's goal during the direct examination is to narrate the story through their own witness, show the witness as a credible person and elicit the information to support the prosecution case. In the analysed section taken from the direct examination, we could see that some possibly damaging information was unintentionally elicited by the prosecution themselves. On the other hand, in cross-examination, discrediting witness credibility is one of the main defence strategies.

In the trial itself, pre-recorded witness statements provide the blueprint for both examination-in-chief and cross-examination, and highlighting their inconsistency with the witness's live evidence is always a crucial component of the defence strategy (Heaton-Armstrong, Wolchover and Maxwell-Scott 2006, pp.171-172).

Leading questions are allowed during cross-examination and their goal is to test the veracity of the witness's evidence (Drew and Heritage 1992, p.470) and to challenge the story presented by the witness during the examination-in-chief. There are two main functions of cross-examination. One is to elicit evidence which supports the cross-examiner's version and the other is to cast doubt on the witness's evidence (Heffer 2005, p.133 after Keane 1996). One way of discrediting a witness during cross-examination is to suggest they are dishonest. This can be achieved by showing inconsistent statements, mistakes and omissions in the witness's evidence (Heffer 2005, pp.134-135). We have already mentioned that questions in direct examination are a means of leading a witness to tell a convincing story to the jury and they are not meant to elicit new information. In cross-examination, the questions put to the witness are in fact declarations. The declarations focus on the trial rather than on the events, i.e. the witness is asked about what they told before and what they are telling now rather than about what had happened (Heffer 2005, p.152). Therefore, in the analysed case we can expect the DC to highlight any discrepancies between the witness's statement and her live testimony in court. We have shown so far that the court treats the police record of the witness's statement as a true and verbatim representation of the witness's words. The following excerpt refers to a disagreement between the DC and the witness. The witness claims she told the police about a certain event, but it is not in the statement. The DC is cross-examining the witness about who she told about the event and why it is not in her statement.

TRIAL DAY 7

DC: Who do you think you told?

W: I said it at the Garda Station.

DC: Do you know who you said it to?

W: I can't remember.

DC: Well, obviously you would have had to say it to either INT1 or INT2 in order to tell it to the police; isn't that right?

W: Yes.

DC: And do you think you told it to them or one of them then?

W: Yes, I did say it.

DC: You did say it? And how do you account for the fact that it doesn't appear to be in your statement or statements?

W: I don't know. I did say it. I don't know why it wasn't interpreted.

We can see in the example above that the witness suggests that the information was not interpreted at the police station and this is the reason why this is not in the statement. While this is possible, there are numerous other reasons why some information may be missing from the statement and the reasons have been discussed in Chapter 4 (section 4.2 and 4.3) and briefly in Chapter 6. In the excerpt above, there is a disagreement between the defence counsel and the witness, who claims to have said something to the police, which is, however, not included in the statement. The defence counsel is trying to ascertain who exactly did the witness say it to and manages to get the witness's agreement that she must have told the information to one of the interpreters.

DC: Do you know who you said it to?

W: I can't remember.

DC: Well, obviously you would have had to say it to either INT1 or INT2 in order to tell it to the police; isn't that right?

W: Yes.

DC: And do you think you told it to them or one of them then?

W: Yes, I did say it.

Once he gets the agreement to this part, the DC brings it together with another piece of confirmed information, i.e. the fact that this particular information is not in the statement. Such a manipulation of pieces of evidence and bringing together contrasting structures to undermine a witness's credibility are a common cross-examination strategy (Drew and Heritage 1992, pp.505-506). On the surface the two pieces of information (*I told the interpreters about it + it is not in the statement*), when brought together and juxtaposed, should create a puzzle for the jury (*if she told it to the interpreters, why it is not in the statement*) and damage the witness's credibility (*if she had told the interpreters about it, it would have been in the*

*statement* → *the witness is lying*). However, in this case the witness disagrees with the defence counsel in a way that may save her image in the eyes of the jury:

DC: You did say it? And how do you account for the fact that it doesn't appear to be in your statement or statements?

W: I don't know. I did say it. I don't know why it wasn't interpreted.

The witness firmly states that she “did say it” but, in order to prevent the negative inference from being drawn from the juxtaposition, adds that she doesn’t know “why it wasn’t interpreted”. Thanks to that she managed to firmly disagree with the DC and yet not to appear confrontational or not credible by shifting the focus to the interpreters and the mode in which the statement was taken as the possible reason for the omission in the statement. In the light of the above, the cross-examiner’s strategy to attack witness credibility by highlighting discrepancies between the statement and the evidence in court loses its force when the witness brings up the interpreting issue. In the absence of electronic recording, it is impossible to verify what was actually said at the police station and the jury is left wondering whether the process is to blame or whether the witness is not truthful.

Similar exchanges between the witness and the cross-examining barrister appear several times during the trial. The witness claims that she had said something at the police station and the cross-examiner asks repeatedly why it is not included in the statement. On one occasion, the opposite situation happens and the witness states that she did not say something that is included in her statement. Here again, the DC repeats the question several times to highlight the apparent inconsistency for the jury.

TRIAL DAY 9

DC: The sentence I read to you, I'll read it again and I want to ask you did you tell the police this? "When we were on streets I made cross on my face because my finger was bleeding."

W: I definitely didn't say it. I definitely didn't make a cross.

DC: Well, firstly, tell us what you say you did do.

W: I definitely didn't make a cross from the blood of my bleeding finger on my forehead. My finger was bleeding so I just put some of that blood on my cheek.



DC: Now, I am a little bit unclear what you are telling me so I'd like to ask this question. Did you say this sentence in your statement to the police: "When we were on streets I made cross on my face because my finger was bleeding."?

W: I definitely didn't make a cross. I just put some of the blood on my cheek.

DC: Well, you definitely didn't make the cross?

W: Definitely not.

DC: That means you told the police something that's wrong?

W: I definitely didn't say it. I definitely said that my finger was bleeding and I just put some of the blood on my cheek.

DC: And how is it that your statement contains that sentence in it that I have read out if you never said that?

W: I don't know why it is in my statement.

In the above fragment we can see that the witness denies saying something that is in the statement, which in a monolingual situation would be an important point in discrediting the reliability of such a witness. However, taking into account the circumstances in which the statement was taken and the fact that *ad hoc* interpreters did not have sufficient English to convey the information in correct English, the quoted sentence might have been misinterpreted by the interpreters or mistranscribed by the police officers. Again, since the police record is the only version available at this stage, this cannot be verified. At the same time, the jury observe that the lay witness constantly disagrees with the DC and this in itself may make them draw negative inferences either way, in particular if we consider that such exchanges occur several times.

The main DC strategy in this case was to discredit the witness by highlighting inconsistencies between her testimony in court and the written statements taken at the police station. During the discussion about whether there is a case to go to the jury, the DC and the judge do not take into account the circumstances in which the statements were taken and the fact that they are testing the third generation of the story. The DC claimed that:

TRIAL, DAY 20, p.77

DC: (...) the inconsistencies and the aspects of her story in relating to each significant event, has changed so much as between her statement and her evidence and as to significantly what actually occurred, that no reasonable jury could be asked to return a safe verdict on any of the counts.

And:

TRIAL, DAY 20, p.79

DC: (...) the case is entirely about credibility, reliability, accuracy, consistency.

Even the judge puts a lot of weight towards the credibility aspect of the case in considering the submission:

TRIAL, DAY 20, p.79

J: (...) there are credibility problems, there are frightful credibility problems.

However, taking into account the method in which interpreted witness statements are taken and the absence of electronic recording, such a heavy reliance on what is ultimately a police record of interpreters' words in poor English may be seen as unfair to the witness.

Generally, attempts to challenge the credibility of the witness by trying to compare their live evidence in court with a written statement are problematic also in monolingual trials, in particular if we take into account that no audio- or videorecording of the witness's words is available. Therefore, arguments over what exactly was said at the police station occur regularly during monolingual trials, too and "attempts to use the statement to test consistency often degenerate into a farce, with unresolved conflicts over just exactly what it was that the witness did say to the police." (Wolchover and Heaton-Armstrong 1992, p.163). However, due to the increased number of story generations, the conflicts in the case of interpreted witness statements become more acute and may have two types of effect on the jury. On the one hand, if there are real credibility issues, it gives the witness the opportunity to shift the focus to the process of taking the statement itself and the possible shortcomings of interpreters. On the other hand, if the witness presents a credible story, the fact that the third generation story is tested in court against the witness's

recollection (i.e. the first generation of the story) will most likely lead to disagreements between what the witness wanted to say and what was written in the police record. Consequently, in an attempt to get the facts right, the witness may frequently not agree with the cross-examining counsel and, as a result, be perceived by the jury as confrontational and their account as not credible. One solution to this quandary may be compulsory recording of interpreted witness statements.

### 6.3.2 Impact of ambiguities on cross-examination

During our discussion of both Polish translations of the witness statements (T and T1, T1a and T1b), we demonstrated that the statements were translated in a covert fashion. The translators disambiguated those fragments of the statement that were unclear, perhaps due to the language limitations of the interpreters, and “polished” the language by translating the statements into standard Polish. The excerpt below, discussed earlier, shows an example of disambiguation which created problems during the trial:

S1a(44-45): The kitchen window I could not open, it was broken.

T1(190): Nie mogłam otworzyć okna w kuchni, było zepsute.

[I could not open the window in the kitchen, it was broken. (i.e. damaged)]

T2a(220): Nie mogłam otworzyć okna kuchennego bo było zepsute.

[I could not open the kitchen window, it was broken. (i.e. damaged)]

Both translators disambiguated the English word “broken” into “damaged”. This is a difficulty because in Polish this ambiguity cannot be preserved and the translators had to decide whether to choose one interpretation or insert a footnote with an explanation. However, the English version is still ambiguous and this is reflected in the following fragment from the witness’s cross-examination by the DC in which he tries to find out what “broken” referred to. We can see in the fragment below that the court interpreter is faced with the same problem as the translator and is looking for clarification as to what the cross-examining barrister had in mind:

TRIAL DAY 9 (Q270-273, pp42-43)

DC: (...) Have you just told the jury that you tried to get out of the window?

W: No, I didn't try to get out of through [sic] this window because it was a small window.

DC: And was it broken?

W: No.

DC: In your second statement you say, "The kitchen window I could not open. It was broken." (Quoted)?

INT: Can the interpreter ask a question?

J: Yes.

INT: Do you mean by broken the window that the glass was broken or just the window it couldn't open.

DC: Well, that's what I want to ascertain.

Due to the ambiguities in the statements, the DC is trying to clarify the quoted fragment during cross-examination. However, it was impossible for the witness to say "broken window" ambiguously in Polish because the two meanings of broken (damaged vs. broken pane) are realised by different lexical items (*zepsute* vs. *zbite*). Having only the third generation of the story available to him, in which the source distinctions are blurred, DC tries to clarify the sentence:

DC: And was it broken?

W: No.

The firm disagreement of the witness indicates that the court interpreter chose the *zbite* (broken pane) version when interpreting the DC's question into Polish. Only in the next turn, when the DC wants to highlight an apparent inconsistency between the witness's words and her statements, the court interpreter asks for clarification:

DC: In your second statement you say, "The kitchen window I could not open. It was broken." (Quoted)?

INT: Can the interpreter ask a question?

J: Yes.

INT: Do you mean by broken the window that the glass was broken or just the window it couldn't open.

The example above illustrates that nuancing an ambiguous statement via an interpreter in court may be difficult. What might have looked at first like an inconsistency in the witness's evidence turned out to be a language related issue in

this case and due to the court interpreter's disambiguation of the word "broken". In general, because the DC is using the third-generation of the story, some of the questions asked in cross-examination may refer to distortion added by the interpreters or the police, which cannot have been a part of the witness's original story. It seems that extra caution needs to be taken when testing the credibility of a witness whose statement was taken with the assistance of interpreters. The judge made a similar observation in relation to a cross-examination conducted with an assistance of a court interpreter:

TRIAL, DAY 10

J: My conclusion is that if this trial were proceeding in the English language throughout, there would be space to perhaps nuance the statement of the case (...)

Even though the judge's comment relates to the interpreter present in court and her impact on the questioning strategy, the observation may apply to interpreted witness statements as well and should be taken into account when assessing witness credibility. Nuancing the statement and highlighting inconsistencies between the police statement and court evidence of the witness may prove futile when we take into account the number of recontextualisations the witness's words subsequently underwent. The absence of recording during a witness-statement-taking session makes it impossible to establish what was said. The lack of recording puts the strategy of comparing the witness statement and the evidence given in court as a means of credibility check into question.

The examples above come from the cross-examination of the witness by the English speaking counsel (DC) who represents the co-defendant. In section 6.4 we will discuss the cross-examination of the same witness carried out by the self-representing defendant (SRD), who uses the Polish translations of the statements in his cross-examination, i.e. the fourth generation of the story.

## **6.4 The use of written witness statements in cross-examination by a self-representing defendant**

In sections 6.2 and 6.3 we have discussed the issues arising from the recontextualisation of the witness's story by the prosecution and the defence counsel. We could see that the issues arose during examination by "friendly" counsel and not only during cross-examination. Some of the issues can be attributed to the fact that the barristers used the third generation of the witness's words (S1, S1a, S1b) and tested that version of events against the witness's own recollection, i.e. the first generation of the story, which was not electronically recorded. In this section we are going to discuss the cross-examination carried out by the self-representing defendant (SRD), who is using the fourth generation of the witness's story or in fact two sets of fourth generation stories (T and T1, T1a, T1b) discussed in more detail in Chapter 5. In Chapter 5 we established that the SRD was provided with two sets of covert translations, which he was going to use in court. We are going to discuss how the fourth generation of the story contained in those translations relate to the witness's account, but also to the third generation of the story used by the barristers.

### **6.4.1 Navigation issues and misrepresentation**

As described in Chapter 5, one set of translations (T) provided for the SRD did not follow the layout of the statements in the English version and in fact merged all three statements (S1, S1a, S1b) into a single statement, which we marked as T. Not only was the original layout not preserved, but all the references to the primary reality of the statement (such as the date and name of the interviewers) were omitted. The fact that the layout was not preserved and the defendant had two sets of translations caused confusion during the trial, when evidence was quoted from the statement. Often the judge and the barristers could not locate the fragments which were quoted by the defendant. Reasons for the confusion included the differences in layout, lack of page numbers and the merging of the three English statements into a single Polish text. The quote below illustrates the issue, where the judge (J) cannot find the passage quoted by the SRD from the witness's statement:

TRIAL, DAY 13 J: Which page from the book of evidence are you quoting from? SRD: I don't have the page numbers.
---

J: Do you have the English Book of Evidence?

SRD: No.

Moreover, we need to remember that the defendant was quoting the fourth generation of the story (one of the Polish translations), which was then interpreted by the court interpreter for the judge and jury. Consequently, the court interpreter was creating another generation of the story in English, which was often different to the third generation of the story that the judge had available. One example of such a confusing series of recontextualisations can be based on a translation issue discussed in section 5.5 relating to the following sentence:

S1(29-30): I broke, I don't know what you call it, something you use to open the window.

We have observed that the underlined fragment was most likely inserted by the interpreter, who was struggling to come up with the English word "handle". However, this role shift of the interpreter was not recognised by the translator of T1, who understood the verb "break" as a mental breakdown instead and rendered in T1 as:

T1(34-35): Nie wytrzymałam. Nie wiem jak to się nazywa, służy do otwierania okien.

[I couldn't bear/stand it. I don't know what you call it, it is used for opening windows.]

In the court data, the SRD attempts to cross-examine the witness in relation to that very phrase and uses T1 to quote the witness:

TRIAL, DAY 12

SRD: You said in your statement: "The car slowed down somewhere close to the forest, I didn't manage any more." Is that correct?

W: It did slow down.

SRD: Did you say "I couldn't manage"?

W: I don't know what those words "I couldn't manage" mean.

SRD: You should be the one to interpret those words.

W: I can't remember myself using the words "I couldn't manage."

We can see from the extract above that the witness cannot recognise the phrase in question, which is interpreted by the court interpreter into English as “I could not manage”. In her reply, the witness agrees only to one proposition in the question, the one referring to the car slowing down:

SRD: You said in your statement: "The car slowed down somewhere close to the forest, I didn't manage any more." Is that correct?  
W: It did slow down.

The SRD wants to clarify further because the sentence is not quite clear in his translation. However, due to a series of recontextualisations, the witness does not understand what the phrase means, a phrase that has supposedly been uttered by her at the police station:

SRD: Did you say "I couldn't manage"?  
W: I don't know what those words "I couldn't manage" mean.

The SRD, still not aware of the recontextualisation problem, thinks he has caught the witness out and led her to a situation in which she cannot explain her own words. However, the witness misses the point and genuinely does not recognise the phrase, which is supposed to be a verbatim quote from her own statement:

SRD: You should be the one to interpret those words.  
W: I can't remember myself using the words "I couldn't manage."

At this stage, the judge intervenes as he is unable to find the relevant fragment himself. The judge is then joined by the prosecution who struggles to find the exact sentence and finally the defence barrister finds the fragment in the book of evidence, but comments that it is presented in different words. Mr Kowalski in the quote below refers to the self representing defendant (SRD).

J: Where is this in the Book of Evidence? Are you dealing with page 12 still? I can read "When the car was going slowly..."  
P: I can't find this, no more than I can find the reference that Mr. Kowalski said there. I am quite willing to be corrected.  
J: Yes, I can't find anything about not able to manage.



DC: The last part of that sentence in different words.

As a result, the flow of the cross-examination is disturbed and both the prosecution and the judge are trying to find the relevant fragment in the book of evidence. We need to remember that the SRD is cross-examining the witness in the presence of the jury and that his cross-examination has been interrupted through no fault of his own. Furthermore, the issue is not solved, and the jury is left wondering why exactly the cross-examination was interrupted by the judge. Finally, the defendant gets lost in the statement himself and abandons this part of cross-examination.

J: The meaning might be pretty lost. Mr. Kowalski, the word "manage" doesn't seem to appear in the Book of Evidence at the appropriate place, and perhaps, Mr. Kowalski, you'd just check the Book of Evidence, page 12, and see does it correspond to your Polish text you seem to be quoting from.

P: Yes, it's also dealt with at page 8 but again I can't find a reference to "managing" or "fists", two thirds of the way down page 8.

SRD: Your Honour, maybe I will come back to that later. I can't find it now.

J: Yes, that's okay. Make a note of that, you might be able to sort it out.

Because each party understands and uses only one language version of the statement, it appears that nobody noticed that the confusion was translation-related. However, when we look at the table below we can see how many different recontextualisations of one sentence were created along the way up to the 12<sup>th</sup> day of the trial, which led to the confusion discussed above:

	<b>Generation</b>	<b>Produced by</b>	<b>Language</b>	<b>Wording</b>
1	First (pre-trial)	Witness	PL	unknown (not recorded)
2	Second (pre-trial)	Interpreter	EN	unknown (not recorded)
3	Third (pre-trial)	Police officer	EN	I broke, I don't know what you call it, something you use to open the window.
4	Fourth	Translator 1	PL	Złamałam, nie wiem jak się to nazywa,

	(pre-trial)			gałkę do otwierania okna [I broke, I don't know what is it called, a knob for opening windows]
5	Fourth (pre-trial)	Translator 2	PL	Nie wytrzymałam. Nie wiem jak to się nazywa, służy do otwierania okien. [I couldn't bear/stand it. I don't know what you call it, it is used for opening windows.]
6	Fifth (during trial)	SRD	PL	unknown
7	Sixth (during trial)	Court interpreter	EN	I didn't manage any more. I couldn't manage.
8	Seventh (during trial)	Witness	PL	unknown
9	Eight (during trial)	Court interpreter	EN	I couldn't manage

**Table 6.3 Different recontextualisations of the sentence S1(29-30) in the course of the legal process**

We can see that as many as nine recontextualisations of this one sentence have been created and observe how the version has changed between the third generation of the story (I broke, I don't know what you call it, something you use to open the window) and the eighth (I couldn't manage). We cannot say what the impact of the interruptions is on the jury, but because such interruptions are not uncommon, but it is possible that they may think the defendant is purposefully misrepresenting the statement. In addition, the confusion regarding different recontextualisations of the story interrupts the flow of cross-examination.

One final example of difficulties related to finding the appropriate statement is presented below when the SRD quotes a fragment from T1(47-48) and then continues on to quote another passage from what he calls witness's "second statement". After some clarification on the part of the judge, it turns out that by

“second statement” he actually means S1, which was the first statement taken from the witness.

TRIAL, DAY 13:

SRD: So I'm going to quote you what you said in your statement (...)

J: Which statement is this you're reading from, Mr. Kowalski, is this the second statement that you said?

SRD: Your honour, I don't know what was the order of the statement. I just have them marked S1, S1A.

Pros: S1 is the first one.

TRIAL JUDGE: And S1A is the second. And you're now reading from S1A?

SRD: No, S1.

We can see from the situation above that the defendant's cross-examination of the witness is interrupted when the trial judge tries to establish which fragment was being quoted by the defendant. Here again the fact that the SRD had two sets of translations hindered navigation through the statements. From the judge's comment below, we can see that he is aware of the negative impact the interruptions may have on the SRD's cross-examination, but at the same time he needs to maintain control over the trial and intervene in case of doubt.

THE JURY WITHDREW.

J: (...) it is confusing and it might be safer to let him go on in accordance with his lights. Sometimes he lurches into a bit of honest to goodness misrepresentation. I'm not saying that it's purposely done, but with the confusion of statements I can well imagine that it could be quite easy to fall into that error (...)

Mr. Kowalski, the Court appreciates the difficulty of putting all the statements together and the language difficulty. And the Court also accepts that generally you're trying to honestly portray quotations and I propose to allow you to

continue doing as you're doing. (...) So don't for a moment think the Court is interrupting you too much or that any interruptions are indicating that the Court is unhappy with the way you're conducting the cross-examination. But there are these difficulties and you will be interrupted from time to time through nobodies [sic] fault at all and that's the way it has been going and probably will go.

While the court “appreciates the difficulty”, we do not know what the impact of these interruptions is on the jury and whether the jury realises what the origin of the confusion is. The fact of the matter is that the SRD often quotes in his questions one of the two sets of translations into Polish (T and T1, T1a, T1b, i.e. generation 4.1 and 4.2). The quotes are then interpreted into English by the court interpreter (generation 5) while the judge and counsel use the police record of the witness statement (generation 3). Both generation 3 and generation 5 are in English, but they will be invariably different and the judge and the counsel will have difficulties finding the quoted fragments. The difficulty is increased by the fact that the translation marked T has been merged into a single text and the defendant does not know whether he is quoting from S1, S1a or S1b. Navigation issues were a source of serious confusion at the trial and caused major delays in the proceedings.

#### **6.4.2 Inconsistencies between translations**

In Chapter 5 we discussed the distortion that took place during the translation of the statements from English into Polish. A number of factors contributed to the distortion of the narrative including the merging of all three English statements into one and omission of the opening and closing paragraphs, i.e. the primary reality which places the interview in a specific time and place. We also concluded, on the basis of House’s translation assessment model, that both translations were covert ones. Consequently, due to the fact that the translators were trying to make sense of the seemingly illogical sentences, we ended up with two fourth generations of the story, which present two different versions of events.

In fact, the two translations were different to such an extent that the defendant was convinced they were two different statements made by the witness and not two

different translations of the same statement. As discussed previously, one of the goals of cross-examination is to discredit the witness's credibility by, for example, highlighting inconsistencies in the statements. The following example will deal with a situation when the SRD quotes a sentence from T and contradicts it with a sentence from T1a, in which the same sentence was translated differently. During the questioning, he is convinced that they are two separate statements, in which the witness contradicts herself. The confusion relates to the following sentence in S1a:

S1a(94-95): On Monday Bartek say to me to phone home and my father have heart attack.

In their covert translations, each of the translators recontextualised the sentence in a different way:

T(247-248): W poniedziałek Bartek kazał mi zadzwonić do domu, i dowiedziałam się, że mój ojciec miał zawał serca.

[On Monday Bartek told me to ring home and I found out that my father had had a heart attack.]

T1a(108-109): W poniedziałek Bartek powiedział mi przez telefon, że moj ojciec miał atak serca.

[On Monday Bartek told me over the phone that my father had had a heart attack.]

Each of the renditions contains a different message and contradicts the other. In T the witness is the person who makes the phone call home and finds out about her father's condition while in T1a, it is Bartek who breaks the news to the witness over the phone. The part of cross-examination in reference to this particular sentence comes from the twelfth day of the trial and it is clear that still at this stage, the defendant is not aware that he is trying to highlight inconsistencies in two different translations of the same statement.

TRIAL, DAY 12

SRD: In the Book of Evidence you're saying, "Bartek ordered me to call my family and I found out that my father had had a stroke". In your next statement you're saying, "Bartek told me on Monday over the phone that my father had had a stroke"?

Putting aside the fact that possibly due to the court interpreter's mistake the heart attack has been transformed into a stroke in the court data, we can see in the fragment above that the defendant is quoting two Polish translations of the same

sentence from English S1a. When the witness denies having said such thing, the SRD quotes T1a to contradict her:

W: I definitely didn't say anything like that. There was definitely a phone call on Monday evening when I spoke to my brother. (...)

SRD: In your statement it says, "On Monday I found out from Bartek over the phone that my father had had a stroke"?

Because the version quoted by the defendant is so far removed from the original story and drastically different from third generation story (S1a) used by the prosecution, there is an objection to the question and the prosecution quotes the relevant fragment from S1a:

Pros: It doesn't say that, well, certainly not in the English version.

J: Had a heart attack.

P: What it says is that, "On Monday Bartek said to me to phone home".

At this stage we can again provide a list of the different generations of this single sentence that have been produced through the process:

	<b>Generation</b>	<b>Produced by</b>	<b>Language</b>	<b>Wording</b>
1	First (pre-trial)	Witness	PL	unknown (not recorded)
2	Second (pre-trial)	Interpreter	EN	unknown (not recorded)
3	Third (pre-trial)	Police officer	EN	On Monday Bartek say to me to phone home and my father have heart attack.
4	Fourth (pre-trial)	Translator 1	PL	W poniedziałek Bartek kazał mi zadzwonić do domu, i dowiedziałam się, że mój ojciec miał zawał serca.  [On Monday Bartek told me to ring home and I found out that my father had had a heart attack.]

5	Fourth (pre-trial)	Translator 2	PL	W poniedziałek Bartek powiedział mi przez telefon, że moj ojciec miał atak serca.  [On Monday Bartek told me over the phone that my father had had a heart attack.]
6	Fifth (during trial)	SRD	PL	unknown
7	Sixth (during trial)	Court interpreter	EN	Bartek ordered me to call my family and I found out that my father had had a stroke.  Bartek told me on Monday over the phone that my father had had a stroke.  On Monday I found out from Bartek over the phone that my father had had a stroke.
8	Fourth (during trial)	Prosecution	EN	On Monday Bartek said to me to phone home.

**Table 6.4 Different recontextualisations of the sentence S1a(94-95) in the course of the legal process**

We can see that at this stage eight different versions of the sentence have been created and this led to a lot of confusion about what the SRD is quoting. The defendant is also confused and realises there are two different copies or two different statements but still does not realise that he is dealing with two conflicting translations of the same statement. In fact he apologises to the court for the confusion and the existence of two translations, which led to the confusion, is not discovered.

SRD: There seems to be two copies and it's different on one. It says over the phone on this one and I'm not sure - oh, it's a different statement, I'm sorry. Okay, these are different statements.

Finally, the prosecution clarifies that he uses the Polish translations of the statements and questions their validity due to the fact that they were translated back a year after the statements were taken:

P: Just to clarify, is Mr. Kowalski working off a Polish statement?

SRD: Yes.

P: Again, we're back to the situation that what she has said originally in Polish to INT1 and INT2 was recorded in English and a year on it's translated back into Polish.

In the above quote, the prosecution links the confusion back to the process in which the statement was taken. The prosecution highlights that the statement was taken down in English only and was then backtranslated into Polish. Here again the obligation to record interviews with witnesses could be helpful for two reasons. Firstly, it would be possible to come back and see what was said by the witness at the police station. Secondly, the Polish language version prepared for the defendants could be prepared on the basis of the recording. Thanks to that, the language used by the witness could also be used in the Polish version. It would also eliminate the need to make a backtranslation from the English version, which now needs to be prepared in isolation from the original context. However, in the analysed case the conflict is not resolved and the participants, including the SRD himself and the jury, do not realise that the SRD is attacking the credibility of the witness by comparing two renditions of one sentence which has been translated in two different ways in his Polish versions. It is only a day later in the trial, on day 13, that the defence counsel raises the issue of the two translations:

TRIAL, DAY 13

DC: I did want to point out at an appropriate stage that in fairness to Mr. Kowalski the jury just don't understand that a Book of Evidence is served in English and then each accused has to get that translated into their native language of Polish.

J: I'd say they do understand that.

DC: So they've been armed with that, but they also have a second translated version of the statements. So there are



three versions of Ms. Jankowska's statements, the ones in English and the two ones in Polish (...).

However, even though the point is raised and recorded in the transcripts, it is not clarified that the defendant was using the differences between translations to highlight inconsistencies in the witness's statement the day before. The issue of multiple translations is not pursued further in the trial.

### 6.4.3 Impact on trial due to distortion between ST and TT

The previous sections dealt with cross-examination difficulties caused mainly by the existence of two translations and the layout of T. This section will discuss the issues related to the distortion between the third generation of the story (S1, S1a, S1b) and the fourth generation, i.e. the translations into Polish (T and T1, T1a and T1b). As already discussed, the DC and the P used the third generation of the story in their examination while the SRD used the Polish translations, i.e. the fourth generation of the narrative. We will now discuss three separate examples in which the covert manner in which the statements were translated impeded the cross-examination by the SRD.

#### 6.4.3.1 Started to tear ticket vs. tore the ticket

In this example a simple lexical infelicity in the Polish translation again caused some confusion at the trial. The example refers to the following sentence in S1a:

S1a(80-81): Bartek and Artur show me ticket and start to tear it. It was fun for them.

While in S1a, the act of tearing the ticket is incomplete (start to tear), in T the action is complete:

T(229-230): Bartek i Artur pokazali mi ten bilet i na moich oczach go podarli. Mieli z tego dobrą zabawę.

[Bartek and Artur showed me this ticket and tore it in front of my eyes. They had good fun doing it.]

Firstly, in T the ticket was actually torn and, in addition, the translator adds to the drama of the whole situation saying that the ticket was torn in front of the

complainant's eyes. Because the untorn ticket is one of the exhibits in the case, the lexical infelicity could be crucial. In fact this sentence is the subject of discussion during the trial and the objection is raised by SRD after the prosecution re-examines a witness:

THE WITNESS WAS RE-EXAMINED BY PROSECUTION AS FOLLOWS:

P: Garda, you were being asked by defence barrister as to your recollection of what Ms. Jankowska had said in the statement about the ticket and I think the position is that what she had said in the statement was that; "Bartek and Artur show me ticket and start to tear it". Not actually complete it.

W: No, more or less threatened to tear it.

P: Thank you Guard.

SRD: (Stands up)

J: Usually, Mr. Kowalski, it is not the practice to cross-examine after an re-examination. Is there any special reason why you would seek to ask a further question. If it arose out of something that prosecution said you can do so.

SRD: I just wanted to highlight what prosecution said because the thing is that in front of the jury the Complainant said that we wanted to tear this ticket, but in the statement of the Complainant which she gave at the police station it is written; "Bartek and Artur showed me the ticket and tore it in my eyes. They had good fun."

J: That doesn't seem to be the English version. What page is the statement in the book of evidence is the English version.

P: Last few words of page 12 and the first few words of page 13.

J: Well, I suppose Mr. Kowalski could say there was an added sentence, it was fun for them. Is there any objection to that?

We can see from the excerpt above that the SRD's objection was based on the translated version of evidence, which clearly says the ticket was torn. However, the judge understood that the defendant's objection referred to the added sentence "it was fun for them" and not to the completion of the tearing of the ticket. The objection is significant taking into account that a complete ticket was one of the exhibits in the trial but it was not understood by the court participants. It is another

example of the SRD raising an inconsistency which is in fact related to mistranslation in his versions of the witness's statements. It is also another example when it is not recognised by the judge and the other English-speaking participants including, presumably, the jury.

#### 6.4.3.2 Ring vs. visit

This example is related to an ambiguous sentence which was analysed in depth in section 5.7.1 of Chapter 5. It referred to the ambiguity in the verb phrase "call to" in the following sentence:

S1(119-120): Before I meet Bartek I call to John Madden butcher.

As discussed in Chapter 5, each translator disambiguated the sentence differently, i.e. one as a phone call (T) and one as meaning a face-to-face encounter (T1). It is only during the cross-examination carried out by the SRD about that fragment that we find out which translator made the right choice.

TRIAL, DAY 13

SRD: Monday xxxxxx, you have said before the jury that you rang Mr. Madden?

W: I definitely didn't say that I phoned that man.

SRD: You have said that before the jury and you have said that in your statement as well?

W: I definitely didn't say that I phoned that gentleman mainly because on Friday my SIM Card was taken away. I had an appointment. I was supposed to see that man. I didn't phone him.

SRD: So I'm going to quote you what you said in your statement, "Before I met Bartek I phoned Mr. Madden, the owner of the butchers"?

W: No.

SRD: So you were lying?

W: No, I never said I phoned this gentleman.

J: Hold on a second, prosecution wishes to speak. Yes?

P: Mr. Kowalski is suggesting that the statement refers to a telephone call, but the English version, at least, says, "Before I meet Bartek I called to", three lines from the bottom of Page 10. I can't find any reference to a telephone call. I don't know where Mr. Kowalski is getting this telephone call from. Her evidence has always been that she intended to meet with this gentleman and why.

SRD: In the Book of Evidence, in my version it says phoned, but that's okay, no problem. Okay, so she didn't phone?

J: Well -

SRD: It says here that she did.

J: If it was originally translated into English as, "Before I met Bartek I called John Madden, butcher". It's ambivalent, prosecution. The context would favour not phoning, but it's -

P: If your Lordship goes back a sentence earlier.

J: Yes, have lunch and

P: "I got there by bike. I meet at 12:50 p.m. and we had lunch. Before I met Bartek I called to John Madden, butcher". I mean it's clearly a description of the bike journey. "Mr. Madden tell me to Hoover his wife's house". I mean it's clearly a face to face encounter.

J: And then next sentence, "I Hoover" Well, I really should be in fairness to the witness there should be reasonable certainty. I'm hesitant to rule on it.

P: I don't think your Lordship needs to because, I think, Mr. Kowalski is accepting that the correct version, that the issue is a translation issue, that he's accepting, I think, that this statement doesn't speak of a telephone call.

J: Yes. You accept that, Mr. Kowalski, because I can send the jury out and we can argue it a little bit more, if necessary. It would seem to be a translation in the statement.

This again highlights the difficulty faced by the translator, who cannot contact the authors of the text to find out what the intended meaning was. We can see that the prosecution and the judge perform their own linguistic analysis trying to figure out from the context what "call to" refers to. The prosecution goes as far as to say "I mean it's clearly a face-to-face encounter." We may of course favour the version that it was a face-to-face encounter, but taking into account numerous ambiguities in the English statement, saying that it is clearly a face-to-face encounter seems to be

presumptuous in the extreme. It does not seem that this – or many other parts – of the witness’s statements are clear. As a result of the above exchange between the prosecution and the judge, it has been established that “call to” referred to a personal visit and the SRD’s translation was wrong.

This is another example when the SRD’s cross-examination is interrupted in front of the jury, which can have a negative impact on the jurors. This concern is raised by the DC:

DC: Well, I'm concerned that the jury might get an impression that because there are interruptions to Mr. Kowalski, because things are being clarified that there is – maybe one or more of the jury might have a perception that there was a degree of style of cross-examination that was –

J: Wasn't pleasing to the Court?

DC: Yeah.

After the concern is raised by the DC, the judge clarifies for the jury that the interruptions have nothing to do with the style of the cross-examination, but more with the language difficulties and translations of the statement. However, the interruptions in the flow of cross-examination cannot be undone and the fact that the SRD has to abandon certain lines of questioning in the middle of cross-examination negatively affects the continuity of his case.

#### 6.4.3.3 Come vs. come

The final example of a lexical mismatch is another attempt at disambiguation of the following sentence, which was discussed in section 5.7.2:

S1(130): I only make love to Bartek since I come to Ireland.

The above sentence, as discussed in Chapter 5, has been mistranslated in T1 as:

T1(141): Uprawiam seks z Bartkiem tylko wtedy, kiedy sama osiągam orgazm.

[I only have sex with Bartek only when I reach orgasm myself.]

In T1, the verb “to come” has been rendered as “to reach orgasm” and “to Ireland” has been omitted in translation. This is a clear example of mistranslation that has negative impact on the SRD’s cross-examination in the trial. The following is an extract from the defendant’s cross-examination of the complainant in front of the jury in relation to the above sentence as translated in T1(141):

TRIAL DAY 12

SRD: Is sex according to you only when you come?

W: No.

SRD: I'm going to quote you from one of your statements, "I have slept with Bartek only when I come myself". This is the last page from statement number one?

J: Well, could we get a page number?

SRD: The last page from statement number one, "I have sex with Bartek only when I come myself".

P: I don't recognise the quotation enough to say My Lord. There is a sentence in the English version which says, "I only have sex with Bartek since I've come to Ireland"(...)

INT: In the Polish version there is a word 'orgasm'.

J: The difficulty is that the Polish Which Ms. Jankowska spoke was translated by INT1 and INT2 and was taken down in English by the Gardai. So really --

P: And a year later someone put it back into Polish, (...) And it seems that when that was a year on being re-translated back into Polish that the translator saw the word 'come' and translated it as orgasm (...).

J: Well, Mr. Kowalski, (...) What prosecution is saying that it seems that the Polish translation that you'd have got may well have mistranslated the word 'come' to read orgasm given that the word 'come' has now required two meanings in the English language. It's a dramatic instance of how translations can go seriously wrong. Are you happy with that Mr. Kowalski?

This is, to quote the trial judge, “a dramatic instance of how translations can go seriously wrong”. This example clearly demonstrates yet again how the defendant is misled by the translation and needs to be stopped in the middle of his cross-examination. In Chapter 5 we observed that both translations into Polish (T and T1, T1a, T1b) were covert ones. The translators and adapted the witness’s story to a

standard representation of the genre of a witness statement. The covert translations made the defendant believe everything in the statement is clear-cut and unambiguous. Moreover, in the process of “ironing out” certain fragments of the statement with no access to the original context, the translators disambiguated and mistranslated certain fragments. This, in turn, impeded the cross-examination performed by the SRD and led him up the wrong path during the questioning. As the judge summed up:

TRIAL, DAY 21

J: And with that type of insertion of doubt over whether the translator was up to the job, by the Complainant and her witnesses, the Defence is working in shifting sands. And it would seem that, certainly in this case, a person would not be getting as fair a trial as the English speaker and the English-speaking investigation system in Ireland would get. You couldn't argue with that.

Every time a point was being made by the Defence, a telling point, there was -- there was a let-out clause for the witnesses

Witness statements are legal texts which serve a specific function. In this case, a written record of the witness's narrative is used as a tool in cross-examination. The translation of the statement into Polish is commissioned to give the defendant access to this tool. It seems from the analysis performed in this chapter that a covert translation contaminates the witness's narrative making it unsuitable for the purpose of cross-examination. If we take into account that the English version remains the exhibit, the translation strategy adopted should aim at giving the reader access to the exhibit. The analysed impact of translated statements on the cross-examination suggests that overt translation may be more suitable in the case of witness statements.

### **6.5 Time spent on T/I issues**

The examples discussed above are just a small cross-section among many more exchanges of a similar kind, which took place during the 25-day-long trial. Having

the court transcripts at her disposal, the researcher performed a simple calculation of the time spent on discussing translation and interpreting issues during the trial.

Having obtained the data before the commencement of the project, one of the first things the researcher did was to extract all translation- and interpreting-related quotations from the court transcripts to see what sort of issues would emerge. These include myriad examples – like the ones quoted above, but also short exchanges in which the court interpreter asks for permission to use a dictionary or when the court registrar needs to intervene when the interpreters have difficulty in keeping up with the speaker. Clearly, some of the issues would appear at every interpreted trial and not only in cases when unqualified translators or interpreters were used. Having extracted all the quotes into a single document, it turned out that it was 38 229 words long.

In order to calculate how much time was spent on producing the 38 229 words of the court transcript, we analysed the word count data from five days of the trial. We chose the following days: 5, 10, 21 and 22. The days were chosen to account for the difference in length between interpreted and non-interpreted proceedings, i.e. all of day 10 was interpreted consecutively (examination of the complainant), days 5 and 21 were partially interpreted and day 22 was conducted nearly entirely in English (legal submissions) with whispered interpretation provided, which did not prolong the proceedings. The researcher knew exactly how long each of the sessions lasted and on that basis calculated how many minutes were spent on each page of the court transcript. Each page (253 words on average) took between 2.47 and 3.85 minutes, which gives an average of 3.22 minutes per page of transcript.

Finally, 38 229 divided by 253 (average page length) gives us 151 pages. 151 pages times 3.22 minutes (time spent per page) gives us 487 minutes, i.e. 8.12 hours. On average, a court session in the Central Criminal Court lasts 4.5 hours (10:30-16:00 with an hours' break for lunch), which leads us to conclude that the discussion of translation and interpreting issues took approximately 1.8 court days in the 25-day-long trial.

Even though this is just a simple calculation, it can give us an idea of how much time was spent on translation and interpreting issues. If we take into account that each of the defence and prosecution teams comprised of three barristers and a solicitor, add



twelve jurors, the judge and all the accompanying court staff, every hour of the trial translates into a significant cost. Clearly, some of the issues would have appeared even if top-notch interpreters and translators were used throughout the investigation, but it is likely that the time spent on clarifying language-related issues would have been significantly reduced.

## **6.6 Conclusion**

As seen from the brief analysis presented in this chapter, interpreting and translation issues played a major role throughout the trial. Because the witness testified through a court interpreter, it was more difficult for the prosecution to ‘control’ the witness. As a result, the prosecution failed to elicit crucial evidence to support their case. They also accidentally elicited additional evidence about another instance of rape, which was not included in the police statement. Both issues affect the credibility of the witness and became the key components of the defence strategy.

In cross-examination, we observed that detailed questioning about specific phrases in the statement may be affected by the interpreting process in court. Such nuancing of the statement may not be possible in interpreted cross-examination where the nuance is lost during the transfer from L1 to L2. As discussed before, the main part of the defence strategy focused on highlighting inconsistencies in the witness’s account. Such an attitude corroborates previous research stating that a written police record, which is a third generation of the witness’s story, is treated by the court as a direct representation of the witness’s words. We have also seen that in the case of interpreted police interviews, the witness is able to refute the cross-examiner’s suggestion of inconsistency by shifting the focus to the mode in which the statement is taken and claim that the omission or addition is down to the interpreter’s or police officer’s distortion. In the absence of electronic recording from the interview room, it is up to the jury to decide whom to believe.

Thirdly, we have discussed the impact of translation and interpreting on the SRD’s cross-examination. Due to a lack of translation policy and procedure in legal translation in Ireland, the SRD received two sets of covert translations. Two different translations of the witness’s statements misled the SRD who was led to believe they were two sets of statements and not two translations of the same statements. This

confusion significantly impeded his cross examination and made him abandon his line of questioning several times. Similarly, lexical infelicities and mistranslations had a negative impact on the SRD, who relied solely on the Polish version of the statement. Frequent interruptions in the SRD's cross-examination might have confused the jury and had an adverse impact on their perception of the defendant.

Finally, we cannot forget about the time spent on clarifying translation and interpreting issues like the ones discussed above. A simple calculation shows that nearly two days were spent on discussing translation and interpreting related matters. Even if all of them had been successfully resolved and would have had no impact on the actual outcome of the case, the time spent translated into a considerable cost for the Irish Courts Service. It is yet another argument in favour of professionalisation in the field of legal translation and interpreting. If we take into account the time saved thanks to efficient and accurate translation and interpreting services, it may turn out that hiring qualified people works not only for the benefit of justice, but that it is also more cost-effective.

Interpreting-related issues during the examination-in-chief had very specific legal consequences. Due to the fact that the prosecution failed to elicit relevant testimony from the witness regarding three counts on the indictment, the jury was directed by the judge to return the verdict of not guilty on those three counts. Moreover, based on the fact that the witness's testimony was inconsistent as compared to the statement given at the Garda station, the DC and SRD made applications to the judge to direct the jury to return the verdict of not guilty on all counts on the indictment. The reasoning behind the submission was that the witness was so inconsistent that her testimony should be regarded as completely unreliable. Consequently, the DC and the SRD claimed that the prosecution's evidence was too weak and that the prosecution failed to present a case to answer to at all.

The trial judge shared the concerns of the defence regarding the inconsistencies in the complainant's statement and expressed them in his ruling:

TRIAL, DAY 22

J: And, by any standards, these are dramatic, if not almost scandalous, inconsistencies, and I would consider, taken on their own, would give cause for grave concern

for a judge in dealing with any application for a direction.

And coupled with that concern was also the difficulty posed in relation to the testing of the Complainant's evidence, indeed other witnesses' evidence, but especially in relation to the Complainant's evidence in relation to these dramatic assertions made by her in the statements in the Book of Evidence and (...) on many occasions, the Complainant took refuge in the fact that she either said something and it wasn't taken down or it wasn't – and translated, or that it wasn't translated properly.

The judge emphasised that had it only been for the complainant's evidence, he would have no hesitation to direct the jury to return the verdict of not guilty on all counts. However, taking into account other witness's evidence and material exhibits, he decided that there was sufficient facts presented at trial against which the complainant's assertions could be tested and, if necessary, shown to be unreliable. Consequently, the judge decided that, taking into account the paramount right to a trial by jury, it would be inappropriate for him to direct the jury to return the verdict of not guilty. However, during the summing up of the case for the jury, the judge several times emphasised the inconsistencies and credibility issues in the witness's evidence from which the jurors could draw their own conclusions.

The jury returned the verdict of not guilty in relation to the counts of rape, but found the SRD guilty of several less serious counts. The SRD received a four-year prison sentence. The co-defendant, represented by the DC, was found not guilty on all counts.

# Chapter 7: Conclusion

## 7.1 Overview

The present chapter is a reflection on the overall study. It presents the results in relation to the original research question, discusses the contribution of the research project to the field of legal interpreting as well as its application to current practice. Finally, it sets out areas for future research.

## 7.2 Statement of Results in Relation to the Original Research Question

The overall aim of the study was to find out how the processes of the interpreting and translation of witness statements impact a criminal trial. Thanks to the unique data, which was comprised of both witness statements and court transcripts from the subsequent trial, the study tracked the witness statement from the police interview room to the courtroom. Chapters 4 and 5 traced the recontextualisations of a witness statement in the pre-trial phase, followed by Chapter 6, which discussed the final recontextualisation of the witness's story during examination and cross-examination in the courtroom.

The overall research question regarding the impact translated and interpreted witness statements have on a criminal trial was broken into four sub-questions for the purposes of investigation. The first of these was to describe the process of taking a witness statement with the assistance of an interpreter in an Irish police station. The study established that interviews with witnesses, including interpreted interviews, are usually not recorded in audio or video. Instead, the common practice is for the police officer to make a written record of the interview. The written statement is prepared in English in the form of a first-person monologue and signed by the witness. Before the witness signs the English version of the statement, the statement is sight translated back to the witness. The English version of the statement, which is the third generation of the original story, becomes the exhibit in the case. The words of the witness or the interpreter are not written down verbatim or electronically

recorded. In Ireland, police interpreting services are outsourced to private agencies. There is no quality control to check the standard of interpreting and the interpreters working at Irish courts and police stations are not required to hold any certification nor do they undergo any form of qualitative testing. In the analysed case, which happened before interpreting services were officially outsourced, the police used *ad hoc* interpreters, who came with the witness to report a crime.

Secondly, the study set out to establish whose voices we can distinguish in a written statement taken from the witness by the police with the assistance of an interpreter. The written statements in the study appeared to be a verbatim record of what the interpreters said at the police station. The statements were written in pidgin English, which reflected the poor English competence of the *ad hoc* interpreters. However, upon closer analysis of the apparently verbatim narrative, it turned out that we can distinguish the police officers' contributions in the statement. The analysis showed that the language used in the written record of an interpreted witness statement reflects the contradicting expectations as to what the statement should include. On the one hand, the police want to write down the witness's words verbatim and on the other, the statement needs to fulfil certain requirements from a legal point of view. The tension between the mode and genre requirements in the witness statement results in a hybrid narrative, which merges the voices of all the participants in the police interview – the witness's, the interpreters' and the police officer's. We have also observed that the level of police officer's co-construction depends on the individual interviewer. In the analysed case, the more experienced Garda detective took a more active role in the co-construction of the statement when compared to the less experienced police officer. This observation is based on a single case, but it would be worth pursuing further to ascertain whether more experienced police officers tend to have a greater impact on the language used in a statement. Furthermore, based on court data, it was observed that the interpreted statements are treated as a direct representation of the witness's words and no account is taken of the mode in which they were taken and of the fact that they are third generations of the witness's story. Despite the fact that the text is co-constructed, it is treated as if its contents were dictated directly by the witness to the police.

Following that, the third subquestion addressed the issue of how and why witness statements are translated. The statements in English need to be translated for non-

English speaking defendants in order “to enable the defendant to have knowledge of the case against him and to defend himself”<sup>12</sup>. The analysis showed that a lack of policy and explicit guidelines regarding the translation of evidence led to the commissioning of two different Polish translations of the same statements. Both translations were provided for the defendant, who believed he was dealing with two different statements rather than two translations of the same statement. Secondly, both statements were translated in a covert manner by polishing the grammar and removing ambiguities contained in the English version. As a result of covert translation, the voices of translators are added to the already multi-authored text. Since the English version of the statement is the only official exhibit, the covert fashion in which the statements were translated into Polish denied the defendant access to the reality presented in the English statement.

Finally, the fourth subquestion investigated how the subsequent recontextualisations of the witness’s story through interpreting and translation affect the examination of the witness in court. We observed that the various generations of the witness's story affected all the court participants. It was more difficult for the prosecution to present their case through the witness, who was testifying through a court interpreter. The prosecution found it harder to control the lay witness, which negatively affected the examination-in-chief. During cross-examination, the attacks on the witness's credibility ended in unresolved disagreement over what was said at the police station. Finally, the cross-examination carried out by the self representing defendant, who relied on the fourth generations of the witness’s story, was significantly affected. The multiple translations and layout differences confused the defendant and led him to believe he was dealing with six different statements rather than two translations of the same three statements. Moreover, the covert translations transformed the reality presented in the written English exhibits and impeded cross-examination, which had to be interrupted in order to clarify language-related issues.

### **7.3 Limitations**

It could be argued that one weakness of the study is that the data used for source text analysis, the written police record, is in fact already a translation and a third version

---

<sup>12</sup> Judgement by the European Court of Human Rights in a related case of *Kamasinski v. Austria* from 1989, p.74

of the original story. This is because neither the witness's original narrative (generation 1), nor the interpreter's words (generation 2) were recorded and only the version taken down by the police officers (generation 3) is available. It needs to be taken into account that this is an empirical, data-driven study based on authentic data. Therefore, it reflects a real-life context exposing the weaknesses of the current practice and not of the study itself. The lack of original recording from the interview room brings the project even closer to reality and puts the researcher and her readers on an equal footing with the solicitors, judge and jury. If readers are disappointed at being left in doubt as to what the witness actually said, they can empathise with the jury who need to determine guilt and innocence on the basis of the same data.

Another potential weakness of the study is the breadth of data. The current project is a case study and is based on an in-depth analysis of three witness statements, taken from the same witness by the same *ad hoc* interpreters, who were not fluent in English. Therefore, the study does not propose to draw generalisations on the nature of police interviews. However, the multitude of issues which arose from the current analysis serves to indicate the possibilities of miscommunication in the process of the recontextualisation of a witness's story. In the current practice of taking a witness statement through an interpreter, the witness's words undergo the same number of recontextualisations and, hence, we can expect that some of the issues may still occur in Irish police stations and courts. Moreover, one can claim that *ad hoc* interpreters and their poor English had a significant impact on the results, which, thus, cannot be extrapolated to form general statements on the state of police interpreting in Ireland. While it is not the aim of the study to formulate such generalisations, in the absence of compulsory testing and accreditation of legal interpreters, as well as lack of quality control or electronic recording of witness statements, there is no insight into the quality of interpreting taking place in Irish police stations and no guarantee that similar situations are not happening today. Therefore, despite being a case study, the analysed case may serve as a looking glass for all the T/I issues that can potentially happen in criminal proceedings.

#### **7.4 Contribution to the Field of Translation and Interpreting Studies**

One of the strengths of the present study is the application of a rigorous and structured methodology, which makes it a valuable contribution not only to current practice, but also to Translation and Interpreting Studies. Due to the fact that the data

was collected before the commencement of the project, three analytical models were applied to a sample of data and discussed in Chapter 3. As a result, House's translation quality assessment model was chosen and used for data analysis, which showed that this functional-pragmatic model can be applied not only to literary texts, but also to legal genres, in particular witness statements. The application of House's model to the data showed that the statements were translated in a covert fashion. The analysis of the purpose of the statement and its status in the legal process, as well as the impact it had on the trial suggest that, in an adversarial system, overt translations may be more suitable for the translation of this particular genre.

In terms of its contribution to the field of Interpreting Studies and legal interpreting in particular, the current investigation draws its results from a variety of primary sources, i.e. authentic police records of witness statements, translations of these statements, transcriptions of examination-in-chief and cross-examination in relation to the statements, as well as many barristers', judge's and defendant's comments on translation and interpreting made during the trial. Taking into account the issues with data access in the field of public service interpreting, the study provides an impressive overview of the journey that a single text makes as it advances from the police station into the courtroom.

Finally, the interdisciplinarity of the study is another advantage and a natural consequence of the decision to observe a witness's narrative advancing through the stages of a criminal process. Due to the numerous recontextualisations of the witness's story, the investigation combines Translation and Interpreting Studies, but also draws on studies on oral and written discourse, forensic linguistics and criminology. Consequently, the results of the study may be of interest to both linguists and practitioners, i.e. interpreters, but also to police officers, solicitors, barristers and judges.

## **7.5 Recommendations for Practitioners**

A variety of recommendations arise from the results of the study. As far as policymakers are concerned, the study observed that the current police practice of taking witness statements could benefit from electronic recording. In the light of the analysis of the courtroom data it is likely that electronic recording would benefit the



legal process in the same way as the implementation of suspect interview recordings did. After mandatory recording of interviews with suspects was implemented, the interviewing process became transparent. Recorded interviews facilitated supervision and training and, consequently, improved the practice of investigative interviewing. In addition, obligation to record the interviews reduced the coercive tactics used by the police.

In the case of interpreted witness statements taken at the police station, the third generation of the witness's story becomes the exhibit in the case. As stories undergo recontextualisations, the potential for miscommunication increases. In the absence of recording, there is no access to the witness's original words and the jury is left to decide whether the apparent inconsistency is due to the several recontextualisations during the process of taking the statement or due to the witness's untruthfulness. Moreover, the recording of witness statements could be the basis for the Polish language version of the statement, making the back translation from the English record unnecessary. Secondly, the provision of translation and interpreting services needs to be supplemented by quality control measures and compulsory certification in order to maintain a certain standard of service. The regulation of the field should include careful commissioning and filing of the material to be translated in order to avoid multiple translations of the same documents.

The legal professionals working with interpreted witness statements should be aware that they are dealing with the third generation of the story. The story recontextualised by the interpreter and the police officer may not be the direct representation of the witness's words. This may affect cross-examination techniques. Inconsistencies between the statement and the witness's live evidence may be due to the process of evidence collection itself. Therefore, compulsory recording of interpreted witness statements may also benefit the legal profession. Access to the original police interview may allow the cross-examiners to plan their defence strategy more accurately.

Finally, legal translators and interpreters should familiarise themselves with the wider legal context and the ramifications of a police interview. Interpreters should be aware of the future audience overhearing the conversation in the interview room. They should bear in mind not only the fact-finding character of the interview, but also its role as a piece of evidence in itself. The translation of witness statements

requires the translator to recontextualise the story without access to the original participants. The original context cannot be reinstated, but knowing the goals of a witness statement and the function of the translation can help in choosing the most suitable translation strategy. Translators of witness statements and other court documents need to tread with caution and remember that somebody's liberty hinges on their work. In Ireland, where the English language version serves as an exhibit, the evidence should remain as intact as possible in translation. Therefore, an overt translation may be more suitable in this particular context.

The EU Directive on the Rights to Interpretation and Translation in criminal proceedings may regulate some of the issues identified above. For instance, the directive suggests that police and court services maintain a register of qualified translators and interpreters to be used in criminal proceedings. If such a register is to be created in Ireland by October 2013, actions need to be taken now because preparatory work, such as testing of interpreters, will require considerable time resources. Collaboration with the Irish Translators' and Interpreters' Association (ITIA), which already organises tests for legal translators, could be a starting point in an effort to improve the situation of legal translation and interpreting in Ireland and comply with the provisions of the Directive.

## **7.6 Areas for Future Research**

Due to the fact that the research is empirical and is comprised of the various stages of a criminal process, as well as both interpreting and translation issues, it also leaves room for expansion. Further studies could include the investigation of the interface between generation 1 and 2, i.e. between the witness's story and the interpreter's rendition in the wider context of the witness statement and its goals. Similarly, an in-depth study of the recontextualisation undergone during the police transcription of the interpreter's words could yield interesting results. Both of these are lacking in the current study due to the fact that these story generations are not routinely recorded in practice in Ireland. Obtaining a permission to record a statement-taking-session could

be a potential stumbling block, but research projects carried out in Sweden (Wadensjö 1998) and the UK<sup>13</sup> show that it is possible.

Another interesting research opportunity would be to describe the creation of a written witness statement taken with the assistance of an *ad hoc* vs. a trained interpreter. It would be interesting to find out if the knowledge of the interview goal and awareness of future audiences change the interpreter's strategies. It would also be worthwhile exploring how witness statements interpreted and translated by professionals affect a criminal trial.

Finally, our preliminary results show the varying level of co-construction among different police officers. An interesting research project could consist of testing whether there is any significant link between the level of experience of the police officer and the degree of contribution to the witness's narrative.

## 7.7 Conclusion

A police encounter is a fascinating topic for linguistic analysis. The institutional context in which it takes place and the complex mode in which it is transformed from oral to written statement creates numerous research opportunities. The current research project is the best example testifying to the above. Despite being a single case study, it has unearthed a multitude of issues and has made a significant contribution to the under-researched field of legal interpreting.

The findings also shed light on the Irish legal system and confirm that current legal interpreting and translation practice in Ireland could benefit from extensive changes. This was also noted by the prosecution on the 21<sup>st</sup> day of the trial in his comment on the translation- and interpreting-related issues at the trial:

TRIAL, DAY 21 PROSECUTION: I mean, I hear what Your Lordship says, and, I mean, I have no doubt that everybody will reflect on this trial. I am quite sure that will happen. JUDGE: But there will be [was] plenty of other trials
--

---

<sup>13</sup> As shown during a conference presentation by Fabrizio Gallai on his research based on authentic recordings of interpreter-mediated police interviews. The paper was given on 30 July 2010 during the Critical Link conference.

along the way where translation has been quite problematical, and one wonders when will the reflection commence, but anyway.

The prosecutor was convinced that people will draw a lesson from the trial while the judge expressed a more sceptical view. Let us hope that the EU Directive on the Right to Interpretation and Translation in criminal proceedings is just the commencement of such a reflection. A reflection that, as the current project illustrates, is long overdue and that will impact both: the victims of crime and those who suffered from miscarriage of justice.

## References:

- Abrahamson, W., Dwyer, J.B. and Fitzpatrick, A. 2007. *Discovery and disclosure*. Dublin: Thomson Round Hall.
- Aldridge, M. 2007. The Questioning of Child Witnesses by the Police and in Court: a Linguistic Comparison *IN*: Cotterill, J. (ed.) *The Language of Sexual Crime*. Basingstoke Palgrave Macmillan, pp.63-82.
- Bacik, I. 2007. Breaking the Language Barrier: Access to Justice in the New Ireland. *Judicial Studies Institute Journal*, 2 pp.109-123.
- Barsky, R. 1996. The interpreter as intercultural agent in convention refugee hearings. *The Translator*, 2(1), pp.45-63.
- Berk-Seligson, S. 2009. *Coerced confessions : the discourse of bilingual police interrogations*. Berlin; New York: Mouton de Gruyter.
- Berk-Seligson, S. 2002. *The bilingual courtroom : court interpreters in the judicial process*. 2nd ed. Chicago: University of Chicago Press.
- Berk-Seligson, S. 2000. Interpreting for the police: issues in pre-trial phases of the judicial process. *Forensic Linguistics*, 7(2), pp.212-237.
- Berk-Seligson, S. 1988. The impact of politeness in witness testimony: The influence of the court interpreter. *Multilingua*, 7(4), pp.411-439.
- Bermúdez Pérez, A. 2000. *Interpreting in the Irish courtrooms : the impact of lack of regularisation on the quality of the interpreter's performance*. M.A. Dublin City University.
- Beyer, V. and Condradsen, K. 1995. Translating Japanese Legal Documents into English: A Short Course *IN*: Morris, M. (ed.) *Translation and the Law*. 1st ed. Amsterdam/Philadelphia: John Benjamins Publishing Company, pp.145-177.
- Bhatia, V. 2006. Legal Genres *IN*: Brown, K. (ed.) *Encyclopedia of language and linguistics*. 2nd ed. Oxford Elsevier, pp.1-8.
- Biber, D., Conrad, S. and Leech, G.N. 2003. *Longman student grammar of spoken and written English*. Harlow: Longman.
- Brown, C. 1995. Reading the Waves of Fortune: Translating Legislation of the Successor Soviet Republic *IN*: Morris, M. (ed.) *Translation and the Law*. 1st ed. Amsterdam/Philadelphia: John Benjamins Publishing Company, pp.67-83.
- Bucholtz, M. 1995. Language in Evidence: The Pragmatics of Translation in the Judicial Process *IN*: Morris, M. (ed.) *Translation and the Law*. 1st ed. Amsterdam/Philadelphia: John Benjamins Publishing Company, pp.115-144.

- Bühler, K. 1990. *Theory of Language*. Amsterdam/Philadelphia: John Benjamins Publishing Company
- Cao, D. 2010. Legal translation. Translating legal language *IN*: Coulthard, M. and Johnson, A. (eds.) *The Routledge Handbook of Forensic Linguistics*. 1st ed. New York, N.Y.: Routledge, pp.78-91.
- Colin, J. and Morris, R. 1996. *Interpreters and the legal process*. Winchester: Waterside Press.
- Cooke, M. 1995. Understood by All Concerned? Anglo/Aboriginal Legal Translation *IN*: Morris, M. (ed.) *Translation and the Law*. 1st ed. Amsterdam/Philadelphia: John Benjamins Publishing Company, pp.36-63.
- Cotterill, J. 2002. Just One More Time...!: Change and Continuity in Courtroom Narratives in the Trials of OJ Simpson *IN*: Cotterill, J. (ed.) *Language in the Legal Process*. New York: Palgrave, pp.147-161.
- Coulthard, M. 2004. Author identification, idiolect and linguistic uniqueness. *Applied Linguistics*, 25(4), pp.431-447.
- Coulthard, M. 2002. Whose Voice Is it? *IN*: Cotterill, J. (ed.) *Language in the Legal Process*. New York: Palgrave, pp.19-34.
- Coulthard, M. 1994. Powerful evidence for the defence: an exercise in forensic discourse analysis *IN*: Gibbons, J. (ed.) *Language and the Law*. New York: Longman, pp.414-427.
- Coulthard, M. and Johnson, A. 2007. *An introduction to forensic linguistics : language in evidence*. London; New York: Routledge.
- Crystal, D. 1997. *The Cambridge encyclopedia of language*. 2nd ed. Cambridge; New York: Cambridge University Press.
- Drew, P. and Heritage, J. 1992. *Talk at work: interaction in institutional settings*. Cambridge England; New York: Cambridge University Press.
- Eades, D. 2010. *Sociolinguistics and the legal process*. Bristol; Buffalo: Multilingual Matters.
- Eades, D. 2008. *Courtroom Talk and Neocolonial Control*. Berlin and New York: Mouton de Gruyter.
- Ehrlich, S. 2001. *Representing Rape: Language and Sexual Consent*. London and New York: Routledge.
- Fowler, Y. 2003. Taking an Interpreted Witness Statement at the Police Station: What Did the Witness Actually Say? *IN*: Brunette, L. (ed.) *The critical link 3 : interpreters in the community*. Philadelphia, PA: John Benjamins Publishing Company, pp.195–209.

- Fox, G. 1993. A comparison of 'policeseak' and 'normalseak' IN: Sinclair, J.M., Hoey, M. and Fox, G. (eds.) *Techniques of description : spoken and written discourse : a festschrift for Malcolm Coulthard*. London; New York: Routledge, pp.183-195.
- Gibbons, J. 2003. *Forensic linguistics : an introduction to language in the justice system*. Malden, Mass.: Blackwell Publishers.
- Giles, H. and Powesland, P.F. 1975. *Speech style and social evaluation*. London and New York: Academic Press.
- González, R.D., Vásquez, V.F. and Mikkelson, H. 1991. *Fundamentals of court interpretation : theory, policy, and practice*. Durham, NC: Carolina Academic Press.
- Grant, T. 2006. Identifying the Origins of Evidential Texts IN: Heaton-Armstrong, A., Shepherd, E., Gudjonsson, G.H. and Wolchover, D. (eds.) *Witness Testimony: Psychological, Investigative and Evidential Perspectives*. Oxford: Oxford University Press, pp.263-276.
- Hale, S. 1997. The Treatment of Register Variation in Court Interpreting. *The Translator*, 3(1), pp.39-54.
- Hale, S.B. 2007. *Community interpreting*. Basingstoke: Palgrave Macmillan.
- Hale, S.B. 2004. *The discourse of court interpreting : discourse practices of the law, the witness and the interpreter*. Amsterdam: John Benjamins Publishing Company.
- Hall, P. 2008. Policespeak IN: Gibbons, J. and Turell, T. (eds.) *Dimensions of Forensic Linguistics*. Amsterdam: John Benjamins Publishing Company, pp.67-94.
- Hall, P. 1994. Prone to Distortion? Undue Reliance on Unreliable Records in the NSW Police Service's Formal Interview Model IN: Gibbons, J., Prakasam, V., Tirumalesh, K.V. and Nagarajan, H. (eds.) *Language in the Law*. New Dehli: Orient Longman, pp.44-81.
- Halliday, M.A.K. and Hasan, R. 1989. *Language, context, and text : aspects of language in a social- semiotic perspective*. 2nd ed. Oxford ; New York: Oxford University Press.
- Halliday, M.A.K. and Hasan, R. 1976. *Cohesion in English*. London: Longman.
- Halliday, M.A.K. and Martin, J.R. 1993. *Writing Science: Literacy and Discursive Power*. Pittsburgh: University of Pittsburgh Press.
- Halliday, M.A.K. and Matthiessen, C.M.I.M. 2004. *An introduction to functional grammar*. 3rd ed. London: Arnold.
- Halliday, M.A.K. and Webster, J. 2009. *The essential Halliday*. London ; New York: Continuum Logo.

- Hammond, M. 1995. A New Wind of Quality from Europe: Implications of the Court Case Cited by Holz-Mänttari for the US Translation Industry *IN*: Morris, M. (ed.) *Translation and the Law*. 1st ed. Amsterdam/Philadelphia: John Benjamins Publishing Company, pp.233-245.
- Hatim, B. and Mason, I. 1990. *Discourse and the translator*. London: Longman.
- Haworth, K. 2010. Police interviews as evidence *IN*: Coulthard, M. and Johnson, A. (eds.) *The Routledge Handbook of Forensic Linguistics*. 1st ed. New York, N.Y.: Routledge, pp.169-184.
- Haworth, K. 2009. *An Analysis of Police Interview Discourse and Its Role(s) in the Judicial Process*. PhD. University of Nottingham.
- Haworth, K. 2006. The dynamics of power and resistance in police interview discourse. *Discourse & Society*, 17(6), pp.739-759.
- Heaton-Armstrong, A., Shepherd, E., Gudjonsson, G.H. and Wolchover, D. 2006. *Witness testimony : psychological, investigative and evidential perspectives*. Oxford: Oxford University Press.
- Heaton-Armstrong, A., Shepherd, E. and Wolchover, D. 1999. *Analysing witness testimony : a guide for legal practitioners and other professionals*. London: Blackstone Press.
- Heaton-Armstrong, A., Wolchover, D. and Maxwell-Scott, A. 2006. Obtaining, Recording and Admissibility of Out-of-Court Witness Statements *IN*: Heaton-Armstrong, A., Shepherd, E., Gudjonsson, G.H. and Wolchover, D. (eds.) *Witness Testimony: Psychological, Investigative and Evidential Perspectives*. Oxford: Oxford University Press, pp.171-190.
- Heffer, C. 2005. *The language of jury trial: a corpus-aided analysis of legal-lay discourse*. Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan.
- Hertog, E. and Van Gucht, J. 2008. *Status quaestionis : questionnaire on the provision of legal interpreting and translation in the EU*. Antwerp ; Oxford: Intersentia.
- House, J. 2001. Translation Quality Assessment: Linguistic Description versus Social Evaluation. *Meta*, 46(2), pp.243-257.
- House, J. 1997. *Translation quality assessment : a model revisited*. Tübingen: Gunter Narr.
- Johnson, A. 2006. Police Questioning *IN*: Brown, K. (ed.) *Encyclopedia of language and linguistics*. 2nd ed. Oxford Elsevier, pp.661-672.
- Linell, P. and Jönsson, L. 1991. Story generations: From dialogical interviews to written reports in police interrogations. *Text*, 11, pp.419-440.



- Kierzkowska, D. 2008. *Tłumaczenie Prawnicze [Legal Translation]*. 3rd ed. Warszawa: Wydawnictwo Translegis.
- Komter, M.L. 2006. From Talk to Text: The Interactional Construction of a Police Record. *Research on Language and Social Interaction*, 39(3), pp.201-228.
- Komter, M.L. 2003. The construction of records in Dutch police interrogations. *Information Design Journal & Document Design*, 11(2), pp.201-213.
- Komter, M.L. 2002. The suspect's own words: the treatment of written statements in Dutch courtrooms. *Forensic Linguistics*, 9(2), pp.168-192.
- Krouglov, A. 1999. Police Interpreting: Politeness and Sociocultural Context. *The Translator*, 5(2), pp.285-302.
- Lee, J. 2010. Interpreting reposted speech in witnesses' evidence. *Interpreting*, 12(1), pp.60-82.
- Lee, J. 2009. When linguistic and cultural differences are not disclosed in court interpreting. *Multilingua*, 28(4), pp.379-401.
- Leung, E.S.M. 2003. Rights to be Heard and the Rights to be Interpreted. *Babel*, 49(4), pp.289-301.
- Lueven-Zwart, K.M.v. 1990. Translation and Original: Similarities and Dissimilarities, II. *Target*, 2(1), pp.69-95.
- Lueven-Zwart, K.M.v. 1989. Translation and Original: Similarities and Dissimilarities, I. *Target*, 1(2), pp.151-181.
- MacFadden, D. 2010. *The Role, Cultural and Linguistic Dimensions of Court Interpreting in Ireland, as Understood by the Legal Profession*. M.A. Dublin City University.
- Martin, J.R. 1992. *English Text: System and Structure*. Amsterdam/Philadelphia: John Benjamins Publishing Company.
- Matoesian, G.M. 1993. *Reproducing rape : domination through talk in the courtroom*. Cambridge, UK: Polity Press.
- Matulewska, A. 2007. *Lingua legis in translation : English-Polish and Polish-English translation of legal texts*. Frankfurt, M.; New York: Lang.
- Miguélez, C. 2001. Interpreting Expert Witness Testimony. Challenges and Strategies IN: Mason, I. (ed.) *Triadic Exchanges. Studies in Dialogue Interpreting*. 1st ed. Manchester, UK and Northampton, MA: St. Jerome Publishing,
- Mikkelsen, H. 1998. Towards a Redefinition of the Role of the Court Interpreter. *Interpreting*, 3(1), pp.21-45.

- Mikkelsen, H. 2000. *Introduction to court interpreting*. Northampton, MA; Manchester: St. Jerome Publishing.
- Moeketsi, R. 2002. Understanding the Other: A Case of Mis-Interpreting Culture-Specific Utterances during Alternate Dispute Resolution *IN: Cotteril, J. (ed.) Language and the Legal Process*. 1st ed. Hampshire and New York: Palgrave Macmillan, pp.196-210.
- Mpolweni, N.L. 2008. The Importance of the Original: Challenges in Interpreting a Xhosa Testimony Before the South African TRC. *Journal of Multicultural Discourses*, 3(3), pp.221-232.
- Nakane, I. 2009. The Myth of an 'Invisible Mediator': An Australian Case Study of English-Japanese Police Interpreting. *PORTAL: Journal of Multidisciplinary International Studies*, 6(1), pp.1-16.
- Nakane, I. 2008. Politeness and Gender in Interpreted Police Interviews. *Monash University Linguistics Papers*, 6(1), pp.29-40.
- Nakane, I. 2007. Problems in Communicating the Suspect's Rights in Interpreted Police Interviews. *Applied Linguistics*, 28(1), pp.87-112.
- Niska, H. 1995. Role Conflicts and Discourse Types in Court Interpreting *IN: Morris, M. (ed.) Translation and the Law*. 1st ed. Amsterdam/Philadelphia John Benjamins Publishing Company, pp.293-316.
- Nord, C. 1997. *Translating as a purposeful activity : functionalist approaches explained*. Manchester: St. Jerome Publishing.
- Nord, C. 1991. *Text analysis in translation : theory, methodology and didactic application of a model for translation-oriented text analysis*. Amsterdam ; Atlanta, GA: Rodopi.
- O'Barr, W.M. 1982. *Linguistic evidence : language, power, and strategy in the courtroom*. San Diego: Academic Press.
- Obenhaus, G. 1995. The Legal Translator as Information Broker. *IN: Morris, M. (ed.) Translation and the Law*. 1st ed. Amsterdam/Philadelphia: John Benjamins Publishing Company, pp.247-259.
- Olsson, J. 2008. *Forensic linguistics*. 2nd ed. London: Continuum.
- Palma, J. 1995. Textual Density and the Judiciary Interpreter's Performance *IN: Morris, M. (ed.) Translation and the Law*. 1st ed. Amsterdam/Philadelphia John Benjamins Publishing Company, pp.200-218.
- Phelan, M. 2011. Legal Interpreters in the News in Ireland. *Translation & Interpreting*, 3(1), pp.76-105.

- Phelan, M. 2007. *Interpreting, Translation and Public Bodies in Ireland: The Need for Policy and Training*. Ireland: NCCRI Advocacy Paper.[30th August 2010].
- Pym, A. 1999. Nicole Slapped Michelle. Interpreters and Theories of Interpreting at the O.J. Simpson Trial. *The Translator*, 5(2), pp.265-283.
- Rabadán, R. 2008. Refining the idea of "applied extensions" IN: Pym, A., Shlesinger, M. and Simeoni, D. (eds.) *Beyond descriptive translation studies : investigations in homage to Gideon Toury*. 1st ed. Amsterdam Philadelphia: John Benjamins Publishing, pp.103-118.
- Rigney, A. 1999. Questioning in interpreted testimony. *International Journal of Speech Language and the Law*, 6(1), pp.83-108.
- Rock, F. 2010. Witnesses and Suspects in Interviews. Collecting oral evidence: the police, the public and the oral word IN: Coulthard, M. and Johnson, A. (eds.) *The Routledge Handbook of Forensic Linguistics*. New York, N.Y. Routledge, pp.126-138.
- Rock, F. 2001. The genesis of a witness statement. *Forensic Linguistics*, 8(2), pp.44-72.
- Šarčević, S. 1997. *New approach to legal translation*. The Hague ; London: Kluwer Law International.
- Schäffner, C. 2009. Functionalist approaches IN: Baker, M. and Saldanha, G. (ed.) *Routledge Encyclopedia of Translation Studies*. 2nd ed. London Routledge, pp.115-121.
- Schäffner, C. and Wieseemann, U. 2001. *Annotated texts for translation: English-German : functionalist approaches illustrated*. Buffalo, NY: Multilingual Matters.
- Shepherd, E. and Milne, R. 1999. Full and faithful: ensuring quality practice and integrity of outcome in witness interviews IN: Heaton-Armstrong, A., Shepherd, E. and Wolchover, D. 1999. *Analysing witness testimony : a guide for legal practitioners and other professionals*. London: Blackstone Press, pp.124-145
- Shuy, R.W. 1998. *The language of confession, interrogation and deception*. Thousand Oaks ; London: Sage Publications.
- Smith, S. 1995. Culture Clash: Anglo-American Case Law and German Civil Law in Translation IN: Morris, M. (ed.) *Translation and the Law*. 1st ed. Amsterdam/Philadelphia John Benjamins Publishing Company, pp.180-197.
- Steiner, E. 1998. A Register-Based Translation Evaluation: An Advertisement as a Case in Point. *Target*, 10(2), pp.291-318.
- Swales, J. 1990. *Genre analysis : English in academic and research settings*. Cambridge England ; New York: Cambridge University Press.

- Thompson, G. 2004. *Introducing functional grammar*. 2nd ed. London: Arnold.
- Tiersma, P. 2007. The Language of Consent in Rape Law *IN*: Cotterill, J. (ed.) *The Language of Sexual Crime*. Basingstoke Palgrave Macmillan, pp.83-103.
- Tiersma, P. 1999. *Legal Language*. Chicago: University of Chicago Press.
- Toury, G. 1995. *Descriptive translation studies and beyond*. Amsterdam/Philadelphia: John Benjamins Publishing Company.
- Trinch, S.L. 2003. *Latinas' Narratives of Domestic Abuse. Discrepant versions of violence*. Amsterdam: John Benjamins Publishing Company.
- Trosborg, A. 1997. *Text typology and translation*. Amsterdam/Philadelphia: John Benjamins Publishing Company.
- Tryuk, M. 2006. *Przekład ustny środowiskowy [Community Interpreting]*. 1st ed. Warszawa: Wydawnictwo Naukowe PWN.
- Wadensjö, C. 2008. In and Off the Show: Co-constructing 'invisibility' in an Interpreter-Mediated Talk Show Interview. *Meta*, 53(1), pp.184-203.
- Wadensjö, C. 1998. *Interpreting as interaction*. London ; New York: Longman.
- Waterhouse, K. 2010. *Limited English Proficient (LEP) Immigrants in Ireland's District Criminal Court*. PhD thesis. Trinity College Dublin.
- Williams, J. and Chesterman, A. 2002. *The map : a beginner's guide to doing research in translation studies*. Manchester ; Northampton, MA: St. Jerome Publishing.
- Wolchover, D. and Heaton-Armstrong, A. 1992. Recording witness statements. *Criminal Law Review*, 3, pp.160-172.
- Zimányi, K. 2010. *What's the story: a narrative overview of community interpreting in mental health care in Ireland*. PhD. Dublin City University.
- Zimányi, K. 2005. *Impartiality or advocacy: perceptions of the role of the community interpreter in Ireland*. M.A. Dublin City University.

## **Appendices**

For confidentiality reasons the appendices are not available in the printed version of the thesis.