Chapter 3

NARRATIVES AND NARRATIVE STRUCTURE IN PLEA BARGAINING

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1. INTRODUCTION

Recent interest in oral language and law (Atkinson & Drew, 1979; Danet, 1980; Levi, 1985; O'Barr, 1982; Pomerantz & Atkinson, 1984), repeating a characteristic of earlier research on criminal justice (cf. Newman, 1966:xiv, Rosett & Cressey, 1976), gives disproportionate attention to trials and formal proceedings rather than informal processes such as plea bargaining, even though it is in the give-and-take of the more casual setting that practitioners settle the bulk of cases coming before the courts. To be specific, the “explosion” of ethnographic research on plea bargaining during the last 15 years (Maynard, 1984:1) makes it abundantly clear that attorneys often present “facts” by telling stories about “what happened.” However, although investigators have explored various dimensions of storytelling in the courtroom (Bennett & Feldman, 1981; O'Barr & Conley, 1985), narratives in the negotiational arena are unstudied and unexplicated.

A purpose of this chapter is to describe the structure of narratives and
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analyze how this structure works in negotiations. Another purpose is theoretical. Probing the structure of narratives is also an exploration of the “interaction order” (Goffman, 1983) through which participants bring off plea bargaining as a situated activity. The interaction order can be contrasted with organizational, legal, and other possible orders. It has an integrity of its own that is not susceptible to influence from these other domains, although the interaction order can be, and is, systematically sensitive to organizational, legal, and other aspects of the social environment (Sacks, Schegloff, & Jefferson, 1974). The claim is not that narrative structure is itself a casual “variable” that explains bargaining outcomes. Rather, through narratives and narrative structure, as 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 effect “outcomes.”

The data used for this analysis are audiotapes and transcripts of pretrial and settlement conferences recorded in a California municipal court. In all, nearly 10 hours of recordings in 52 cases were obtained, including 15 theft, 11 drunk driving, 8 battery, 3 drinking in public, 2 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 3-month period were recorded, as the logistics of recording various plea discussions within the courtroom would allow.

Generalizability of the analysis here 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 (Sacks et al., 1974:699), we can “extract” from plea bargaining talk those orderly discourse procedures phenomena that are independent of the particular court, particular kinds of cases, and particular negotiators. Moreover, narrative structures in plea bargaining can be regarded as specialized forms of storytelling procedures in ordinary conversation (Heritage, 1984:24). Such procedures may be modified in other settings, or with respect to felony bargaining, but that remains a matter for future investigation. Due to space limitations, I discuss only a small portion of the 52-case corpus. However the propositions about narrative structure apply to, and derive from, detailed, rigorous scrutiny and analysis of all cases and the narratives within them.

2. NARRATIVE STRUCTURE

Sociolinguists have provided a functional definition of narrative: it matches the temporal sequence of experience and, by providing a main point, it serves personal interests of those in the social context where the narrative originates (Labov & 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, including, sometimes, nothing at all, and, at other times, many different things. Furthermore, tellers may produce stories precisely to discover, with recipients, what evaluation should be made of it (Polanyi, 1979:214; Robinson, 1981:69–70). And finally, the “same” story may have different meanings according to the group in which it is told (Sacks, 1975).

Other scholars have criticized the 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, my strategy is to use a loose characterization to the effect that stories are 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.” Following conversation analysts, I will attend to structural matters. 4 Stories, in conversation, are distinguishable

1Prior research in both ordinary settings (e.g., Labov & Waletzky, 1967; Sacks, 1978) and legal arenas (O’Barr & 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 with whom the tellers are usually acquainted and events with which the tellers have no direct experience. Thus these stories are parasitic on the tellings and writings of primary observers (offenders, witnesses, victims) and secondary interpreters (e.g., police). In contrast to “personal narratives,” the phenomena for this study might be called “third person narratives.”

2The terms “tellers,” “recipients,” “speakers,” and “listeners” are used in this chapter to denote what Sacks (April 19, 1971:4) calls “conversational identities.” Such identities are intrinsic to activities in talk (such as storytelling) and, according to West and Zimmerman (1984:116), contrast with “master statuses” (sex, race, age) that transcend particular occasions of discourse and with situated identities (student, salesperson, bus driver) that belong to particular settings.

3See also the definition of stories being about “remarkable” events (van Dijk, 1975), and Robinson’s (1981:2–3) critical comment that “commonplace” events are, in appropriate circumstances, as tellable as the less common ones. And consider Sack’s (1984:418) proposal that even when one has a remarkable experience, its reporting is done in such a way as to be usual with respect to how others have had the same experience. In a sense, persons are only “entitled” to experiences as are conventionally available (Sacks, 1984:427).

4The structural approach here 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 schemata and what that reveals about them as persons. For an extension of the latter 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:Chapter 4 and Appendix).
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, and, in the DAs view, it was one that 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 Furitage (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 affects 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.\(^\text{15}\) In short, it seems that a lawyer requires both legal and conversational competence, and we need more understanding of the latter kind of skill to fully appreciate how bargaining results come about.

5. CONCLUSION

Comparative research on bargaining narratives would be beneficial and would involve studying narratives in different plea bargaining settings, such as those wherein felony offenses are discussed. Also relevant are negotiations in other legal arenas, including civil cases such as divorce (e.g., Erlanger et al., 1987; Mnookin & Kornhauser, 1979). Comparisons should also be made between narratives in legal contexts and those in everyday conversation. Plea bargaining narratives may be less “idle” than everyday stories, to the extent that they more regularly continue to unfold in the process of being told. We also need more understanding of textual narratives on which negotiators depend (cf. Spencer, 1984) and which are largely absent in the everyday context. Contrasts such as 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 informative. And most intriguing would be a comparison between how events are told in plea bargaining and how they are presented at trial. We know that trial narratives are elicited and pieced together through question-and-answer sequences (Atkinson & Drew, 1979; see especially pp. 61–62, 76–77), whereas plea bargaining stories are told more spontaneously and uninterrupted. 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).

\(^{15}\) See Schegloff’s (1987:228) remarks on how modes of conversational organization constitute a context for bodies of knowledge and other interactional products.

And, parties at some remove from the original event tell plea bargaining stories, whereas trials involve direct participants. The question for future research might be, how consequential are these differences for the depiction of reality and the rendering of justice in each arena?

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6. REFERENCES


because they take up more than one utterance of talk; usual turn taking is suspended while the story is told (Ryave, 1978:131; Sacks, 1970: Lecture 2; 1975). Furthermore, a story is articulated with ongoing talk. At its beginning, it must be introduced into conversation, and, at its ending, it must be 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 cues that make the storytelling a collaborative production (Jefferson, 1978; Ryave, 1978; Sacks, 1978). Attention to such matters in plea bargaining shows the following structure:

- A. Story entry devices by which participants warrant the telling of a story, such as
  Naming of the case
  Synopsis
  Transition to story
- B. The story itself, including
  A background segment
  An action report
  Reaction report
- C. Following the story, a defense segment, which consists of
  Denial
  Excuse

Both the reaction report and defense segment are devices by which a speaker offers to exit from the narrative and reengage 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.

2.1. Story Entry Devices

Telling stories in any conversational arena is an activity that must be entered properly. In plea bargaining, participants go through an organized series of actions to arrive at the telling of a story. Regularly, one practitioner’s naming of the case starts the plea bargaining session and may directly elicit a story:

(1) 1.01

| 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 |

5Numbers at the start of each excerpt refer to specific points in transcriptions of plea bargaining sessions. Tape recordings were transcribed according to the conversation analytic system devised by Gail Jefferson (e.g., 1978). Those conventions are designed to preserve and reproduce as much detail as possible from the actual conversations. In this chapter, excerpts are simplified 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 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 2–4 and is followed by a story prefix (Jefferson, 1978:224; see the phrase between asterisks below):

(2) 31a 001

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

The prefix operates with the synopsis to make a story’s telling relevant and to project a subsequent utterance as the beginning of the story proper. Another device for properly introducing a story is the "prestory" sequence, in which a speaker requests to tell, and projects, a forthcoming story. Thus, in the next example, after naming the case (lines 1–2) and producing a synopsis (lines 3–6), PD1 requests to tell the story (asterisked utterance, line 8). Then, DA3 produces a go-ahead signal (line 9) that indicates his alignment as a recipient of the storytelling (Jefferson, 1978:219; Sacks, 1975:339–340).

(3) 1A 023

| PD1: | Um the only other one I have is Maria Zamora-Avila. |
| DA3: | Sure Zamora hyphen Avila we’ve got a probation report on this |
| PD1: | They’re recommending straight probation but she’s not gonna plead ‘cause we have a good good defense. |
| DA3: | Oh yeah? |
| PD1: | Yeah It should be dismissed. [Referring to the contents of a file that DA3 is reading:] Those are letters that other people’ve written about her character. *Lemme briefly tell ya ’bout the case |
| DA3: | Mm hmm |
| PD1: | She goes into Davidson’s . . . |

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, etc. Also, personnel are labeled with abbreviations and numbers: J1 means Judge 1, PD2 = public defender 2, DA2 = district attorney 2, PA1 = private attorney 1, etc. All names of defendants, witnesses, attorneys, and others are pseudonyms.
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4.2. The Reflexivity of Stories and Plea Bargaining

Unlike stories in everyday conversation, those 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 those selfsame 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, part of the process by which some resolution is to be reached.

Prior 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 (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 & Cressy, 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, attorneys will be interested in more than mutually deciding facts and character or engaging in exchange or meeting their bureaucratic mandate. As part of a still unfolding narrative, lawyers are provided with a structural incentive to be alert to legal, extralegal, personal, and other innumerable elements of a case that can be built into the story in such a way as to justify and induce the granting of a favorable disposition.

As Goffman (1983:8) argues, the work of organizations gets done face-to-face and is therefore susceptible to interactional effects. Persuasion is one such effect; as negotiational devices, narratives can be “performed” in such a way as to be more or less compelling or convincing (Bauman, 1977:26; Labov, 1982:230). Consider again the Zamora–Avila case, in which a woman was charged with the theft of clothes. Although 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

And it should be clear 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” (Emerson, 1983:425) specifically relevant for a case at hand by operating in conjunction with the case narrative an attorney builds.

13 See the discussions in Buckle and Buckle (1977:150–152) and Mather (1979:96–97) regarding how lawyers are evaluated in terms of whether they “win” or “lose” negotiations.
Another type of preacing sequence is where teller is invited to produce a story. This occurs in line 4 below, following the naming (line 1) and a synopsis (lines 2–3):

(4) 40a.005
1  J1: Alberto Camina
2  PD2: Oh well this is a case where you heard the motion to suppress, made a bad call in my opinion
3  J1: What was it about
4  PD2: Okay. This is the guy who’s in the car, 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, 3, and 4, they precede the story. In a few cases, if not in initial position, then they follow the story. In example 1, after telling what happened at the “dump” that led to his client being charged with theft, the PD remarked, “they don’t have any case at all judge.” Notice how the story there is built for this kind of “upshot” (Heritage & Watson, 1979). The use of synopses indicates that from the outset stories are not neutral renderings of “what happened” but aim toward or intend the kind of bargaining stance that teller ultimately takes. In example 2, PD2’s characterization that he and the DA are “not at loggerheads, we 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 would be a fine rather than time in jail. The PD in 3, as in 1, uses a synopsis to signal that he wants the case dismissed. The synopsis in 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.

2.2. Stories

2.2.1. Background Segments

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

In a petty theft case, for instance, the PD produces the action-report part of his story (lines 7–9 below) after he describes the defendant as an employee of Sears and of a specific department within the store where a series of thefts had occurred. These person descriptions and locational formulations then provide the reference for deictic terms such as “they” (line 6) and “she” (lines 7–9), and for other indexicals such as “the room” (line 7), and “in” (line 9).

(5) 3.003
1  J1: Lemme come back ta Kathy Nelson
2  PD3: Um this is a very unusual petty theft your honor, uh Nelson’s employed in Sears and there’s been some theft of employee purses and—
3  J1: She herself is an employee
4  PD3: She’s employed and uh there’s been some theft of employee purses, employee money um from a little room that they have in the department that she works in. And uh she goes back into the room to make some phone calls and she sees a strange purse and she’s lookin’ in it an’ the store detective comes in 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 Sears helps constitute a “course of action” (Sacks, 1972; Schutz, 1973; Zimmerman, 1974) that supplies a reason for her being at the location of the thefts (cf. Maynard, 1984:148–149). Similarly, although the store detective is not identified in the background segment, formulating Sears and the defendant’s department as the locale of previous thievery also gives a particular sense to the detective’s coming into the “room” (lines 8–9). Rather than being a random or fortuitous event, his presence is analyzable as part of a monitoring process, a reasonable course of action that is warranted not only by his membership in the category “store detective” but by the history of thefts in the defendant’s department. Background segments place and account for parties in the alleged criminal action besides the defendant:

(6) 12.016
PD3: Um his girlfriend was in the car up ta ’bout five or ten minutes before uh the detention

Here, PD3 mentions the defendant’s girlfriend, a “relational” category (Sacks, 1972) that explains her presence in the car. Generally, when a background segment contains descriptions of participants in a scene, they are not incidental members, but rather become principal characters in the forthcoming action reports, reaction reports, and/or defense segments (cf. Sacks, 1978:257). Thus, when PD3 continues the story in example 6 (see example 12), he reports the girlfriend as having spent time with the defendant before he was charged with drunk driving. Moreover, in the subsequent defense segment of the narrative, PD3 supports a denial of the accusation by quoting her version of the defendant’s behavior. Finally, background segments may introduce objects that play a central role in the action report. In 5, PD3 refers to “some theft of employee
where a defense attorney uses an excusing defense as part of the narrative, that regularly results in arguments over what the subjective state of the defendant was during commission of the offense. Such arguments may indirectly recast the character of the defendant and the nature of the act. In all, 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:Chapters 4, 5, and 8).

4. THEORETICAL IMPLICATIONS

Narratives have a structure that is organized independently of outside or exogenous social and legal factors. This structure is part of the interaction order that bargaining participants simultaneously produce and confront in the ways that they talk and behave with one another. In this view, neither “what happened” nor “who” the defendant is, nor the criminal justice process and the law as institutions are constraining or influencing the interaction order. Rather, through narrative and other interactional structures, participants constitute the reality of facts, character, rules, and law as features of situated activity. An initial step in explicating this assertion can be made with an analogy between plea bargaining and science. Both enterprises are devoted to making propositions about events in the world and to drawing conclusions from those propositions. Both are seemingly constrained in a variety of ways. They are to be responsible to the actual sequence of events. They determine this actuality in relation to a body of law, on the one hand, or scientific procedure, on the other. Laws also help specify appropriate remedies, whereas scientific procedures dictate how to report results and conduct further investigations. In the realm of science, Landau (1984) argues that narrative has an unsuspected influence on perceptions of the world, on determining significant events, and even on methods of investigation. Across their various paleanthropological accounts of human evolution, for instance, scientists have followed several narrative principles. They organize events into intelligible stories with beginnings, middles, and ends. Furthermore, scientists define individual evolutionary episodes as “turning points,” “crises,” and “transitions.” Finally, 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” (Landau, 1984:267). The point of Landau’s suggestive analysis is not to discredit science or to somehow rectify the narrative forms through which scientists perform their enterprise and report their results. Rather, it is to take narratives seriously with respect to understanding how they are used in the process of discovery and experimentation.

4.1. Plea Bargaining, Defendant Characteristics, and Other “Factors”

By the same token, a focus on narrative forms in plea bargaining should not imply that attorneys are “only” telling stories or that they are producing fictionalized accounts of legal offenses or that they are somehow distorting facts. As Schudson (1982:98) observes: “Their function is less to increase or decrease the truth value of messages they convey than to shape and narrow the range of kinds of truths that can be told.” Understanding narratives in plea bargaining means appreciating how participants bring facts, biography, law, and other matters to bear on the decision-making process. They do so through narrative structure: by introducing stories into negotiations with synopses, prefaces, prefixes, and the like; by telling stories with background segments, action and reaction reports; and by producing defense segments in characteristic ways. The “normal form” of plea bargaining narratives suggests that attorneys orient to offenses as acts committed by persons with distinct characters who engage in conduct that elicits a more or less reasonable legal reaction. Defense attorneys can claim innocence for their client by denying that the behavior occurred or by excusing it with reference to the defendant’s unintended 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 that which will be most effective in supporting their respective bargaining positions (cf. Spencer, 1984:223-224).

Therefore, traditional concerns with the influence of various legal, organizational, and other “factors” on plea bargaining outcomes must be supplanted (Maynard, 1984:Chapter 7). We need an understanding of how the organization of “talk-in-interaction” (Schegloff, 1987) makes an independent, integral contribution of its own to outcomes. Abstract factors, such as the character of the defendant, organizational roles, and the law do not influence decisions so much as the narrative structure of plea bargaining affects how participants bring those matters into play. We know, 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 & Turner, 1980:20) nor of simple “adequacy” (Atkinson & Drew, 1979:137). Rather, they select factors and assemble them in context
purses,” which suggests a history of stealing in the defendant’s department and poses the “strange purse” (line 8) as a candidate, subsequent part of that history.

Background segments not only place and account for persons and objects in a scene, they also provide characterological information, answering the question, “What kind of person is this?” Thus, describing the defendant in example 5 as employed at Sears is important not only in explaining her presence in the situation but also in portraying her as a course-of-action “type.” That the defendant is “employed” and working in the Sears store make her appear different from one who might be unemployed and wandering through the store. And the kind of person a defendant is proposed to be will become intimately related to the bargaining position that a negotiator displays. This is particularly clear in the Zamora–Avila case (see example 3 preceding):

(7) 1.01

PDI: Situation is this. She’s a sixty five year old lady, Mexic—speaks uh Castillian Spanish, she’s from Spain. Uh she goes into Davidson’s. Oh incidentally, by way of background, for twenty years she’s worked in the Catholic church at San Ramon as the housekeeper for the nuns an’ the fathers an’ all this stuff, and uh very religious, well known. I’ve interviewed half of San Ramon concerning her background. Wonderful lady, no problems, sixty five years old.

In this case, analyzed in detail in Maynard (1984:126–134), the person descriptions (lines 1–7) work in conjunction with other negotiational devices to establish what PDI considers to be the innocence of the defendant. And they do so in part by characterologically assessing the woman, in the public defender’s terms, as “such a sweet little old lady, there’s no jury in the world’s gonna convict her.” Eventually, as mentioned earlier, he proposes that the case be dismissed.

Thus, negotiators use background segments to depict a scene and persons and objects within it where action and counteraction take place. They describe and assess persons and objects with the effect of providing a particular understanding of what is related within the storytelling. Background segments are also constitutive parts of an overall bargaining position.

2.2.2. Action Reports

The action report is constituted by the temporally and sequentially ordered telling of those activities in which at least the defendant and perhaps others are involved until someone, usually an officer, reacts to what the defendant has done. Furthermore, the action report is often demarcated from the background segment by a change from a remote past to present events. In example 5, PDI states that “there’s been some thefts” (lines 3 and 5) and then tells what happened by saying, “she goes back into the room to make some phone calls and she sees a strange purse. . . .” In example 7, PDI suggests that the defendant “worked” for 20 years as a housekeeper and then begins recounting more recent events with “She goes into Davidson’s.” But this verb shift is not the only demarcator, nor is it invariably present. More basic is a move from portraying biographical and other relatively durable matters to presenting situated information. Thus devices such as detailing a “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 or age or nationality and making overall assessments or evaluations of an actor (“wonderful lady”), all propose transsituational elements to a scene, whereas 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 & Hobbs, 1982:13–14). The continuation of example 7 shows PDI interjecting, between the background segment and the action report, “But on this particular occasion” (line 1 below). In example 11 following, PDI inserts the phrase “On October first of this year” between the background and action components.

Action reports are therefore conversational objects with noticeable, participant-analyzable beginnings. They may also contain items that provide for their possible completion. In the Zamora–Avila case, the action report commences with “she goes into Davidson’s” and ends with the defendant leaving the store.

(8) 1.02

PDI: But on this particular occasion, she goes into Davidson’s, goes into a fitting room, takes two hundred dollars worth o’ clothes, pins them up underneath her dress, and leaves.

(1.2 seconds silence)

PDI: And they pick her up outside, she’s with a companion, they pick her up outside and they uh cite her for petty theft, later discover how much was involved and hit her with four eighty seven point one. [grand theft]

“Goes into” (line 1) and “leaves” (line 3) are contrasting terms that bracket the action report, and because “goes into” begins the report, it provides for “leaves” (line 3) 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. The device here is met with silence (line 4). PDI next produces a reaction report (lines 5–7), in which the PD tells of the
items” (lines 4–5). Lines 5–6, which identify what the small items were, also constitute the defense segment; they represent an excuse for the defendants’ behavior. This segment (lines 4–6), furthermore, is a possible completion for the narrative: It is point where the recipient could demonstrate an understanding of the narrative’s import (Jefferson, 1978). Next is a silence (line 7), however, which indicates a lack of turn transition. PA2 then formulates an explicit reaction report (line 8), a “secondary ending” (Jefferson, 1978:231) 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 9–10) by arguing 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 24 hours in the county jail.

The vulnerability of excuses derives from their dependence on assertions about a party’s subjectivity (cf. Coulter, 1979). Instead of directly occasioning talk regarding “what happened,” as occurs with denying defenses, an attorney’s employment of excuses involves 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 the prior example, that seems to be a relatively weak defense, which may be why the PA in this case achieved no compromise. Clear evidence for the weakness of such subjectivity statements exists in the case of employee theft at Sears (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:

(23) 3.049  
J1: Why was she even foolin’ with the purses  
PD3: Well she says she didn’t recognize the purses, she was wondering what they were doin’ in there an’ she was looking through the purses when the guy came in  
→ J1: Boy that’s a bad excuse  
PD3: Um that’s the only excuse that she’s got

Stronger excuses, it seems, are those that propose external or internal processes as interfering with a defendant’s subjectivity and capacity for forming intent. Thus, in the Zamora–Avila shoplifting case (examples 7, 8, 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 district attorney in this case responds to PD1’s telling, he questions neither the backgrounding information nor the action and reaction reports; instead, he attacks the excuse:

(24) 1.121  
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 invite 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.

3.3. 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 who their audience is and what the knowledge states of its members are. 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 background or defense segments to justify a bargaining position. And when narratives or their components appear in plea bargaining, it is usually defense attorneys who tell 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 permit plea negotiations to proceed in a systematic fashion, in four basic ways. In routine processing, participants depend on stories that have been textually constructed in police and other documents and, in deciding charge and sentence, may claim particular understandings of cases on the basis of synoptic upshots. In cases of character assessment, where participants similarly rely on police reports, an attorney may introduce background information regarding the defendant into the negotiations as a way of justifying 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 an offense, it sets up a negotiable dispute over “what happened.” That may mean discussing alternative versions of the facts and also reconsidering who the defendant is in terms of identity and character. Finally,
defendant being apprehended and charged. \(^6\) Thus, the story contains at least 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 story exit is noticeable. The defendant is depicted as in the midst of an activity ("looking in" the purse) that is not itself a recognizable completion point when "the store detective comes in and she gets busted."

2.2.3. Reaction Reports

Reaction reports in plea bargaining 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 to 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. Because of their brevity, the following examples are selected from Labov and Waletzky's 14-set corpus of elicited storytellings to illustrate the pattern:

(9) 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.

(10) 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 portrays conflict in, structural terms, constitutes the "complicating action" and then reaches some "resolution" or completion in both cases (Labov & Waletzky, 1967).\(^8\) 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 further steps to reach resolution.

Reaction reports are mostly found in utterances that explicitly formulate police or prosecutor response to the defendant's activity, as in example 8, lines 5–7. However, tellers can depict reactions by different, more implicit means. That is, they may give no overt reaction report and instead provide enough information for a recipient to infer it. Thus, in the next example, the attorney does not produce an explicit reaction report. Instead, the action report (lines 4–8), that contains the plaintiffs' version of events, gives enough information so that a recipient of the story can realize the authorities' likely reaction:

(11) 21.007

1 PA3: The undisputed facts are that my client is an accountant, he conducts a business in his home out in Woodenville. One night on October first of this year, two people were parking about a hundred yards from his house. He went out of his house 'n went down and exchanged some words with those people, and the dispute is over what those people were. The uh people in the car say that he came and beat on the window and told 'em ta get the fuck outta there and that he was a member of the county foot patrol. What my client—

2 DA: That he was an Officer from the county foot patrol.

3 PA3: What my client will say is that he went down there and told them that he wanted them to leave, he was going to call the Woodenville foot patrol or the county sheriffs if he didn't. And the uh, well the gist of the whole thing, it's just who's telling the truth, the two victims or my client and our other witness.

This mode of indirect reporting employs what Sacks (1964–1965, lecture 1) has called a "proper sequence." Listeners to a story know that once one event has occurred, or a series of events has occurred, then something else correctly follows; that is, they know how things should occur in a particular context. In particular, PA3 quotes those descriptive terms from the plaintiffs' version of events that display the legally sanctionable nature of the defendant's behavior (see lines 6–7). (The defendant was charged, under Section 146 of the California penal code, 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 recipients' orientation to a proper sequence, it is not necessary for a speaker to produce an overt reaction report. Instead, the teller relies on recipients' sense of the grounds upon which police are

\(^6\) An interesting transition occurs between the action 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 intervention. Where the police were or how they got there is not indicated (cf. Sacks, Fall 1965:Lecture 7, p. 3).

\(^7\) These are 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 stories in interviews (elicited) and those in conversation (spontaneous), see Wolfson (1982:61–71).

\(^8\) Evidence that spontaneously told stories often embody "complicating action" and "resolution" stages can be found in other places. 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' goes home." See also Sacks's (1978:258) analysis of a dirty joke, which contains a puzzle whose resolution is interpreted from the punchline.
bargaining proposals (cf. Maynard, 1984:137), and prosecutors deal with the backgrounding information by granting or denying these proposals.

3.2.3. Disputing Facts

A third pattern includes those cases in which an attorney uses a defense component that is a denial. In these, the defense segment reconstitutes the “facts” of the case (whether presented in an attorney’s story or in the police reports) and the properness of a legal reaction as matters for dispute within the bargaining episode. Consider example 15 again, where PD2 introduced 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 argued that his client did not resist officers by throwing beer cans. That defense rendered questionable the police report and resulted in a discussion of the facts of the case. The district attorney then noted (but this is not reproduced here) that the defendant allegedly threw beer “bottles” and not “cans” (as the PD had characterized the objects). And when PD2 countered DA1’s offer with a proposal for a lesser charge and fine, this occurred:

(20) 7.077

DA1: I can’t see it, nor when the officer has to sit through and go through bottles bein’ thrown 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, we can note that PA3 uses a story prefix (line 1) that marks subsequent utterances as containing “undisputed facts.” He then produces a background segment (lines 1–2), and an action report (lines 3–7) with an implicit reaction report. Within this action report, PA3 refers to an exchange of “some words” between the defendant and the plaintiffs and characterizes those words as the subject of “the dispute” (line 5). Next, PA3 reports what “the people in the car say” (lines 6–7) and, in the defense component (lines 9–11), “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.”

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

(21) 21.035

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 the use of a denying defense component calls into question “what happened,” determining the facts of the case may entail 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 may be the DA’s way of picturing a type of person who would impersonate a police officer. The PD, on the other hand, continued to point out inconsistencies in the victim’s account of the event and suggested the possibility that they “misunderstood” his client. That is, rather than arguing over the character of the defendant, he—as it turns out, successfully—attempted to discredit the opposing version of what happened. In the end, the district attorney dismissed 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 and do so through suggesting different scenarios and backgrounds for the focal event.

3.2.4. Arguing Subjectivity

A last 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. The private attorney (PA2) here represents two defendants:

(22) 20.013

1 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 o’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 pocket.

2 (1 second silence)

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

9 DA3: Well to be absolutely precise uh the co-defendant with mister Winter told the store employees that uh he in effect intended to steal it.

PA2’s narrative contains an action report (lines 1–4) and an implicit reaction report that can be filled in at the point where the defendants are “payin’ for it . . .” and it turns out that they “neglected to think about the other small
called to some scene (Sacks, 1964–1965, lecture 1:6) 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 implicitly convey the legal reaction to a defendant’s activity; they work in conjunction with narrative structure. In the prior example (11), PA3 suspended the action report and euphemistically described the dispute (lines 4–5: 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 the next example, the implicit reaction report is evoked by the manner in which the teller fashions the background segment:

(12) 12.016
1  PD3: Um his girlfriend was in the car up ta ‘bout five or ten minutes before uh
2  the detention. He’d had something to drink seven, seven thirty at night,
3  he had three beers, and uh he had a little whiskey in the day, went to sleep,
4  woke up to take her to work, drops her off at work, he’s got his kid with ‘im
5  an’ he’s driving home? And um, he says I was not doing anything wrong,
6  said I didn’t feel the alcohol, I wasn’t under the influence . . .

In this excerpt, the action report (lines 4–5) reaches a possible completion (“he’s driving home?”, line 5) and is not followed by a reaction report. What follows the story is the defense portion of the narrative. And unlike the prior example, the action report is not itself clearly formulated so as to project arrest as an inevitable consequence of the events within it. 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 and placed the defendant’s girlfriend in the car before that detention. Therefore, when PD3 reports the defendant “dropping her off at work,” one of the next expected events is the detention, which recipient “builds in” or inferentially supplies as part of the story that teller “drops” or leaves out (Sacks, Fall 1965:Lecture 7).

Stories in my plea bargaining data invariably end with a depiction of conflict between various accusers and the accused, whether this depiction derives from an explicit or implicit reaction report. This conflict is comparable to 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 it, stories can be “embedded in social processes extending beyond the immediate social encounter.” In plea bargaining, if negotiators succeed in determin-

2.3. Defense Segments

Defense segments in plea bargaining appear as two basic types: denials and excuses. Denials, on the one hand, propose that an alleged wrongdoing on the part of the defendant did not occur. Consider the continuation of example 12:

(13) 12.016
1  PD3: An um, he says I was not doing anything wrong. said I didn’t feel the
2  alcohol, I wasn’t under the influence, and she says, well I was in the car
3  with him, I would’ve taken the car myself if I thought he couldn’t drive. If
4  I thought his driving was impaired or he was doin’ somethin’ wrong, I
5  would’ve driven. I 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 defendant’s culpability or responsibility for the act (cf. Scott & Lyman, 1968:47; Emerson, 1969:153–155). Thus, in the Zamora–Avila case, after recounting the defendant’s arrest, the public defender produces a long explanation for her behavior:

(14) 1.036
1  PD1: She had no explanation except to say that she was sorry, her companion
2  with whom she lives is here in court today, says that night, SHE, the
3  companion was crying saying— look what’ve you done why are you
4  doing this an’ all the lady could say is what’ve I done? y’know what’ve I
5  done? It wasn’t til the next day that she realized when she found the ticket
6  in her purse that the police had given her what she had done. And then in
7  subsequent investigation, uh it was discovered that she had taken two
8  different drugs, one for her arthritis condition, she’d taken more than
9  what she should’ve, and another drug, combined them which was im-
10  proper, and was obviously under the influence of drugs

11  JI: What’re the drugs, ya got any idea
12  PD1: Darvoset
13  JI: Yeah
14  PD1: and seconal. Now I’ve checked with the county pathologist and he’s
15  researched the thing out. He says that if those drugs are mixed, it will
16  cause a state of confusion, delirium, and put the person in a situation
17  where they just in a dream world, don’t know what in the world they’re
18  doing. I’ve also talked with a pharmacist at Middleton Medical who says
19  the exact same thing
sentencing issues (Maynard, 1984:107). Such a focus becomes possible, Mather (1979:57–58) indicates, when prosecution and defense “converge” in their assessments of the case by “reading” police reports and other documents in the same way. However, this is only part of what makes “routine processing” possible. In the following example, a defendant was charged with engaging in a “speed contest,” a misdemeanor. The attorney eventually agree to reduce the charge to an infraction (“forty five in a twenty five,” line 6).

(17) 33.004
1 PD2: Okay. Ya wanna make an offer in that case
2 DA3: I have so little use for these uh, dumb uh [9 seconds of silence while DA3
3 reads file] I can’t intelligently make an offer in that case ‘cause I have no
4 idea whether it’s a bankrupt uh, you know sometimes they hear the
5 scratch uh y’know, little squealer
6 PD2: Forty five in a twenty five, I mean you know what are we don’t’ here
7 DA3: I’ll be happy uh— would you give me forty five in a twenty five on that?
8 PD2: Twenty five dollar fine
9 DA3: How ’bout a fifty dollar fine
10 PD2: How ’bout a twenty five dollar (heh) fine (heh) real misdemeanors go for
11 fifty dollars
12 DA3: How ’bout thirty five
13 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 4). 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 $25 fine (line 8) by suggesting $50 (line 9), PD2 holds to his original proposal and downgrades the case with an ironic statement, “real misdemeanors go for fifty dollars” (lines 10–11). In a sense, it 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 himself with this characterization. Notice also that the judge may produce such synopses in the context of routine processing, as in this example:

(18) 47.001
1 J1: Next is Jerry Romney, which is a 23109b (speed contest)
2 PD2: Ya we haven’t discussed that yet but if you’ll take a speeding and thirty
3 five dollars
4 (silence)
5 J1: Oh I’m sure the people’ll do that, right?
6 (silence)
7 J1: Looks like it’s just breaking traction
8 DA3: Sure, sure.
9 PD2: Okay, we’ll do that

Twice the DA responds with silence when asked to accept a proposal (lines 2–3, and 5), and after the second time, the judge produces a synopsis which downgrades the offense (line 7). 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, as these examples also show, such convergence depends on negotiators’ reading of others’ previously told and written stories, which is embedded in discursive negotiations over charge and sentence.

3.2.2. Assessing Character

Another pattern involves the use of narrative background segments that assess the defendant’s character. As with cases of routine processing, a defense attorney does not dispute the action of the defendant or the appropriateness of a legal 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 the judge decides negatively, as in the Walter Larson drunk-driving case mentioned. The DAs 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 and in the following shoplifting case:

(19) 39.101
PD2: She is advanced middle aged eastern lady. This is the lady who sends her son
back east to go to med school, the son is killed, her husband leaves her, uh she
lives in an apartment with no furniture, uh she attempts suicide. She knew what
she was doing when she took it. I just don’t think that uh considering her age’n
her mental state that uh she’s a fit candidate for—that she will fit in well with the
jail population, and if she could do some uh service work
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 requires such knowledge) and indicates 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
Although this is not the whole of the defense attorney's argument, the segment shows that he does not question the wrongfulness of the act. Indeed, he depicts her companion and the defendant as shocked and puzzled by what she had "done" and by "the ticket" (lines 3–7). Not denying the delict, PDI 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. Defenses by denial, on the one hand, retrospectively reconstruct the nature of behavior first depicted in an action report. In example 11, 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 13, 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 the defendant's subjective state. Denials and excuses, we shall see, are also different in their sequential consequences. Recipients of a narrative treat them in contrastive ways.

3. THE USE OF NARRATIVE COMPONENTS

Narrative structure in plea bargaining comprises a set of devices by which attorneys introduce a story, present it, and then exit from the telling. 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 relevantly tell the 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.

That a narrative "can" consist of these components and subcomponents means that it does not necessarily contain them all nor in that specific order. Stated positively, narratives in plea bargaining display variation in the use and ordering of these basic devices. In general, the variability in the use of components and subcomponents reflects their employment for specific purposes, situations, and audiences (Robinson, 1981:74). Having completed our analysis of basic narrative structure, we can now consider the significance of this variability, by examining (1) patterns whereby narratives and narrative components are distributed in negotiations, and (2) how narratives and components work to set boundaries for negotiation.

3.1. On the Distribution of Stories and Other Narrative Components

In the 52-case corpus of plea negotiations, only 12, or less than one-fourth, contain stories in which attorneys orally present the facts of what happened to one another. Furthermore, the data include 24 offenses that a defense attorney and prosecutor discussed on their own and 34 in which the judge participated. Comparing the two sets of cases shows that attorneys tell stories when the judge is present but not very often to each other. In only 1 of the 24 lawyer-only negotiations is there a narrative; the other 11 narratives all occur in negotiations with the judge present. This asymmetry does not mean that lawyers are uninterested in the facts. Instead, it reflects familiarity with or immediate access to police and other sources of information, such as the stories of defendants, victims, witnesses, and others (Meehan, 1986; Smith, 1974). In fact, the one situation in which a defense attorney does tell a story to the prosecutor with no judge present occurs because the DA is newly assigned to the case.

That is not the end of the matter, for negotiations without full-blown narratives may nonetheless contain narrative components. Thus, bargaining in 9 cases contains a defense segment and in 8 cases a background component. All 17 of these cases are ones with which the attorneys and judge demonstrate familiarity, and the defense or background components are introduced in the context of making or rejecting offers for disposition. The following examples illustrate the two usages.

3.1.1. Using a Defense Component

In a case where the defendant is charged with "resisting public officers" and possessing marijuana, negotiations open with the DA offering to dismiss the second charge in exchange for the defendant's pleading guilty to the first and spending two weekends in jail. The PD rejects the offer on the basis of the defendant's denials of specific alleged acts:

(15) 7.012 (Simplified)
PD2: Well I can just about tell ya what he's gonna say, and that's no. And uh he'd get two weekends if he lost this trial, he might get more. Now he didn't throw any beer cans at any police officer. Uh he was at a place where there was quite a disturbance, lots of people. Uh if they got the right guy and if he threw beer cans
CHAPTER 3

I suppose that the weekends are uh reasonable . . . but he says he didn’t do it and uh that wouldn’t settle the case.

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

3.1.2. Using a Background Segment

In a case of drunk driving (no. 9 in the corpus), the DA proposes to reduce the charge to reckless driving but with a regular drunk driving penalty. The PD’s response is to say the defendant, Walter Larson, is “concerned” with what even this conviction “might do to his security clearance one day, he’s going for his master’s or his doctorate.” On this basis, the PD rejected the DA’s proposal. The DA, held to his position, based partly on a review of the police report, which stated that the defendant’s driving was extremely erratic. Subsequent to this, the PD asked for a lesser penalty because the standard one was so “punishing” and “undignified” for his defendant. The DA also refused that appeal, and the defendant eventually pleaded guilty and received the standard punishment. In a theft case (no. 10), the defendant, David Johnson, had taken a decal that permitted him to park at his college. During negotiations, the PD did not dispute the defendant’s having taken the decal but noted that he was a student at the college with no prior record and asked that he be given a suspended sentence rather than time in jail. The DA and judge granted his request.

As these examples show, defense segments that deny or excuse a person’s behavior and/or background components that identify the defendant in particular ways may be disjoined from the rest of a narrative to justify a given bargaining position. This demonstrates how negotiations are parasitic on the tellings and writings of primary observers (offenders, witnesses, victims) and secondary interpreters (e.g., 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:

(16) 13.017
PD4: If you wanna read it over I can explain ta you what he says happened which is uh actually very plausible.

Thus the successive tellings a given occurrence goes through before some version is delivered in the plea bargaining context would be an interesting topic for study were it possible to gather the necessary data. Of particular importance in understanding the complete narration of an event is the police report as a socially constructed “documentary reality” (Smith, 1974) and one that aims for particular readings in contexts other than that in which it was written (Meehan, 1986). Most significant, dependence of a negotiator’s dis-

course on textual tellings shows that stories, although not necessarily delivered orally, are nonetheless an embedded feature of all plea negotiations.

3.1.3. Who Uses Narrative Components

The distribution of narratives and narrative components reveals that, predominately, defense attorneys 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 12 negotiations in this corpus that contain stories, defense attorneys were the narrators. District attorneys thus tend to be recipients, responding 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 or, in other words, to make an argument that a given case is not an instance of a “normal” crime (Sudnow, 1965). Significantly, the one narrative told by a district attorney ends not with a defense segment but rather with the reaction report. The generalization from this is not that prosecutors are precluded from telling stories or that defense attorneys are required to do so, as if these behaviors were part of their role obligations. Rather, by looking at the deployment of narratives and narrative structure, it is possible to describe the means by which interactants make visible those categorical identities in and through actual talk. In part, one enacts the identity of defense attorney by using narratives and narrative components, including defense segments, in asking for some disposition. Another brings off the identity of district attorney largely by responding in specific ways to a narrative or its components or by telling narratives without defense segments.

3.2. Setting the Boundaries of Negotiation

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

3.2.1. 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 “routine” enough to permit immediate focus on charging

12 See the discussion of these matters in Maynard (1984:151, fn. 7).