Parties to a conversation often talk about other people: friends, acquaintances, relatives, strangers, clients, public figures, and so forth. In so doing, they face a selectional problem: namely, of all the things that might be said of a person, how is something chosen for a particular conversation?\footnote{1}

The particular conversations forming the data for this study are transcribed plea negotiations from misdemeanor criminal cases, recorded among defense lawyers, district attorneys, and judges in a municipal court. Talk about defendants, identification of their biographies, and assessments of their characters are prominent features of these negotiations. Yet of the many things that could possibly be said regarding defendants’ backgrounds, a relative few are utilized. That is, as Atkinson and Drew (1979: 248) put it, ‘... a description is in principle incomplete, and hence necessarily a selection from what could have been said’.\footnote{2} This paper describes a principle that is exhibited in the work that lawyers do to relevantly talk about defendants in the cases before them.

Before we address this issue directly, a number of matters must be examined. In the first section of the paper, the person-description ‘format’ is discussed as fundamental to how talk about persons is done in conversation. The second section examines the relation between person-descriptions and the topical and activity environments where they appear. By utilizing this analysis, we can, in the third section, return to the selectional problem and examine a more general problem in ‘communicative competence’ (Hymes 1974: 527): in the conduct and interpretation of any kind of spoken discourse (negotiational or other), how are the third parties described?

**Person reference and person description**

We do have some understanding of how conversationalists refer to some third person in talk. First, parties regularly employ ‘membership categori-
zation devices’ to do the work of reference. Simply put, a device of this kind consists of a collection of membership categories that may be properly applied to the members of a given population (Sacks 1972: 32). For example, (male, female), (man, woman), (he, she), (guy, gal) are paired collections of categories all deriving from the device ‘sex’. Such categories are often used as referential forms in conversation:3

(1) 32.013 [Drunk driving]
  PD2: He’s in Arkansas
(2) 39.010 [ Petty theft]
  PD2: She is advanced middle aged

Second, Sacks and Schegloff (1979) have noted that when reference to persons is done, two preferences are operative. One is that reference should be done with a single form, and the other is that the form should be recognizable by a recipient. In the above examples, ‘he’ and ‘she’ are single forms, occurring in a context (not reproduced here) where such pronouns are adequate for the hearers of the utterances to know who the referent persons are.

Talk about third parties is not just a matter of reference, however. Examples (1) and (2) also show that a reference form may be accompanied by a descriptive item or biographical formulation (‘in Arkansas’; ‘advanced middle aged’) regarding the referent persons. The term ‘person description’ will be used in the following discussion for utterances in which some person-reference form is linked with one or more formulations:

person-description = reference form + descriptive item(s)4

For some utterance to be a person description, conversational structure and not grammar is the important determinant. Linguists (e.g., Lyons 1968: 419–420) and sociolinguists (Hymes 1974: 49, 53) have both pointed out that the construction of utterances in conversation is heavily dependent on contextual matters. Critical to the recognition of utterances as person-descriptions and not other sorts of conversational units is their placement within ongoing sequences of talk. For example, the following statement regarding a defendant could be taken several ways:

(3) 1.023
  PD1: She goes into Davidson’s

If PD1 were employing ‘goes into Davidson’s’ as an activity-description related to some category of person, embedded in a series of utterances working to establish the ‘type’ of person the defendant is, then the utterance would be considered a person-description. However, as will be
seen in example 7 below, this utterance initiates a story about the defendant’s alleged shop-lifting and thus primarily helps characterize the offense rather than the defendant.

**Person-descriptions as justifications**

The data in this study consist of discussions held among defense attorneys, prosecutors, and judges regarding proper disposition of defendants in misdemeanor criminal cases. Traditionally, these discussions have been called ‘plea bargainings’, but a more appropriate term might be ‘disposition negotiations’. Attorneys not only discuss what plea is appropriate for given defendants, but also barter over what sentence is appropriate for a given charge, and whether the case can be diverted before trial or dismissed entirely (cf. McDonald 1979). Such negotiations are not adversarial in the strict sense of the term, since prosecutors and defense attorneys are partially engaged in the attempt to agree on ‘what actually happened’ and what penalties are warranted in particular cases (cf. Feeley 1979: 180; Rosett and Cressey 1976: 105–109). But lawyers also solicit, make, and refuse proposals, offers, and counteroffers in the course of their negotiations.

The problem here is to identify the relationship exhibited between these central activities of coming to agreement, soliciting, offering, and so forth, and the descriptions of defendants employed in their accomplishment. Based on prior work in conversational analysis, we would expect that person-descriptions in general would be sensitive to, and partially constitutive of, the conversational topic or activity (cf. Schegloff 1972: 104). This is because of the recipient-design feature of conversation, which refers to the regular fitting of conversational terms to particularities of context, including persons to whom an utterance is spoken, where it is spoken, and so forth.\(^5\)

In some cases, the relation between defendant descriptions and their topical environment is quite transparent, and we shall examine these in the section on ‘Immediate sequential environments’ below. There are, however, apparent anomalies — descriptions of defendants that are not related to their immediate conversational contexts. In the section on ‘Wider contexts’, it will be demonstrated how they nevertheless fit a basic pattern of providing support for the defense or prosecution position. It will also be argued, under ‘Repair’, that this pattern is nontrivial in the sense that participants mutually require one another to adhere to it. Following this preliminary work, we can, in the ‘Conclusion’, return to the selectional problem posed at the outset.
Immediate sequential environments

Now one way that negotiating parties attempt to establish the facts of a case is by telling various versions of what happened. Lawyers typically have a police report or a police officer's testimony, the defendant's version of the event, and they may have a victim's as well. Where there are competing versions, an assessment of a person's truthfulness may be of critical concern when his story is repeated. For example, in one case a young man was charged with petty theft for allegedly taking some beer from a liquor store. The defendant's argument was that it was his companion who had taken the beer, and that he (the defendant) had actually protested the theft. So when the lawyer defending the young man tells the story to the judge, he prefaces his representation as follows:

(4) 31a.025
1. PD2: ... my client, who- in fact who's story I- I tend
2. to believe because of the way he tells it, eh an' for
3. y'know subjective things like that 'n for no other
4. reason, uh says that ... ((story))

Between the connecting parts of the story entry ('my client', line 1, and 'says that ...', line 4), the PD reports his own belief of the story on the basis of 'subjective things'.

When a defendant's story is quoted, then, its 'truth value' may be an issue that the speaker may address by making visible his own attitude. In the following, the PD does this by employing person-descriptions. The PD had been telling a Chicano defendant's version of a hit-and-run event, relayed to the PD by way of an interpreter, Bill Campbell. The defendant claimed that he had left the scene of this accident to obtain a friend who could speak English for him, and that he was planning to return when he was apprehended.

(5) 44.036
1. PD1: But uh, you know I- I was talking to 'im through Bill
2. Campbell and uh, this is what he tells me
3. (0.6)
4. PD1: What I would like to see- you know this guy is really,
5. I think he's jus' strict- strictly honest, I think he's
6. telling me the truth. What I'd like to see happen
7. is jus' have us continue the thing for like thirty
8. days, make him- let him make restitution on 'is own and
9. if he does it, then dismiss the case

While in line 4 there is a projected person-description, 'this guy is really',
it is cut off and followed by two other complete ones, each with a perspectival preface:

**Preface + reference form + descriptive item**

(a) I think + he’s + jus’ strictly honest

(b) I think + he’s + telling me the truth

Sequentially, these person-descriptions appear in a significant position. Lines 1 and 2 represent an ending point of the PD’s retelling of the defendant’s story. After the silence (line 3), PD1 produces a ‘preproposal’ (line 4, ‘What I would like to see’), an utterance projecting the proposal to come. However, the person-descriptions are inserted after this preproposal. Following the descriptions, the preproposal is repeated with some added components (lines 6 and 7). Then the actual proposal is made, ‘have us continue the thing for like thirty days’, etc. (lines 7 to 9). Thus, the person-descriptions follow the PD’s relaying of a defendant’s story that defends him against a criminal charge, and come before the PD’s proposing an eventual dismissal of the charge (line 9). The descriptions are, therefore, precisely placed, assessing the defendant’s story as truthful just after it is produced, and just before production of the proposal the story warrants.

If person-descriptions regarding defendants help justify proposals or position reports, they can also rationalize replies to them. In discussion of a shoplifting case, for example, the PD suggested that the defendant be allowed to plead guilty for a fine rather than spend 24 hours in jail (the ‘standard disposition’, lines 2 and 3 below), because it was a first offense and the item stolen was just one jar of soap (‘Mini-wash’, line 5).

(6) 42.040 [Shoplifting]

1. (7.6) ((DA3 reads file))
2. DA3: I have difficulty making this other than the standard disposition
3. 4.
4. (0.8)
5. PD4: For a dollar and some odd cents worth of Mini-wash?
6. DA3: Yeah I mean I- I can BUY the logic within the limits of the- you know the items of necessity by somebody very poor, but a-
7. 8.
8. 9. PD4: Yeah
9. DA3: cosmetic item by a young um lady who’s just uh in too much of a hurry to go pay for it. Uh I can’t buy that
10. 11.

After reading the case file, DA3 here reports his ‘difficulty making this other than the standard disposition’, lines 2 and 3. PD4 expresses disappreciation of the DA’s report by minimizing the value of the stolen
item (‘dollar ‘n some odd cents worth of Mini-wash’, line 5), and producing upward intonation (as signified by the question mark; see Appendix), so that the utterance is hearable as a questioning of the position the DA displays in the report. Moreover, that utterance (which is in a class including questioning repeats and requests for clarification) and the silence that precedes it (line 4) are both disagreement implicative (Pomerantz 1975: 72–73). That is, while not directly expressing disagreement themselves, they indicate it may follow.

Subsequent conversation does, in fact, exhibit additional components of a disagreement sequence, but the focal point here is that a justification of the DA’s position has been sequentially occasioned. The extended turn from lines 6 to 11 follows a position report in which the recipient’s questioning specifically invites further talk relative to the report. And occurring after two disagreement-implicative items, the turn may be spoken by reference to the agreement that is projected. Thus, in two ways, by following a disapproving postreport solici t and by anticipating a disagreement turn, an utterance making visible the propriety of the proposed standard penalty is elicited.

We can now begin to focus on the person-description that occurs in lines 10 and 11. The turn (lines 6 to 11) of which it is a part is tightly and artfully constructed. There is an acknowledgement (‘Yeah’, line 6), which ties this turn to the PD’s prior. Then DA3 produces a prefacing item ‘I mean I can buy the logic within the limits of …’ (lines 6 and 7) that specifically contrasts with the concluding utterance, ‘I can’t buy that’ (line 11). Between the preface and the conclusion are several comparative descriptions, connected by the contrast marker ‘but’ (line 8). First, there are two nonperson-descriptions regarding stolen articles:

nonperson reference form + descriptive items
(a) (i) items of necessity + (ii) by somebody very poor
(b) (i) a cosmetic item + (ii) by a young lady who’s just in too much of a hurry to go pay for it

Second, embedded within each of these formats are person-descriptions:

person reference form + descriptive items
(aii) somebody + very poor
(bii) a young lady + who’s just in too much of a hurry to go pay for it

In both sets of descriptions, contrasts are exhibited between reference forms and between descriptive items. Furthermore, the comparison between person-descriptions represents a standard device for making
'character assessments', which consists of contrasting descriptions of a particular person (the 'young lady') with descriptions of a hypothesized person ('somebody') (see Maynard 1979).

We have established that the activity implicated here is a justification of the DA's announced refusal to consider an alternative to a standard penalty for the defendant. The description of the defendant is fitted to this context, then, by means of the contrastive work it does for the discrepancy claimed between the actual stolen article (in b above) and the prior version of allowable stolen items (in a above). In summary, the person-description is systematically embedded in, and partially constitutive of, a sequentially occasioned justification.

Wider contexts

While the relation of person-descriptions may be relatively transparent in their relation to the immediate conversational context, this is not always the case. In the following example, a series of person-descriptions, packaged as a distinct entity, is triggered by a story-telling. The task will be to account for the appearance of each description, and to do so we will have to draw on other sources besides the present sequential environment. One source will be later sections of this same conversation, and the other will be evidence from another conversation regarding the 'subcultural' orientations of the legal practitioners who participate in these negotiations.

In this segment, a woman defendant, who allegedly stole some clothes from 'Davidson's', a local department store, is of focal interest.

(7) 1.014
1. PD1: On the face of it it looks pretty bad
2. PD1: (0.8)
3. PD1: But
4. DA1: Uh-huh
5. PD1: Investigating the case uh comes up with some beautiful defenses that I'm anxious to go to trial on if the Dee Ay is
6. (1.4)
7. PD1: Situation is this (0.2) eghhh. She's a sixty-five year old lady Mexic- speaks uh (0.2) Castillian Spanish (0.4) she's from Spain (1.0) Uh eghhh she goes into Davidson's (0.8)
8. Oh incidently uh- th- by way of back ground, for twenty years she's worked in the- Catholic Church of- at San Ramon
9. as the housekeeper for the nuns 'n the fathers 'n all this
10. stuff (and uh) very religious well-known I've interviewed
half of San Ramon, concerning her background (0.4) wonder-
ful lady no problems sixty-five years ol’ .hhh sh- but on this
particular occasion, she goes into Davidson’s eghh goes
into a (0.2) fitting room (0.4) takes two hundred dollars
worth o’ clothes (0.8) pins them up underneath her (0.6)
dress (0.6) and leaves.

The person-descriptions, in this example, are rather elaborately brack-
eted off from the story. The descriptions in lines 8 to 10 are both preceded
and followed by small silences and voice clearings that separate them
from the story preface, ‘situation is this’ (line 8) and the first story entry,
‘she goes into Davidson’s’ (line 10). This story entry item is itself followed
by 0.8-second silence (line 10), a misplacement marker (‘oh incidently’,
line 11; Jefferson 1972: 313), and a preface (‘by way of background’, line
11) to the next set of person-descriptions (lines 11 to 16), which are clearly
end-bracketed as well. The last description, ‘sixty-five years old’ (line 16),
is a repeat of the very first one in lines 8 and 9, neatly encapsulating the
whole series of descriptions, which is followed by indicators of a change in
focus: an inbreath and hesitation (‘.hhh sh-’, line 16). Then PD1
produces another preface (‘on this particular occasion’, lines 16 and 17)
that contrasts with the prior one (‘by way of background’, line 11),
marked as such with the ‘but’ (line 16), and followed by a repeat of the
story entry item ‘she goes into Davidson’s’ (line 17) and the rest of the
story (lines 17 to 20).

In sum, through misplacement markers, prefases, repeats, and other
items, a series of person-descriptions is produced next to, but distinct
from, a story regarding the referent person. By virtue of the work that
PD1 does to position the person-descriptions before the story, it is clear
that the story should be heard against the ‘background’ they provide. But
the exact relation of each of the descriptions to the story and to the
negotiational work being done requires further investigation.

Subsequent conversation  In the last of the above fragment (lines 18 to
20), the PD’s story tells of the woman taking 200 dollars worth of clothes
from the store by pinning them underneath her dress. After this, he asserts
she had been taking pain-killing drugs, and reports that a consultant
pharmacist had said these drugs could cause a ‘state of confusion’ and
‘delirium’, where a person is ‘just in a dream world’ and doesn’t ‘know
what in the world they’re doing’. Subsequently, the PD, responding to a
question of the judge, tells how much and when the medication was taken.
After the judge remarks on what the drugs might do (pain-killing drugs
could produce ‘some odd effects’), the PD provides additional expert
opinion on the matter, quoting a doctor who said that with ‘elderly people’ the drugs sometimes have ‘strange or adverse effects that it wouldn’t have normally’. Then the following occurs:

(8) 1.096
1. PD1: So we feel like that she certainly wasn’t acting within her
2. normal characteristics
3. J1: Has she ever had any violations for anything?
4. PD1: That’s it, she’s had nothing, for twenty years she worked up
5. there in the Church of San Ramon with all these people. She’s
6. a very religious lady. All these uh, these uh Mexican Catholics
7. up there who just think the world of her they say my god I
8. couldn’t believe it. I spent uh was it Monday this week? ...
9. up there talking with ’em and uh they just you know I’ve
10. got uh some sisters who’re willing to come in and state they’ve
11. known her for all this period of time and she’s just has a
12. tremendous reputation for honesty and (very religious)
14. PD1: Want it dismissed

At the end of this segment, and in response to the judge’s solicit (‘what do you want’, line 13), PD1 reports his position that he wants the case ‘dismissed’ (line 14). Of focal interest here will be the talk leading up to that display of position.

In lines 1 and 2, PD1 produces a description of the defendant, ‘that she certainly wasn’t acting within her normal characteristics’. This relates to the information the PD has provided regarding the defendant’s drug intake and the consultants’ and judge’s opinion regarding the effects of the drugs. But it is also heavily dependent on the series of descriptions provided earlier in the conversation, to the extent that the items provided by PD1 in segment (7) document what her ‘normal characteristics’ are.

There is evidence in the present segment that the earlier descriptions in fact do such work. Note that the judge, in line 3, asks if she’s ‘had any violations for anything’. The PD, in line 5, answers that ‘she’s had nothing’, and proceeds to repeat and reformulate the earlier person-descriptions (an exception will be discussed in the next section). Thus, the judge’s question is used by PD1 as the occasion to reproduce the descriptions of the defendant (lines 4 to 12) in a topically coherent way. Both judge and public defender, then, exhibit an orientation to the relevance of the woman’s past record of behavior. The recitation of activities and assessments in the form of person-descriptions seems to be an effort to document the ‘real’ self, or character, of the defendant by
citing instantial characteristics. Then, drawing on cultural assumptions
to the effect that facts of a person’s biography cannot be contradictory
(Goffman 1961: 63), or that they should be consistent with one another
and with the real self of the defendant, the woman’s shoplifting behavior,
as reported in the PD’s story, can be heard as anomalous.

We can now draw some conclusions regarding the prior series of person-
descriptions, in example (7). We saw that they occupy a well-constructed
slot at the beginning of a story about the defendant’s act. They do not
display a sequential link to the PD’s eventual proposal in the way that
earlier examples demonstrated. Rather, the person descriptions are integral
to a procedure that is developed over a longer stretch of conversation, and
that provides a rationale for the proposed dismissal. Roughly, that
procedure consists of (1) providing person-descriptions that work to
establish the nature of the defendant’s self or character, (2) formulating the
defendant’s offense so that it appears inconsistent with her character, and
(3) explaining the behavior by reference to the ‘extraordinary circum-
stances’ (drug effects) that could produce it. Thus, the earlier person-
descriptions do work to justify the PD’s eventual proposal and are a
constituent feature of the topical and activity environment, one that
occupies broader sections of conversation than we have seen so far.

The courtroom subculture There is one description of the defendant in
the last two examples that is not accounted for in the above analysis.
While the defendant’s being old, well known, and religious and having
worked in the church are documentary evidences of a type of person who
would not ‘normally’ steal garments from a department store, the
assertion that she ‘speaks Castillian Spanish’ and ‘she’s from Spain’,
example (7) (lines 9 and 10), is not visibly germane to the argument. The
problem remains, then, as to the kind of work these person-descriptions
are doing. It will be shown that some descriptions are produced with an
orientation to the courthouse subculture: that is, to ‘what everybody
knows’ regarding their relevance and importance. ‘What everybody
knows’ who participates in that subculture, however, will not be viewed
here as a content of a person’s head, but will be seen to be exhibited in
certain conversational practices.

Let us scrutinize the key utterances.

(9) 1.015

PD1: ... She ... speaks uh (0.2) Castillian Spanish (0.4)
    she’s from Spain

The defendant’s being ‘from Spain’ is a descriptive item occasioned by
and selected by reference to the first description that she ‘speaks Castillian
Spanish'. Thus, taken together, the utterances seem to be characterizing
the defendant's language capacity, but there are no further clues in this
conversation as to the relevance of the defendant's language.

Some help is provided, however, by parts of another conversation that
concerns a Chicano defendant, also Spanish-speaking. In the course of
the discussion of the case, the following utterance is produced:

(10) 31.160
PD2: He makes a good witness and uh, in his native tongue

The PD's utterance here occasions some joking regarding profanities in
the 'native tongue', and then this talk appears:

(11) 31.175
1. DA3: Why is there that- that feeling that if they can't
2. speak the language they can harbor no malice or- or
3. criminal intent uh some things are not even challenged
4. PD2: Well I only bring it up to you as a TACTical consideration
5. heh heh
6. DA3: Uh it is that
7. PD2: Uh huh huh. Many a welfare fraud is blocked because she
8. couldn't speak the langua(h)ger wouldn't cop to speaking it
9. in court

Here, the DA and PD each draw inferences from the defendant being a
Spanish speaker. The DA heard the PD as proposing that the defendant,
by virtue of not speaking 'the language', also lacks any evil or criminal
subjectivity (lines 2 and 3). The PD states, however, that it is a 'tactical
consideration' (line 4), and that receives an agreement utterance from the
DA (line 6). The PD then produces an acknowledgement and a laughter
token (line 7), and topically elaborates how it is a tactical consideration
(lines 7 to 9).

Both the DA and the PD have thus exhibited an orientation to the
'meaning' of the descriptive item concerning the defendant's language
capacity. The argument is not that it has the same meaning to each of the
actors, except as that is negotiated then and there. That is, in the last
example, sequentially speaking, the import of the defendant's language is
its 'tactical' significance in that this, rather than the intentional issue, is
implicated in the DA's agreement turn and the PD's topical expansion.
More generally, the idea is that a person-description has meaning in the
way it is used to do, and is heard as doing, relevant negotiational work.

In this sense, each of the person-descriptions in Examples 7 and 8
exhibits and accomplishes the 'subculture' of the courtroom. More
specifically, however, this analysis accounts for the production of one
item ('speaks Castillian Spanish') that may be related to the others, but also may be quite independent of them and the work they do to establish the 'real' self of the woman defendant. Whether the defendant's speaking Spanish, like these others, helps to establish the character of the defendant (being a claim that she can harbor no 'malice', etc.) or whether it is a 'tactical' consideration, it is not just any description, but fits the general pattern of relating to the topical and activity content of its production in that it is further reason for dismissing the case.

Repairs

We have been talking about the patterned use of person-descriptions in negotiational discourse. One issue that could be raised is whether the relation of person-descriptions to topic and activity is 'oriented to' by participants in that the pattern could be breached, and the breach would be noticeable and subject to repair (Sacks, n.d.: 4–5). This does appear to happen in the following example.

(12) 22.005 [Drunk Driving]
1. PD2: Now this is a case which oughta be- which is eminently disposable. Uh Lynn Heater is a uh, a young lady.
2. PD2: Beautiful by the way, absolutely beautiful
3. J1: Mm
4. PD2: She looks like Kim Novak right down to the toes. She works as a waitress for Bill's new place called out
5. in the shopping center
6. J1: Okay let's get to the case heh=
7. J1: = h a h h a h h a h hhhhh
8. PD2: Well this is all very important because this is part of the defense see, uh as a witness, the jury won't
9. J1: "Ha"
10. PD2: hear a word she says, they'll be too busy looking at
11. ( ): Ha ha
12. PD2: her. In any event, but ...

The public defender, in line 1, proposes that 'this is a case which ... is eminently disposable' and then produces several person-descriptions regarding the defendant's looks (lines 2 to 5). Those are followed by another description concerning where the defendant works, but the judge produces an utterance ('let's get to the case', line 9) implying that the prior descriptions are not relevant to the discussion, and proposing a next turn in which the talk would relate to the case. While the judge's utterance does
end in unsolicited laughter (lines 9 and 10), implying a nonserious treatment of the issue, that laughter is overlapped by the PD’s ‘Well this is all very important because …’ (line 11). This utterance is self-retrieved out of the overlap (Jefferson and Schegloff, n.d.: 14) by PD2’s continuing the utterance ‘this is part of the defense ya see’ (lines 11 and 12) outside of the overlap.15 A speech overlapping token, as Jefferson (1975: 3) notes, ‘undercuts the appropriateness of laughter’ and proposes ‘to treat seriously whatever it was the laughter is proposing to treat nonseriously’. Here, the PD may be suggesting that the descriptions are not ‘laughables’. He goes on to provide for how the assessment items are related to the defense — ‘as a witness the jury won’t hear a word she says, they’ll be too busy looking at ’er’ (lines 11 to 15). Thus, the PD completes a repair sequence initiated by the judge through demonstrating the way in which at least the defendant’s looks may be pertinent factors in the defense strategy should the case go to trial.16 And what might happen at trial is a regular consideration in the discussion of criminal cases.

That district attorneys and public defenders are required to produce relevant person-descriptions is consistent with other studies arguing that in courthouse subcultures attorneys are expected to be ‘reasonable’ in their negotiations (Neubauer 1974:217; Eisenstein and Jacob 1977: 33). While these studies argue that ‘reasonableness’ is a general constraint in plea bargaining, it is seen here as a requirement, exhibited in negotiational discourse, specifically applicable to how defendants are described in those negotiations. Not just anything that might be said of a defendant may be deemed relevant or allowable as part of such discourse.

Conclusion

In the examples we have examined, a variety of different items were utilized to describe the various defendants. Roughly, these can be broken into two classes. The first includes those descriptions employing what were referred to earlier as membership categorization devices. For example, ‘national origin’ was a device employed in example (7) to describe the defendant as ‘from Spain’ and to generate the related (or category-bound) activity-description that she spoke Castillian Spanish. When we consider that persons can be categorized as to their sex, occupation, hometown, race, and so on, it is clear that there is a large array of devices available for generating person-descriptions.17

A second class of descriptions includes assessment terms, or items that are ‘opinion’ or ‘subjective’ statements about a person’s attributes. Thus, in example (5), the public defender described his client as ‘strictly honest’.
Again, there are numerous assessment terms such as good, bad, upstanding, immoral, neat, and so forth that can be used in person-descriptions. Categorical descriptions and assessment items can be used singly or together, and the latter possibility yields combinations that increase the number of ways a person can be identified in conversation.

(13) 9,100 [Drunk Driving]
1. PD2: Uh mister Larson is a highly educated young economist at the college

Here, a person description employs a number of assessment terms ('highly educated', 'young') together with a categorical description ('economist at the college') to depict a defendant. One could imagine the use of other categories with the same assessment items, or other assessment items with the same category, either of which would radically change the sense of the description.

(14) (Hypothetical)
1. PD2: Uh mister Larson is a perpetually drunk economist at the college

In any case, when considered together, the categories, assessments, or combinations of these two classes of descriptions yield possibilities for describing persons in conversation that are indeed numerous. This returns us to the problem presented at the outset. The question was, given all the facts and assessments that might be predicted of a person, how are certain ones chosen?

We have seen that person-descriptions are sensitive to, and constitutive of, the topic and activity being done in various episodes of conversation. This means that members do a 'topical' or 'activity' analysis in relevantly selecting and producing (or hearing) a person-description (cf. Schegloff 1972: 96). The intimate fit between person-descriptions and their conversational environment appears as an oriented-to feature, in that conversationalists can and do produce repair sequences when that fit is not exhibited.

With respect to the particular conversations investigated here, this means that description of defendants, and character assessment, is not done indiscriminately in the way that, for example, jokes can be inserted in conversation (cf. Sacks 1978: 262). Nor is there an orientation to some sort of 'correctness' (Sharrock and Turner 1980: 20) or 'descriptive adequacy' (Atkinson and Drew 1979: 137). This implies there is no abstract set of factors or descriptive variables, the values of which are determined for each defendant when that person's case is discussed. This is an assumption made about the decision-making process of research
that investigates the effects of socioeconomic status, race, and other extralegal characteristics on sentencing outcomes in the criminal justice system (Maynard 1982). It is clear, rather, that defendants’ attributes are systematically made visible in relation to arguments for and against various dispositions, as justifications for the positions taken up by prosecution and defense.

Defendant’s attributes are used, then, to the extent that they can support proposals, position reports, and their replies in actual negotiations over dispositions. More generally, when persons are talked about in any conversation, descriptions are selected and produced according to what activity is being done: ‘complaining’, ‘praising’, ‘blaming’ (cf. Atkinson and Drew 1979), ‘insulting’ (Labov 1972), ‘talking objectively’, and so forth. Who a person officially is, for others, depends on what activity is being accomplished in their talk.

Notes

1. This is taken to be a member’s problem insofar as it is exhibited in the work they do to relevantly talk about third persons, or to provide the ‘why that now’ of such talk. Cf. Schegloff and Sacks (1974: 234, 241).
2. See the discussion regarding this issue by Sharrock and Turner (1980), who examine a description of a car in a telephone report to police.
3. Beginning here, transcripts are reproduced. They are numbered according to their order of appearance, such as (1), (2), etc. Next to this number is a case identification and the line number in the original transcript where the excerpt starts. In square brackets is the offense charged. Personnel are labeled with abbreviations and numbers: J1 = Judge #1, PD2 = Public Defender #2, DA2 = Assistant District Attorney #2, PA1 = Private Defense Attorney #1, etc. The tapes were originally transcribed in detail according to the system devised by Gail Jefferson (see Appendix). Where details have been thought unnecessary to the analysis, they have been left out. All examples should thus be considered as ‘simplified transcripts’.
4. Person-descriptions are one instance of a general way in which not only other persons but the self (‘I’m forty-five’) and nonperson referents (‘Camisoles are essentially slips’) are described.
5. The ‘recipient design’ feature of conversation is discussed in Sacks et al. (1974). See also Ervin-Tripp (1972) who investigates the way address terms are sensitive to the particularities of situations in which they are used.
6. The repetition of the preproposal may serve to delete its first occurrence so that the person-descriptions can be heard as tied to the foregoing story.
7. Jefferson (1978: 246, fn. 11) notes, ‘It appears that the perturbation occurs at junctures between discrete activity types, and its presence can serve as an index to junctures between discrete activities in otherwise apparently continuous activities like “story preface” and “story entry.” Another phenomenon which may indicate activity junctures is the audible inbreath.’
8. The summarized piece of conversation occupies three minutes and three pages of transcript.
9. Technically, we can consider the move from 'she's had nothing' to 'for twenty years she worked …' as a topic shift. It depends upon the membership of those descriptions in a class of items we could term 'defendant's background' and that would be organized into two subclasses, 'things the defendant has not done', and 'things the defendant has done'. The topic shift is between subclasses. Cf. Sacks (1968).

10. Douglas (1967: 281–283) discusses a distinction made in everyday life between 'situated' and 'substantial' selves, where a 'substantial' self is the reality lying behind 'situated' behaviors. Similarly, Goffman (1974: 293) remarks that a person's acts are regarded as 'in part an expression and outcome of his perduring self, and that this self will be present behind the particular roles he plays at any moment'.

11. The contradiction set up between the character of the defendant and the behavior she engaged in is a phenomenon related to the occurrence of 'reality disjunctures' in courtroom and other situational discussions of 'facts'. And the use of 'extraordinary circumstances' to explain the phenomenon is one method by which such disjunctures are resolved and the noncontradictory stature of the world is preserved. See Pollner (1974, 1975).


13. 'Speaking Castilian Spanish' is an activity bound to the category 'from Spain'. It is in this sense that the second description is occasioned and selected by reference to the first description. It should be noted that these two items together appear to be correcting the prior assertion (cut-off) that the defendant is 'Mexican'. See (7), line 9.

14. 'Bill's' is the name of a restaurant.

15. That is, when two utterances are produced in overlap, it can be a problem as to which one will be implicated in further talk. A means of achieving implicativeness for one's own utterance is to continue producing related talk after the other party stops talking or laughing in overlap.

16. The laughter tokens at lines 13 and 15 indicate a continuing treatment of the items as nonserious, and the PD may in fact be co-oriented to such a state in ways not visible here. But the argument stands that he is working to make the descriptions of the defendant a relevant matter, however amusing.

17. It is also the case that once a person has been categorized in a given way, that sets up the use of subsidiary devices. In conversations between persons who mutually categorize one another as students, as a way of 'getting acquainted', Zimmerman and Maynard (1979) have shown that the use of other devices such as major, year in school, etc. is thereby occasioned.

18. The distinction between categorical and assessment descriptions here is made on commonsense grounds, although there is some evidence that distinction is an achievement of, and made observable in, identifiable conversational practices. See Maynard (1979: Chapter 3).

References


—(n.d.). Chapter 2, unpublished manuscript.


Douglas W. Maynard (b. 1946) is assistant professor in the Department of Sociology at the University of Wisconsin-Madison. His principal research interests are ethnomethodology, conversational analysis, and face-to-face interaction. His publications include 'Placement of topic changes in conversation' (1980), 'On the reification of social structure' (1980, with Thomas P. Wilson), and 'Defendant attributes in plea bargaining: Notes on the modeling of sentencing decisions' (1982).

**Appendix: Adapted* transcribing conventions**

1. A: Oh you do? **Really**
   
   B: **[Um hmm]***

2. B: That’s how I felt =
   
   A: = **Really**

3. A: And I’m not use ta that (1.4)
   
   B: Yeah me neither

4. A: People would say I’m from Marin (+) County

5. A: Are they?
   
   B: Uh huh they are because...

6. A: It was unbelievable. I had a three point six? I think.

---

A left-hand bracket marks the point of overlap, while a right-hand bracket indicates where overlapping talk ends. Equal signs indicate 'latching'; i.e., no interval between the end of a prior utterance and the start of a next. Numbers in parentheses indicate elapsed time in tenths of seconds.

Dots in parentheses indicate a very small pause (less than one-tenth of a second). Ellipses indicate where part of an utterance is left out of the transcript.

Punctuation markers are not used as grammatical symbols, but for intonation.

*From the work of Gail Jefferson*
B: You did.

Thus a question may be constructed with 'comma' or 'period' intonation and 'question intonation' may occur in association with objects that are not questions.

7. B: I did oka::y

Colon(s) indicate the prior syllable is prolonged. The more colons, the longer the prolongation.

8. A: That's where I REALLY want to go

Capital letters indicate various forms of stressing, and may involve pitch and/or volume.

9. A: I told them that there was- well there IS a job opening

The dash indicates a 'cut off' of the prior word or sound.

10. B: Tha(h)t was really neat

The 'h' within a word or sound indicates explosive aspiration, e.g., laughter, breathlessness, etc.

11. B: You didn't have to worry about having the .hh curtains closed

The 'h' indicates audible breathing. The more 'h's' the longer the breath. A period placed before it indicates inbreath; no period indicates outbreath.

12. A: °Uh huh

The degree sign indicates that the talk it precedes is low in volume.

13. A: Well ((cough)) I don't know

Materials in double parentheses indicate features of audio materials other than actual verbalization.

14. B: (Is that right)

Materials in single parentheses indicate transcribers are not sure about words contained therein. If no material is within the parentheses, none of the talk was decipherable.