NARRATIVES AND NARRATIVE STRUCTURE IN PLEA BARGAINING

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During plea negotiations, attorneys use stories to tell what happened when a defendant was charged with an offense. This paper is concerned with how attorneys tell stories, and includes a consideration of narrative structure and how components of this structure are used in plea negotiations. Components of narrative include: (1) a story entry device; (2) the story itself which may contain a backgrounding segment, action report, and reaction report; and (3) a defense segment in which an attorney denies or explains the defendant's behavior. Systematic employment of these components results in four patterns of negotiations: (1) routine processing, (2) assessing character; (3) disputing facts, and (4) arguing subjectivity. Narrative structure is part of the interaction order of negotiations and is a mechanism through which participants assemble features of a case and aspects of the courtroom setting. Narrators reflexively become part of the stories they tell, which provides a structural motivation for them to perform well during negotiations.

I. INTRODUCTION

Like earlier research on criminal justice, recent interest in language and law (Atkinson and Drew, 1979; Danet, 1980; Levi, 1985; O'Barr, 1982; Pomerantz and Atkinson, 1984) tends to give disproportionate attention to trials and formal proceedings rather than informal processes such as plea bargaining (cf. Newman, 1966: xiv). Thus, in the 1970s, experts complained that more information was needed regarding how courtroom actors engaged in negotiations, exercised discretion, and made decisions in routine, unceremonial colloquies. Similarly, much contemporary research on language and law remains preoccupied with speech practices in a relatively rare yet public event—the trial—and neglects that talk through which practitioners settle the bulk of cases "behind the scenes . . . in a closed, private system" (Rosett and Cressey, 1976: 3). Investigators have specifically explored various dimensions of storytelling in the courtroom (Bennett and Feldman, 1981; O'Barr

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and Conley, 1985). Yet despite the "explosion" of ethnographic research on plea bargaining during the last fifteen years (Maynard, 1984: 1), which shows clearly that attorneys often present facts by telling stories about what happened, narratives in the negotiational arena are unstudied and unexplicated.

One purpose of this paper is to describe the structure of narratives and analyze how this structure works in negotiations. Another goal is a theoretical exploration of the "interaction order" (Goffman, 1983) through which participants engage in plea bargaining. The interaction order can be contrasted to organizational, legal, and other possible orders. It has its own integrity that is not susceptible to influence from exogenous factors, although it is systematically sensitive to these factors (Sacks *et al.*, 1974). The claim is not that narrative structure is itself a causal variable that explains bargaining *outcomes* but rather that through narratives and narrative structure, elements of a robust and impermeable interaction order, participants bring to life such factors as the law, organizational roles, and even the identity of a defendant, as part of mundane negotiational discourse. It is through narrative that actors make decisions and effectuate outcomes.

The data I will use are audiotapes and transcripts of pretrial and settlement conferences recorded in a California municipal court. In all, I obtained nearly ten hours of recordings in fifty-two cases, including fifteen theft, eleven drunk driving, eight battery, three public drinking and two loitering offenses and one case each of hit and run driving, resisting public officers, assault with a deadly weapon, removing vehicle parts, vandalism, and burglary. (In several cases, there was more than one charge; only the first charge for each case is listed here.) Some recordings involved a prosecutor and defense attorney; these took place in an unused jury room. Other negotiations included the judge and were recorded in chambers. Two judges, six public defenders, three private attorneys, and six district attorneys participated in the research. The corpus of cases was not systematic in the sense of being a probability sample. Rather, discussions in approximately one-eighth of all the cases handled during a three-month period were recorded, as the logistics of recording various plea discussions would allow.

The generalizability of the analysis derives from a presumption that patterns of talk and interaction reflect a common system of speaking and acting skills that participants acquire as users of natural language. Following procedures in conversation analysis, it is possible to extract from plea bargaining talk those orderly phenomena that are independent of the particular court, cases, and negotiators (Sacks *et al.*, 1974: 699). Moreover, narrative structures in plea bargaining can be regarded as specialized forms of story telling procedures in ordinary conversation (Heritage, 1984: 24). Such procedures may be modified differently in other settings or

in felony bargaining, but that remains a matter for future investigation. Because of space limitations, I discuss only a small portion of the data from the fifty-two cases. However, the propositions about narrative structure apply to and derive from detailed, rigorous scrutiny and analysis of all cases and the narratives within them.

II. NARRATIVE STRUCTURE

Sociolinguists have provided a functional definition of narrative:[1] Narrative matches the temporal sequence of experience and, by providing a main point, serves the personal interests of those in the social context where the narrative originates (Labov and Waletzky, 1967: 13). However, as Robinson (1981: 64–69) argues, it is difficult to assign an intrinsic point to a story. At the very least, the analyst has to take into account what a listener may make of a story, which may sometimes be nothing at all and at other times many different things. Furthermore, tellers may produce stories precisely to discover, with recipients,[2] what evaluations should be made of them (Polyani, 1979: 214; Robinson, 1981: 69–70).[3] Finally, the meaning of a story varies according to the group in which it is told (Sacks, 1974).

Other scholars have criticized this definitional approach because there is no universal agreement on what the functions of narrative are (Mishler, 1986: 108, 155). Rather than providing a strict functional definition of stories and narratives, I will loosely characterize stories as ways of packaging or presenting the facts of one's own or another's experience (cf. Sacks, 1978: 259). In Smith's (1980: 232) terms, stories "minimally" and "generally" are "verbal acts consisting of someone telling someone else that something happened." I will also follow conversation analysts in attending to

[1] Prior research in both ordinary settings (e.g., Labov and Waletzky, 1967; Sacks, 1978) and legal arenas (O'Barr and Conley, 1985) deals with the personal narrative, wherein the teller of a story recounts his or her own past experience. Stories in plea bargaining involve other parties and events with which the tellers have no direct experience. Thus, these stories are parasitic on the tellings and writings of primary observers (e.g., offenders, witnesses, and victims) and secondary interpreters (e.g., police). The phenomena for this study might be called "third-person narratives."

[2] The terms "tellers," "recipients," "speakers," and "listeners" are used in this paper to denote what Sacks (1964–1972: April 19, 1971, p. 4) calls "conversational identities," Such identities are intrinsic to activities in talk (such as storytelling) and, according to West and Zimmerman (1985: 116), contrast with "master statuses" (sex, race, and age) that transcend particular occasions of discourse and with situated identities (e.g., student, salesperson, or bus driver) that belong to particular settings.

[3] See also the definition that states that stories are about "remarkable" events (Van Dijk, 1975), and Robinson's (1981: 2–3) comment that "commonplace" events are, in appropriate circumstances, as tellable as the less common ones. And consider Sacks's (1984: 418) proposal that even when one has a remarkable experience, it is reported so as to be usual with respect to how others have had the same experience. In a sense, persons are only "entitled" to those experiences that are conventionally available (ibid., p. 417).

structural matters.[4] Stories, in conversation, are distinguishable because they take up more than one utterance of talk (Ryave, 1978: 131; Sacks, 1964–1972: 1970, lecture 2; Sacks, 1974). Furthermore, a story is articulated with ongoing talk. At its beginning and ending boundaries, it must be: (1) introduced into conversation, and (2) exited in such a way as to reengage or fit with other topical talk (Jefferson, 1978); within the story itself, teller and recipient may trade turns, comments, glances, and other devices that make the storytelling a collaborative production (ibid, 1978; Ryave, 1978; Sacks, 1978). I will use "narrative" in a way that is similar to Jefferson's (1978) use of the term "storytelling." Structurally, plea bargaining narratives contain:

1. story entry devices by which participants warrant the telling of a story, such as
   a. naming of the case,
   b. synopsis, and
   c. transition to story;
2. the story itself, including
   a. a background segment,
   b. an action report, and
   c. reaction-report;
3. following the story, a defense segment, which may be either
   a. denial or
   b. excuse.

Both the reaction report and defense segment are devices by which a speaker offers to exit from the narrative and reengage in turn-by-turn talk. The schematic here is very rough. As will be shown, not all negotiations contain these components nor necessarily in the order shown.

A. Story Entry Devices

Storytelling in any arena must be entered properly. In plea bargaining, participants go through an organized series of actions to arrive at the telling of a story. Regularly, naming of the case starts the plea bargaining session and may directly elicit a story:[5]

[4] The structural approach is also discussed by Agar (1980), who contrasts it with the hermeneutic or interpretive analysis of narrative and with his own concern with a narrator's cognitive schemas and what they reveal about the person. For an extension of this approach that uses concepts from the field of artificial intelligence, see Agar and Hobbs (1982). For an excellent review of a wide literature on narratives and narrative structure, see Mishler (1986: chap. 4 and appendix).

[5] Tape recordings were transcribed according to the conversation analytic system devised by Jefferson (1978), which are designed to preserve and reproduce as much detail as possible from the actual conversations. In this paper, excerpts are simplified versions of the original transcription form. Following Labov and Fanshel (1977: 40–41), excerpts contain some well-recognized dialect pronunciations, such as "ya" for "you." Personnel are labeled

Example 1

J1:	Next we got John Gage.
PD2:	Well John Gage is a case that uh he's down at the dump and uh he's in the office where they got the money and the two guys apparently leave or turn their backs or something. When they come back money is missing. They don't know how much because they don't bother to ever keep track, they have no idea how much is in there ever. I assume that somebody regularly steals from those guys. They accuse my client, an' he says search me, which they do, right down to his toes, they search the horse he rode in on an' everything around him.

Naming of the case may also obtain a synopsis through which a speaker identifies the case, assesses or evaluates its worth, or exhibits the state of negotiations in such a way as to display a position on the matters to be told. The synopsis in the next example occurs at lines 2–5:

Example 2

1	*J1:*	So two [charges] on Daniel Torres.
2	*PD2:*	Okay now Daniel Torres is a case where the
3		DA 'n I had talked we still haven't—we're
4		not at loggerheads, we really haven't made up
5		our minds yet. *The facts basically are that*
6		Torres and another young Mexican male are
7		in a place to buy beer. . . .

Following the synopsis, other devices operate to make a story's telling relevant and to project a subsequent utterance as the beginning of the story proper. The italicized phrase is what Jefferson (1978: 224) calls a "story prefix." Another device is a prestory sequence in which the speaker requests to tell and then projects a forthcoming story. In the next example, the Zamora-Avila case, after the naming or identifying of the case (lines 1–4) and a synopsis (lines 5–9), PD1 asks to tell the story (italicized utterance, lines 12–13). Then DA3 produces a go-ahead signal (line 14) that indicates an alignment as the recipient of the storytelling (Sacks, 1974: 339–340; Jefferson, 1978: 219):

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with abbreviations and numbers: J1 = Judge 1; PD2 = Public Defender 2; DA2 = District Attorney 2; PA1 = Private Attorney 1; and so on.

Example 3

1	*PD1:*	Um the only other one I have is Maria
2		Zamora-Avila.
3	*DA3:*	Sure Zamora hyphen Avila we've got a
4		probation report on this.
5	*PD1*	They're recommending straight probation but
6		she's not gonna plead 'cause we have a good
7		good defense.
8	*DA3:*	Oh yeah?
9	*PD1:*	Yeah. It should be dismissed. [Referring to
10		the contents of a file that DA3 is reading:]
11		Those are letters that other people've written
12		about her character. *Lemme briefly tell ya*
13		*'bout the case.*
14	*DA3:*	Mm hmm.
15	*PD1:*	She goes inta Davidson's. . . .

In another type of prefacing sequence the teller is invited to produce a story. This occurs in line 5 below, subsequent to the naming (line 1) and a synopsis (lines 2–4):

Example 4

1	*J1:*	Alberto Camina.
2	*PD2:*	Oh well this is a case where you heard the
3		motion to suppress, made a bad call in my
4		opinion.
5	*J1:*	What was it about?
6	*PD2:*	Okay. This is the guy who's in the car,
7		stopped without taillights. . . .

Thus, instead of placing stories just anywhere in plea bargaining discourse, participants introduce them systematically. Moreover, one party does not unilaterally decide when a story is to be inserted in conversation; rather teller and recipient collaboratively provide for its production. Finally, synopses play a particularly significant role in the overall negotiations. Most often, as in Examples 2–4, they precede the story. In a few cases, if they are not in the initial position, they follow the story. In Example 1, after telling what happened at the "dump" to get his client charged with theft, the PD (in an utterance not reproduced in the text) remarked, "They don't have any case at all judge." Notice how the story is built for this kind of "upshot" (Heritage and Watson, 1979). The indication is that from the outset stories do not neutrally render what happened but aim toward the teller's ultimate bargaining stance. In Example 2, PD2's characterization that he and the DA are "not at loggerheads, we really haven't made up

our minds yet" shows a willingness to deal. Indeed, after telling the story, he suggests that the defendant would plead guilty if the sentence were a fine rather than time in jail. The PD in Example 3, as in Example 1, uses a synopsis to signal that he wants the case dismissed. The synopsis in Example 4 displays PD2's attitude toward a negative decision on an earlier motion to suppress the defendant's testimony, and also anticipates a story-subsequent request for dismissal.

B. Stories

Initial utterances of a story regularly contain descriptions and formulations that orient (Labov and Waletzky, 1967) recipients to the action report, or the core of the story. That is, they provide a sense of who the main characters are and where activities occurred in such a way as to allow an appreciation of the unfolding of events in the body of the story (Sacks, 1964–1972: Spring, 1970, lecture 7; cf. Goodwin, 1984). In technical terms, descriptions and formulations precede the action report in a background segment.

1. Background Segments. In a petty theft case, for instance, the PD produces the action report part of his story (lines 10–14 below) after he describes the defendant as an employee of Sears who works in a specific department where a series of thefts had occurred. These person descriptions and locational formulations then provide the sense of indexical or deictic terms such as "she" (lines 10–14), "the room" (line 11), and "in" (line 13):

Example 5

1	*J1:*	Lemme come back ta Kathy Nelson.
2	*PD3:*	Um this is a very unusual petty theft your
3		honor, uh Nelson's employed in Sears and
4		there's been some theft of employee purses
5		and—.
6	*J1:*	She herself is an employee.
7	*PD3:*	She's employed and uh there's been some
8		theft of employee purses, employee money
9		um from a little room that they have in the
10		department that she works in. And uh she
11		goes back inta the room ta make some phone
12		calls and she sees a strange purse and she's
13		lookin' in it an' the store detective comes in
14		and uh she gets busted. . . .

In addition to placing persons at the scene where an offense occurred, background segments may also account for persons being at this scene. Thus, describing the defendant as an employee of

history of thefts (Example 5) or listing actors including the defendant (Example 5) and others (a companion, Example 6) as involved in a course-of-action, provide a temporal dimension to stories that is wider than and yet encompasses the focal moment of activity that resulted in arrest. Furthermore, portraying actors as types, using categories such as employment status, age, or nationality, and making overall assessments or evaluations of an actor ("Wonderful lady") all introduce transsituational elements to a scene, while the action report portrays just that which occurred at a specific time and place and gives the scene its particularity. A way that tellers mark a transition from the background section to the action report, then, is to introduce temporal formulations that indicate the boundedness of the focal activity (cf. Agar and Hobbs, 1982: 13–14). In Example 8 the PD follows the background segment and precedes the action report with "But on this particular occasion" (line 1). In Example 11, PD3 inserts the phrase "on October first of this year" (lines 3–4) between the background and action components.

Action reports are therefore objects with noticeable beginnings that participants can analyze. They may also contain items that provide for their "possible completion" (Jefferson, 1978). In Example 8 the action report commences with "she goes into Davidson's" and ends with the defendant leaving the store:

Example 8

1	*PD1:*	But on this particular occasion, she goes into
2		Davidson's, goes into a fitting room, takes two
3		hundred dollars worth o' clothes, pins them
4		up underneath her dress, and leaves.
5		[1.2 seconds of silence]
6	*PD1:*	And they pick her up outside, she's with a
7		companion, they pick her up outside and they
8		uh cite 'er for petty theft, later discover how
9		much was involved and hit 'er with four
10		eighty seven point one [grand theft].

"Goes into" (line 1) and "leaves" (line 4) are contrasting terms that bracket the action report; because "goes into" begins the report, it provides for "leaves" as a possible completion.

Such completions are a kind of story exit device; that is they can invite a return to more general topical talk. In Example 8 this device is met with silence (line 5). PD1 next produces a reaction report (lines 6–10), in which the PD tells of the defendant being apprehended and charged.[9] Thus, the above story contains at least

[9] An interesting transition occurs between the action report and reaction report. That is, the action report triggers the reaction report by characterizing the defendant's activity in such a way as to provide the grounds for official in-

two candidate completions, which show how action and reaction reports can be distinguishable components of narrative structure. In Example 5, however, it is only by way of the reaction report that a story exit is noticeable. The defendant is depicted as in the midst of an activity ("lookin' in" the purse) that is not itself a recognizable completion point when "the store detective comes in and . . . she gets busted. . . ."

3. Reaction Reports. In plea bargaining, reaction reports portray unresolved, incomplete conflict between a defendant and accuser, who may be an actual party ("the detective") or, more abstractly, the "police," the "prosecution," or even "they." This way of proposing completion of a story may be unique in the plea bargaining context as compared with conversational storytelling. Labov and Waletzky (1967) suggest that "normal form" narratives in everyday environments contain some "complicating action" and then a "resolution" of the complication that constitutes the ending of the narrative. The following examples were selected from Labov and Waletzky's fourteen-set corpus of elicited storytellings because of the brevity with which they illustrate the pattern:

Example 9 (from Labov and Waletzky, 1967: 16, Example 5)

Questioner:	Were you ever in a situation where you were in serious danger of being killed?
Subject:	Yes.
Questioner:	What happened?
Subject:	I don't really like to talk about it.
Questioner:	Well, tell me as much about it as you can?
Subject:	Well, this person had a little too much to drink, and he attacked me, and the friend came in, and she stopped it.

Example 10 (from Labov and Waletzky, 1967: 18, Example 10)

Questioner:	Did you ever see anybody get beat up real bad?
Subject:	I know a boy name Harry. Another boy threw a bottle at him right in the head, and he had to get seven stitches.

Each of these stories[10] portrays conflict which, in structural terms, constitutes the "complicating action" and then reaches some "reso-

tervention. Where the police were or how they go there is not indicated (cf. Sacks, 1964–1972: Fall 1965, lecture 7, p. 3).

[10] These were elicited rather than spontaneously told stories, but the question that invites them may constrain only the substance of the story rather than its structure. On substantive and structural differences between

lution" or completion.[11] Notice that Example 9 has a kind of reaction report ("she stopped it"), but it still indicates at least a temporary end to the situation. In contrast, plea bargaining reaction reports necessarily imply that further steps are required to reach resolution.

Reaction reports are mostly visible in utterances that explicitly formulate police or prosecutor response to the defendant's activity, as in Example 8, lines 6–10. However, tellers can depict reactions by different, more implicit means. That is, they may give no overt reaction report and instead allow a recipient to infer it. Thus, in Example 11, the attorney does not produce an explicit reaction report. Instead, the action report (lines 3–12), which contains the plaintiffs' version of events, gives enough information so that a recipient of the story can realize the authorities' likely reaction:

Example 11

1	*PA3:*	The undisputed facts are that my client is an
2		accountant, he conducts a business in his home
3		out in Woodenville. One night on October first
4		of this year, two people were parking about a
5		hundred yards from his house. He went out of
6		his house 'n went down and exchanged some
7		words with those people, and the dispute is
8		over what those were. The uh people in the
9		car say that he came and beat on the window
10		and told 'em ta get the fuck outta there and
11		that he was a member of the county foot
12		patrol. What my client—.
13	*DA3*	That he was an officer from the county foot
14		patrol.
15	*PA3:*	What my client will say is that he went down
16		there and told them that he wanted them to
17		leave, that he was going to call the
18		Woodenville foot patrol or the county sheriff's
19		if he didn't. And the uh, well the gist of the
20		whole thing, it's just who's telling the truth,
21		the two victims or my client and our other
22		witness.

stories in interviews (elicited) and those in conversation (spontaneous), see Wolfson (1982: 61–71).

[11] Evidence that spontaneously told stories often embody "complicating action" and "resolution" stages can be found in other places as well. In an article by Jefferson (1978: 237–245), see Example 25, in which Roger tells a story regarding "Voodoo," a car that drag raced "every car" in the valley, "polished them off one after another," and then "turns aroun'n goes home." See also Sack's (1978: 258) analysis of a dirty joke, which contains a puzzle whose resolution is interpreted from the punch line.

This mode of indirect reporting employs what Sacks (1964–1972: 1964–1965, lecture 1) has called a "proper sequence." Listeners to a story know that once one event or a series of events has occurred, something else correctly follows; that is, they know how things should occur in a particular context. In particular, in Example 11 PA3 quotes those descriptive terms from the plaintiff's version of events that display the legally sanctionable nature of the defendant's behavior (lines 8–12). (The defendant was charged, under section 146 of the California Penal Code (Deering, 1977), with falsely representing himself as a police officer, and under section 415, with "using offensive words inherently likely to produce violent reaction.") Given this display and the recipients' orientation to a proper sequence, it is not necessary for the speaker to produce an overt reaction report. Instead the teller relies on the recipients' sense of the grounds upon which police are called to some scene (Sacks 1964–1972: 1964–1965, lecture 1, p. 6) by using characterizations of behavior that evoke report, arrest, and charge as normal and natural consequences of the behavior.

Such characterizations do not work alone to convey implicitly the legal reaction to a defendant's activity but rather in conjunction with narrative structure. In Example 11, PA3 suspended the action report and euphemistically described the dispute (lines 7–8: the defendant "exchanged some words with those people, and the dispute is over what those were"). It is partly due to the action being suspended that a reaction report is cued and expected. In Example 12, the teller deploys the background segment to provide for a later, implicit reaction report:

Example 12

1	*PD3:*	Um his girlfriend was in the car up ta 'bout
2		five or ten minutes before uh the detention.
3		He'd had something to drink seven, seven-
4		thirty at night, he had three beers, and uh he
5		had a little whiskey in the day, went to sleep,
6		woke up to take her to work, drops her off at
7		work, he's got his kid with 'im an' he's
8		driving home? And um, he says I was not
9		doing anything wrong, said I didn't feel the
10		alcohol, I wasn't under the influence. . . .

In this, the action report (lines 5–8) reaches a possible completion (lines 7–8: "he's driving home?") and is not followed by a reaction report. What follows the story is the defense portion of the narrative. Unlike Example 11, here the action report is not itself clearly formulated so as to project arrest as a natural consequence of the events. Yet recipients can infer the police reaction as having occurred just when the defendant is driving home. This is possible

because PD3 mentioned "the detention" in the background segment (line 2), and placed the defendant's girlfriend in the car before that detention (lines 1–2). When, therefore, PD3 reports that the defendant "drops her off at work" (line 6), a next expected event is the detention, which recipients inferentially supply as part of the story that teller leaves out (Sacks, 1964–1972: Fall 1965, lecture 7).

Stories in my plea bargaining data invariably end with a depiction of conflict between various accusers and the accused that derives from either an explicit or implicit reaction report. This conflict is what Labov and Waletzky (1967) refer to as the "complication" of a personal narrative in ordinary conversation. The "resolution" that is the normal end to such narratives does not occur in plea bargaining stories precisely because resolution must be the *outcome* of negotiations rather than part of the stories told within the process. As Robinson (1981: 75) argues, to encompass the resolution phase of some narratives, we have to expand "our concepts of form to include the entire narrative interaction." Or as Goodwin (1982: 799) states, stories can be "embedded in social processes extending beyond the immediate social encounter." In plea bargaining, the story has reached its resolution if negotiators succeed in determining a disposition for the case. If they decide to go to trial, resolution is put off for one more narrative round, and the negotiations have become another segment in the unfolding story.

C. *Defense Segments*

Defense segments in plea bargaining appear as two basic types: denials or excuses. Denials propose that an alleged wrongdoing by the defendant did not occur. Consider the continuation of Example 12:

Example 13

1	*PD3:*	And um, he says I was not doing anything
2		wrong, said I didn't feel the alcohol, I wasn't
3		under the influence, and she says, well I was
4		in the car with him, I would've taken the car
5		myself if I thought he couldn't drive. If I
6		thought his driving was impaired or he was
7		doin' somethin' wrong, I would've driven. I
8		didn't need him.

Here, statements of both the defendant and his girlfriend counter the allegation of drunk driving.

Excuses, on the other hand, admit that some wrongdoing has occurred and propose an explanation that mitigates the defend-

ant's culpability or responsibility for the act (cf. Scott and Lyman, 1968: 47; Emerson, 1969: 153–155). Thus, in the Zamora-Avila case, after recounting the woman's arrest, the PD produces a long explanation for her behavior:

Example 14

1	*PD1:*	She had no explanation except to say that she
2		was sorry, her companion with whom she
3		lives is here in court today, says that night,
4		*she*, the companion was crying saying—look
5		what've you done why are you doing this an'
6		all the lady could say is what've I done?
7		Y'know what've I done? It wasn't til the next
8		day that she realized when she found the
9		ticket in her purse that the police had given
10		her what she had done. And then in
11		subsequent investigation, uh it was discovered
12		that she had taken two different drugs, one
13		for her arthritic condition, she'd taken more
14		than what she should've, and another drug,
15		combined them which was improper, and was
16		obviously under the influence of drugs.
17	*J1:*	What're the drugs, ya got any idea.
18	*PD1:*	Darvoset.
19	*J1:*	Yeah.
20	*PD1:*	and seconal. Now I've checked with the
21		county pathologist and he's researched the
22		thing out. He says that if those drugs are
23		mixed, it will cause a state of confusion,
24		delirium, and put the person in a situation
25		where they're just in a dream world, don't
26		know what in the world they're doing. I've
27		also talked with a pharmacist at Middleton
28		Medical who says the exact same thing.

While this is not the whole of the defense attorney's argument[12] this segment shows that he does not question the wrongfulness of the act. Indeed, he depicts the defendant and her companion as shocked and puzzled by "what she had done" and by "the ticket" (lines 4–10). Not denying the delict, PD1 provides an excuse for it.

Ultimately, both denials and excuses may be a claim of innocence for the defendant, but within the narrative they operate in very different ways.[13] Denial defenses, on the one hand, retrospec-

[12] See a more complete analysis and transcript of this case in Maynard (1984).

[13] In a study of trial discourse, Atkinson and Drew (1979: 139) also discuss two basic types of defenses that witnesses produce to avoid or reduce the

tively reconstruct the nature of behavior first depicted in an action report. In Example 11, above, the defense component offers an alternative version of what the defendant said to the plaintiffs who were in a car parked outside his house. In Example 12, the denial suggests the inculpability of the defendant's conduct as he was "driving home" from taking his girlfriend to work. Excuses, on the other hand, leave an action report relatively intact and provide a causal reason for what happened that focuses on a defendant's subjective state. Denials and excuses, as we shall see, are also different in their sequential consequences, for recipients of a narrative treat them in contrasting ways.

III. THE USE OF NARRATIVE COMPONENTS

Narrative structure in plea bargaining refers to a set of devices by which attorneys introduce, present, and then exit from telling the "facts" of a case. That is, at least in these data, a narrative can consist of: (1) story entry devices, such as invitations, requests, synopses, and prefixes, through which participants occasion the telling of a story; (2) the story itself, which may contain a background segment, action report, and reaction report; and (3) a defense segment that marks the end of the narrative. Comparative research would help reveal how general this structure is.

A narrative does not necessarily contain all of these components and subcomponents nor in the specific order outlined. Stated positively, narratives in plea bargaining, which are made up of these basic devices, nonetheless display variation in their use and ordering. In general, the variability in the use of components and subcomponents reflects their employment for specific purposes, situations, and audiences (Robinson, 1981: 74). This is exhibited in patterns whereby narratives and narrative components are distributed in negotiations and in how narratives and components work to set boundaries for negotiation.

A. *On the Distribution of Stories and Other Narrative Components*

In the fifty-two-case corpus of plea negotiations, only twelve, or less than one-fourth, contain stories in which attorneys orally present the facts of what happened to their bargaining coparticipants. Furthermore, in the data are twenty-four offenses that a defense attorney and prosecutor discussed on their own, and thirty-four in which the judge participated.[14] Comparing the two

blame implicit in a counselor's allegations. Witnesses use *justifications* in an attempt to forestall blame, and they employ *accounts* to reject the premise that they could have performed the action they are faulted for not taking. In the discourse, there are separate and ordered "slots" where the two kinds of defenses appear. By virtue of the organization of blaming sequences, speakers may use both.

[14] The total is 58 rather than 52 because 6 cases were discussed and taped

sets of cases shows that attorneys tell stories to the judge but not very often to each other. In only one of the twenty-four lawyer-only negotiations is there a narrative; the other eleven all occur in negotiations with the judge present. This asymmetry does not mean that lawyers were uninterested in the facts. Instead, it reflects their familiarity with or immediate access to police and other sources of information, such as defendants, victims, and witnesses (Meehan, 1986; Smith, 1974). In fact, the one situation in which a defense attorney did tell a story to the prosecutor with no judge present occurred because the DA was newly assigned to the case.

This is not the end of the matter, for negotiations without full-blown narratives may nonetheless contain narrative components. Thus, nine cases contain defense segments, and eight have background parts. In all seventeen of these cases the attorneys and judge demonstrate familiarity with the defense or backgrounding components, which are introduced in the context of making or rejecting offers for disposition.

1. Using a Defense Component. In a case in which the defendant is charged with "resisting public officers" and possessing marijuana, negotiations open with the DA offering to dismiss the second charge if the defendant pleads guilty to the first and spends two weekends in jail. The PD rejects the offer on the basis of the defendant's denials of specific alleged acts:

Example 15

1	*PD2:*	Well I can just about tell ya what he's gonna
2		say, and that's no. And uh he'd get two
3		weekends if he lost this trial, he might get
4		more. Now he didn't throw any beer cans at
5		any police officer. Uh he was at a place
6		where there was quite a disturbance, lots of
7		people. Uh if they got the right guy and if he
8		threw beer cans I suppose that the weekends
9		are uh reasonable . . . but he says he didn't
10		do it and uh that wouldn't settle the case.

Subsequently, PD2 suggests that his client will plead guilty for a fine, and this counteroffer eventually succeeds.

2. Using a Background Segment. In a case of drunk driving, the DA proposes to reduce the charge to reckless driving but with a regular drunk driving penalty. The PD responds that the defendant, Walter Larson, is "concerned" with what even this convic-

in 2 locales—once between a defense attorney and prosecutor only and once among the attorneys and the judge.

tion "might do to his security clearance one day, he's going for his master's or his doctorate." On this basis, the PD rejects the DA's proposal. The DA holds to his position, based partly on a review of the police report, which stated that the defendant's driving was extremely erratic. Subsequently, the PD asks for a lesser penalty because the standard one is so "punishing" and "undignified" for his defendant. The DA also refuses this appeal, and the defendant eventually pleads guilty and receives the standard punishment. In a theft case, the defendant, David Johnson, had taken a decal that permitted him to park at his college. During negotiations, the PD does not dispute this fact, but notes that he was a student at the college with no prior record, and asks that he be given a suspended sentence rather than time in jail. The DA and judge grant this request.

Thus, defense segments that deny or excuse a person's behavior and/or background components may be disjoined from the rest of a narrative to justify a given bargaining position. This points to ways in which negotiations are parasitic on the tellings and writings of primary observers (such as offenders, witnesses, and victims) and secondary interpreters (such as police). The dependence of a negotiator's narrative on other parties' prior stories is sometimes marked or signaled during the opening of talk on a particular case:

Example 16

PD4: If you wanna read it over I can explain ta you what he says happened which is uh actually very plausible.

This indicates that the successive tellings a given occurrence goes through before some version is delivered in the plea bargaining context would be an interesting topic, were it possible to gather the necessary data. Of particular importance is how the police report is socially constructed as an instance of what Smith (1974) calls a "documentary reality," and one that aims for particular readings in contexts other than that in which it was written (Meehan, 1986). Most significantly, this dependence shows that stories, although not necessarily present orally, are nonetheless an embedded feature of all plea negotiations.

3. Who Uses Narrative Components. Defense attorneys are predominately those who tell stories or introduce other aspects of narrative structure, such as background or defense segments, into the discourse. For example, in all but one of the twelve negotiations that contain stories, defense attorneys were the ones who told them. District attorneys are recipients of stories and largely respond to specific components of the telling. This is consistent

with the "relative passivity" of prosecutors (Feeley, 1979: 177; Mather, 1979: 70, 94), who seem to assume that standard penalties are appropriate for most cases and leave it to defense attorneys to convince them otherwise in particular cases, that is, to argue that a given case is not a "normal" crime (Sudnow, 1965).[15] Significantly, the one narrative in our corpus told by a DA ends not with a defense segment but rather with the reaction report. This suggests not that prosecutors are precluded from telling stories nor that defense attorneys are required to do so, but rather that the deployment of narratives and narrative structure indicate how interactants provide for the visibility of these categorical identities in and through actual talk. In part, one participant enacts the identity of defense attorney by using narratives and narrative components, including defense segments, in asking for some disposition. Another coparticipant brings off the identity of DA largely by responding in specific ways to a narrative or its components or by telling narratives without defense segments.

B. Setting the Boundaries of Negotiation

Speakers' use of narratives and narrative components and recipients' specific ways of dealing with them result in four patterns of negotiational discourse: routine processing, assessing character, disputing facts, and arguing subjectivity.

1. Routine Processing. In some plea negotiations, a prosecuting or defense attorney may open by soliciting or requesting to make an offer. The lawyer thereby proposes that the case is sufficiently "routine" to permit immediate focus on charging and sentencing issues (Maynard, 1984: 107). Such a focus is possible because prosecution and defense converge in their assessments of the case (Mather, 1979: 57–58) based on their similar interpretation of police reports and other documents. In the following example, a defendant is charged with engaging in a "speed contest," a misdemeanor. The attorneys eventually agree to reduce the charge to an infraction ("forty-five in a twenty-five," line 8):

Example 17

1	*PD2:*	Okay. Ya wanna make an offer in that case.
2	*DA3:*	I have so little use for these uh, dumb uh [9
3		seconds of silence while DA3 reads file] I
4		can't intelligently make an offer in that case
5		'cause I have no idea whether it's a bankrupt
6		uh, you know sometimes they hear the
7		scratch uh y'know, little squealer.

[15] See the discussion of this in Maynard (1984: 151, n. 7).

8	*PD2:*	Forty-five in a twenty-five, I mean you know
9		what are we doin' here.
10	*DA3:*	I'll be happy uh—would you give me forty-
11		five in a twenty-five on that?
12	*PD2:*	Twenty-five-dollar fine.
13	*DA3:*	How 'bout a fifty-dollar fine?
14	*PD2:*	How 'bout a twenty-five-dollar (heh) fine
15		(heh) real misdemeanors go for fifty dollars.
16	*DA3:*	How 'bout thirty-five?
17	*PD2:*	Eh yeah, I think that's not a bad deal.

In line 1, PD2 solicits an offer from DA3, who, while reading the file, formulates the case as "dumb" (line 2) and as possibly "bankrupt" (line 5). These characterizations suggest that he considered the case, in Mather's (1979) words, as "light" (in terms of seriousness) and "weak" (in terms of evidence). Similarly, after DA3 counters PD2's proposal of a twenty-five-dollar fine (line 12) by suggesting fifty dollars (line 13), PD2 holds to his original proposal and downgrades the case with an ironic statement, "real misdemeanors go for fifty dollars" (lines 14–15). In a sense he asks for or confirms an understanding of the case as light and weak, as if this would be the synopsis that PD2 would use if he himself were to tell the story from the file. In ultimately agreeing to a compromise, the DA aligns with this characterization. Notice also that judge may produce such synopses in the context of routine processing:

Example 18

1	*J1:*	Next is Jerry Romney, which is a 23109b
2		[speed contest].
3	*PD2:*	Ya we haven't discussed that yet but if you'll
4		take a speeding and thirty-five dollars.
5		[silence]
6	*J1:*	Oh I'm sure the people'll do that, right?
7		[silence]
8	*J1:*	Looks like it's just breaking traction.
9	*DA3:*	Sure, sure.
10	*PD2:*	Okay, we'll do that.

Twice the DA responds with silence when asked to accept a proposal, and after the second time, the judge produces a synopsis that downgrades the offense (line 8). In the data, this represents a characteristic form of participation for the judge and suggests again that a way of "doing" a particular identity is to insert narrative components at sequential junctures in the negotiations. By producing a suggested upshot of a case's narrative rendering after one party makes a proposal, the judge may urge the recipient to

reply in a specific way. Here, the DA does indeed assent to the judge's proposed synopsis and accepts the PD's offer. Cases of routine processing may involve a convergence or "concerting of expectations" (Schelling, 1963: 93), but that depends on a displayed reading of previously told and written stories that is embedded in discursive negotiations over charge and sentence.

2. Assessing Character. Another pattern involves the use of narrative background segments. As with cases of routine processing, a defense attorney does not dispute the action of the defendant or the appropriateness of a legalistic reaction. Rather, an appeal for leniency is based sheerly on the good character and difficult circumstances of the defendant. The question for the DA is whether character and circumstances need to be taken into account and, if so, to what extent. Sometimes he decides negatively, as in the Walter Larson drunk driving case mentioned above. The DA's displayed concern with the weaving of the defendant's car prior to arrest seemed to override the importance of the PD's backgrounding information. Sometimes, however, the DA reacts positively, as in the David Johnson decal theft mentioned above, and in the following shoplifting case:

Example 19

1	*PD2:*	She is advanced middle-aged Eastern lady.
2		This is the lady who sends her son back East
3		to go to med school, the son is killed, her
4		husband leaves her, uh she lives in an
5		apartment with no furniture, uh she attempts
6		suicide. She knew what she was doing when
7		she took it. I just don't think that uh
8		considering her age 'n her mental state that
9		uh she's a fit candidate for—that she will fit
10		in well with the jail population, and if she
11		could do some uh service work.
12	*DA3:*	Sure.

Notice that the defense attorney admits the woman's culpability in a way that depends upon common knowledge (understanding what "it" was that she took [line 7] requires such knowledge) and indexes the participants' familiarity with what happened. He simultaneously uses descriptions of the defendant to argue against jail time and for the alternative penalty, which the DA grants. In each of these cases, the PD presents person descriptions and character assessments that the DA does not dispute. The descriptions and assessments justify bargaining proposals (cf. Maynard, 1984: 137), and prosecutors deal with the backgrounding information by granting or denying these proposals.

3. Disputing Facts. A third pattern includes those cases with a denying defense component. Whether the story is one that an attorney tells or one that appears in the police reports, the defense segment recasts the action report, and raises questions about the appropriateness of a legalistic reaction. This means that what happened becomes a matter for dispute. Consider Example 15, where PD2 introduces a denial when rejecting the DA's suggestion that his client plead guilty to "resisting public officers" and be sentenced to two weekends in jail. That is, PD2 argues that his client did not resist officers by throwing beer cans (line 4). This defense renders the police report questionable and results in a discussion of the facts of the case. The DA notes that the defendant allegedly threw beer "bottles" and not "cans" (as the PD had characterized the objects). And when PD2 counters DA1's offer with a proposal for a lesser charge and fine, this occurs:

Example 20

1	*DA1:*	I can't see it, not when the officer has to sit
2		through and go through bottles bein' thrown
3		at him, and he says he saw your man do it.

Not surprisingly, the outcome of the negotiations is at least partially tied to which version of the event participants regard as the "real" one. In this case, DA1 favored the police account and did not relent on reducing the charge, although he did offer a penalty of a fine rather than time in jail (and the defendant pleaded guilty).

The way in which denying defenses render action reports equivocal is also apparent when attorneys, rather than relying on the police report, produce a story during negotiations. Returning to Example 11, the case in which the defendant was charged with representing himself as an officer and with using offensive words, note that PA3 uses a story prefix (line 1) that marks subsequent utterances as containing "undisputed facts." He then produces a background segment (lines 1–3) and an action report (lines 3–12) with an implicit reaction report. Within this action report, PA3 refers to an exchange of "some words" between the defendant and the plaintiffs, which he characterizes as the subject of "the dispute" (line 8). Next, PA3 reports what "the people in the car say" (lines 8–12) and, in the defense component (lines 15–19), "what my client will say. . . ." All of this renders what happened as very uncertain. Thus, the PA formulates the gist or synopsis of the story as "who's telling the truth, the two victims or my client and our other witness" (lines 19–22).

How do attorneys determine who is telling the truth? The DA's strategy in this case was to introduce further background information:

Example 21

DA3: It would appear that the defendant has called the foot patrol a number of times on prior occasions complaining about people parked there, he seems to have, I dunno, from the face of things, I would say an inordinate concern for the possibility the people park in front of his house may be burglars. . . .

Thus, even as a denying defense calls into question what happened, determining the facts of the case may elicit reconsideration of who the defendant is in an attempt to ascertain a possible motive that would fit with one version of the event as opposed to another. Here, noting the defendant's history of complaints (line 2) may be the DA's way of suggesting a type of person who would impersonate a police officer. The PD, on the other hand, continues to point out inconsistencies in the victims' account of the event and suggests the possibility that they "misunderstood" his client. That is, rather than arguing over the character of the defendant, he attempts to discredit the opposing version of what happened. In the end, the district attorney dismisses the case. In summary, then, introducing a denying defense means that attorneys do not take a story of what happened at face value; instead they may seek to reconcile alternative versions by providing different scenarios and backgrounds for the focal event.

4. Arguing Subjectivity. The fourth pattern in the use of narrative components derives from excusing defenses, which largely leave a depiction of what happened intact and seek to provide an exculpatory reason for the defendant's behavior. Consider yet another case of shoplifting. Here PA2 represents two defendants:

Example 22

PA2: . . . an' it was one o' these things where they went to a grocery store, did not have a cart, they're pickin' up items, and uh a few of 'em happened to fall in the pockets, they get up ta pay for it, they're payin' for it, they buy twenty dollars worth of uh groceries and uh uhm just—they claim they didn't—they neglected to think about the other small items that they had, which it was a bottle of Visine which was in their pants pockets.

[1 second of silence]

PA2: So uh they were picked up for simple petty theft.

14	*DA3:*	Well to be absolutely precise uh the
15		codefendant with Mr. Winter told the store
16		employees that uh he in effect intended to
17		steal it.

PA2's narrative contains an action report (lines 1–6) and an implicit reaction report that can be filled in at the point where the defendants are "payin' for it" (line 5) and it turns out that they "neglected to think about the other small items" (lines 8–9). Lines 7–10, which identify the small items, also constitute the defense segment: They represent an excuse for the defendants' behavior. This segment (lines 7–10), furthermore, is a possible completion for the narrative; it is the point where recipient could demonstrate an understanding of the narrative's import (Jefferson, 1978). Next is a silence (line 11), however, which indicates a lack of turn transition. PA2 then formulates an explicit reaction report (lines 12–13), a "secondary ending" (ibid., p. 231), through which PA2 more strongly proposes closing the narrative and returning to a system of turn-taking that is partially suspended during the narrative proper. When DA3 takes his turn, he rejects the excuse (lines 14–17) by suggesting that the intent of at least one of the defendants was different from PA2's characterization. Later, he also refuses each of a series of lesser charges and penalties suggested by PD1 as alternatives to a guilty plea and the standard shoplifting penalty (see the discussion in Maynard, 1984: 95–96). That is, both defendants pleaded guilty and received twenty-four hours in the county jail.

The vulnerability of excuses derives from their dependence on "subjectivity avowals" (cf. Coulter, 1979). Instead of directly occasioning talk regarding what happened, as occurs with denying defenses, using excuses means making inferences regarding the defendant's intentional or psychological state. When a claim is simply made that a defendant did not form the intent to commit the wrongful act, as in Example 22, that seems to be a relatively weak defense, which may be why the PA achieved no compromise. Clear evidence for the weakness of such subjectivity statements exists in the case of employee theft at Sears (see Example 5). Upon hearing PD2's narrative defense component, wherein it is acknowledged that the defendant was going through the purses but had "no intention of stealing anything," the judge produces a negative assessment (line 6):

Example 23

1	*J1:*	Why was she even foolin' with the purses?
2	*PD3:*	Well she says she didn't recognize the purses,
3		she was wondering what they were doin' in

4		there an' she was looking through the purses
5		when the guy came in.
6	*J1:*	Boy that's a bad excuse.
7	*PD3:*	Um that's the only excuse that she's got.

A stronger excuse seems to stem from formulating external or internal processes that interfere with a defendant's subjectivity and capacity for forming intent. Thus, in the Zamora-Avila shoplifting case (see Examples 3, 7, 8, and 14), the PD proposed that the ingestion of drugs incapacitated the defendant. Still, the case fits a pattern wherein the use of an excusing defense occasions a dispute over the defendant's psychological state. When the DA verbally responds to PD1's telling, he questions neither the backgrounding information nor the action and reaction reports but instead attacks the excuse:

Example 24

DA1: . . . I just can't believe that the drug is—if the drug affects you that badly you're gonna do something bizarre, in other words you're gonna walk out swingin' around your arm or carryin' out bananas in your ear or something crazy. Here she was extremely sophisticated, go into the dressing room, pin it up underneath her coat, uh her dress like that. Uh I just can't buy it.

Stated differently, the DA does not directly dispute who the woman is or what she did, but rather argues against the defense attorney's depictions of her subjective state and capacity to form intent. Of course, this can indirectly call into question the character of the defendant and can provide for a different, retrospective interpretation of the "facts" as told during the story proper. Nevertheless, the PD, telling his story several times as the case was continued over a period of weeks, stuck to his portrayal and interpretation of events and eventually won a dismissal.

C. Summary

Narratives in plea bargaining are structured aspects of the discourse through which attorneys present or rely on versions of what happened in a way that is sensitive to the social situation, including the composition and knowledge of their audience. Thus, some negotiations contain no narratives and others include only narrative components or subcomponents. When coparticipants are familiar with a case or when they regard it as routine, they may proceed directly to deciding charge and sentence or may use back-

ground or defense segments to justify a bargaining position. And when narratives or their components appear in plea bargaining, it is usually defense attorneys who speak them. Prosecutors and judges may also produce components, but in particular ways. This suggests that narratives and their components may be devices for "doing" the identities by which principal actors in the discourse are known.

Narratives and narrative structure, in my data, permit plea negotiations to proceed systematically in four basic ways. In routine processing, participants depend on stories that are textually constructed in police and other documents; in deciding charge and sentence, they may claim particular understandings of cases on the basis of synoptic results. In cases of character assessment, participants similarly rely on police reports, and an attorney may introduce background information to justify a bargaining position. Rather than disputing the assessment, the other negotiator simply accepts or rejects the dispositional proposal it supports. When attorneys deploy a narrative component that denies the offensiveness of an act, it sets up a negotiational dispute over what happened. This may mean discussing alternative versions of the facts and reconsidering the defendant's identity and character. Finally, if a defense attorney uses an excusing defense as part of the narrative, this regularly results in arguments over the subjective state of the defendant during commission of the offense. Such arguments may indirectly recast the character of the defendant and the nature of the act. In all, then, their use of narratives and narrative structure partially establishes what participants will and will not discuss when utilizing bargaining sequences to decide matters of charge and sentencing (Maynard, 1984: chap. 4, 5, and 8). In other plea bargaining arenas, practitioners may use basic narrative components to achieve other patterns of negotiation.

IV. THEORETICAL IMPLICATIONS

Narratives have a structure that is organized independently of outside or exogenous social and legal factors. In this view, neither what happened and who the defendant is nor the criminal justice process and the law as institutions constrain or influence the interaction order so much as this order constitutes the reality of all these elements as features of situated activity. An initial step in expliciting this assertion can be made with an analogy between plea bargaining and science. Both are enterprises devoted to making propositions about events in the world and to drawing conclusions from the sequence of those events. Both are seemingly constrained in a variety of ways: They are to be responsible to the actuality of events, and they determine this actuality in relation to a body of law and scientific procedure, respectively. Laws also help specify appropriate remedies, while scientific procedures dic-

tate how to report results and conduct further investigations. Landau (1984) argues that in science narrative has an unsuspected influence on perceptions of the world, on determinations of significant events, and even on methods of investigation. Across their various paleoanthropological accounts of human evolution, for instance, scientists have followed several narrative principles: (1) they organize events into intelligible stories with beginnings, middles, and ends; (2) they define individual episodes as turning points, crises, and transitions; and (3) they select and arrange worldly matters into chronological and causal sequences that are narrative in origin. Thus, it is possible that "scientific explanations apparently based on natural laws are actually a function of narrative procedures" (ibid., p. 267). The point of Landau's suggestive research is not to discredit science or to rectify somehow the narrative forms through which scientists perform their enterprise and report their results. Rather, it is to consider seriously the role of narratives in the process of discovery and experimentation.

A. Plea Bargaining, Defendant Characterisitics, and Other Factors

By the same token, a focus on narrative forms in plea bargaining should not imply that attorneys are "only" telling stories, that they are producing fictionalized accounts of legal offenses, or that they are somehow distorting facts. It should instead call attention to the manner in which participants bring facts, biography, law, and other matters to bear on the decision-making process. They do so by using narrative structure; by introducing stories into negotiations with synopses, prefaces, prefixes, and the like; by telling stories with background segments and action and reaction reports; and by producing defense segments in characteristic ways. The "normal" form of plea bargaining narratives suggests that attorneys view offenses as being committed by persons with distinct characters and engage in conduct that elicits a more or less reasonable legalistic reaction. Defense attorneys can claim innocence for the defendant by denying that the behavior occurred or by excusing it with reference to the defendant's unintending subjective state. They use such defenses to ask for some lesser charge or sentence or for dismissal. Prosecutors and to some extent judges, also employ narratives and narrative components, but differently from defense attorneys. In all, stories are not a neutral rendering of what happened but rather aim for some synoptic upshot. Even if participants do not produce a full narrative, they rely on textual stories from police documents and can deploy narrative components, including synopses, background segments, and defenses as they bargain over charge and sentence. All of this suggests that attorneys may scan the material available to them as a "case" for its "storyable" characteristics (cf. Sacks, 1984: 417), seeking just that

which is presentable in narrative form and which will be most effective in supporting their respective bargaining positions (cf. Spencer, 1984: 223–224).

Therefore, traditional concerns with the influence of various factors on plea bargaining outcomes must be supplanted. We need an understanding of how the organization of "talk-in-interaction" (Schegloff, 1987) makes its own independent, integral contribution to outcomes. Abstract factors such as law, the character of the defendant, and organizational roles do not influence decisions so much as the narrative structure of plea bargaining affects how participants bring those matters into play. Other work shows, for instance, that descriptions of persons depend upon an infinite variety of potentially relevant categorical and evaluative background factors. In producing person descriptions in conversation, however, participants orient neither to a principal of "correctness" (Sharrock and Turner, 1980: 20) nor of simple "adequacy" (Atkinson and Drew, 1979: 137). Rather, they select factors and assemble them in context with one another and within discourse activities such as praising, blaming, insulting, and justifying (ibid.; Labov, 1972; Maynard, 1984: 137–139). In plea bargaining, descriptions of defendants appear in background segments of stories and supply a sense of persons so as to inform what is to be made of what they have done. With the stories they accompany, they are ultimately employed to argue for and against various dispositons. We have also seen that negotiators, rather than acting out roles, enact or provide for the visibility of their organizational identities in and through the details of their talk; that is, by producing characteristic narrative components at particular sequential junctures in the negotiations. As a last consideration, although the role of law has barely been touched upon here, there are clear directions for further research. If bargaining occurs in "the shadow of the law" (Mnookin and Kornhauser, 1979), studies of narrative may show just what kind of shadow the law casts, for it is in the process of producing narratives that participants interactively take it into account (cf. Erlanger *et al.*, 1987: 599). The law operates as a "context of accountability" (Rawls, 1987: 46, n. 16); it is only through a sensitivity to legal stipulations that participants can muster background components, defense, and other devices for making and responding to proposals for disposition. In short, future investigations concerned with the law in action can attend to how attorneys *use* laws in forming narratives and narrative components during negotiations.

In general, then, who a defendant is and what legal, organizational, and other factors influence a decision depend in part upon how they become relevant within the narratives that attorneys collaboratively build. To paraphrase Smith (1980: 229), the major features of a case are not prior to or independent of narratives; instead they come to life through narrative practices by which a

teller makes them manifest and a listener makes inferences and responds accordingly. Thus, more attention needs to be paid to the conversational and interactional order in legal settings; rather than seeing cases, laws, organizations, or roles determining how participants talk and act, we need to conceptualize cases, the setting, and their features as a function of the interaction order.[16]

B. The Reflexivity of Stories and Plea Bargaining

We noted earlier that unlike stories in everyday conversation, the stories in plea bargaining portray conflict that is not yet resolved. Plea bargaining narratives thereby exhibit a reflexive relationship between actors and the stories they tell. That is, narratives are a resource in and for plea bargaining which is itself a feature of these narratives. Even while attorneys present what has happened (an action report), how it was responded to (a reaction report), and what a defense might be, they themselves have become part of the drama and the process by which some resolution is to be reached.

The literature depicts the main participants in plea bargaining as engaging in exchange and reciprocity on the basis of how they mutually decide facts and character (see, e.g., Alschuler, 1975; Feeley, 1979). Plea bargaining, in this view, is a way of rendering substantive justice, although investigators acknowledge that work load and bureaucratic demands diminish defense attorneys' sense of duty to their clients so that "accommodation and compromise" rather than "adversary combat" characterize negotiations (Rosett and Cressey, 1976: 127–128). In emphasizing cognitive appraisals of cases to the neglect of everyday routines and experiences in which participants become embedded (Maynard, 1984: 170), this may be an overrationalistic approach to understanding negotiations. If participants are part of the narratives they present, the implications are different. They are motivated to present stories as effectively as possible as an interactional matter. That is, from within an experience, participants are often oriented to producing it as a course of action that will turn out to be a "good story" (cf. Sacks, 1984: 417). Insofar as "good stories" are those that involve winning rather than losing,[17] attorneys will be interested not just in mutually deciding facts and character, engaging in exchange, or meeting their bureaucratic mandate. Being part of a still unfolding narra-

[16] It should be obvious that narratives are only one aspect of that order. In plea bargaining, narratives work in conjunction with bargaining sequences and other negotiational devices to bring about concrete decisions and outcomes. See, for example, the analysis in Emerson (1983: 445) regarding how attorneys "invoke the treatment accorded prior cases as a lever for negotiating the outcome of the current one." Such a device can make a "larger organizationally determined whole" (ibid., 425) specifically relevant for a case at hand by operating in conjunction with the narrative an attorney builds.

[17] See Buckle and Buckle (1977: 150–152) and Mather (1979: 96–97) on how lawyers are evaluated in terms of whether they win or lose negotiations.

tive provides a structural urge for lawyers to be alert to those legal, extralegal, personal, and other innumerable features of a case that can be built into the story in such a way as to justify and induce a favorable disposition.

As Goffman (1983: 8) argues, the work of organizations is done face-to-face and is therefore susceptible to interactional effects. Persuasion is one matter that is only achievable in direct relationships, and narratives can be "performed" in such a way as to be more or less compelling (Bauman, 1977: 26; Labov, 1982: 230). Consider again the Zamora-Avila case, in which a woman was charged with the theft of clothes (See Examples 3, 7, 8, 14, and 24). While the prosecutor adamantly disagreed with the PD's defense regarding the influence of drugs on his client, he ultimately granted the PD's proposal to dismiss the case. His decision derived from an assessment, based on the PD's narrative, about what would happen at trial. It was as if the story the PD told was a rehearsal for a similar courtroom presentation that, in the DA's view, would be convincing to a jury (Maynard, 1984: 114, 133–134). Thus whatever the merits of the case and the legal grounds for dismissing it, the PD's narrative casting had to be done in such a way as to provide compelling support for his proposal. Case characteristics and legal matters, then, are not irrelevant, but neither are they self-invoking or self-evident features of the negotiational process. Rather, to paraphrase Heritage (1984: 290), they are "talked into being" by way of narrative and narrative structure. As an aspect of the interaction order, this structure shapes the content of the case, and clearly *effects* the course of negotiations. The exact ways in which it also *affects* outcomes cannot be ascertained until more is known regarding narrative and other structured aspects of negotiational interaction.[18] In short, it seems that a lawyer requires both legal and conversational competence. We need more understanding of the latter skill to appreciate fully how bargaining results come about.

V. CONCLUSION

I have proposed that comparative research on bargaining narratives is needed. This means studying narratives in different plea bargaining settings, such as those involving felony offenses. It additionally implies a comparison with informal negotiations in other legal arenas, including civil cases such as divorce (see, e.g., Erlanger *et al.*, 1987; Mnookin and Kornhauser, 1979). Comparisons should also be made between these narratives and those in ordinary conversation. Plea bargaining narratives may be less "idle" than everyday stories to the extent that they more regularly continue to unfold in the context of being told. We also need more

[18] See Schegloff (1987: 228) on how modes of conversational organization constitute a context for bodies of knowledge and other interactional products.

understanding of textual narratives on which negotiators depend (cf. Spencer, 1984) and which are largely absent in the everyday context. Contrasts, such as those O'Barr and Conley (1985) have drawn regarding the legal adequacy of narratives in everyday conversation and those that seem effective in small claims court, are apt. And most intriguing would be the comparison between how events are presented in plea bargaining and at trial. We know that trial narratives are elicited and pieced together through question-and-answer sequences (Atkinson and Drew, 1979: esp. 61–62, 76–77), while plea bargaining stories are told more spontaneously and uninterruptedly. Trial discourse therefore structures narrative events differently from plea bargaining discourse in terms of length, amount of detail, ordering of segments, and so on (cf. Wolfson, 1982: 61–71). In addition, parties at some remove from the original event tell plea bargaining stories, while direct participants are involved in trials. How consequential are these differences for the depiction of reality and the rendering of justice in each arena?

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