THE STRUCTURE OF DISCOURSE IN MISDEMEANOR PLEA BARGAINING

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This paper examines transcriptions of tape-recorded plea bargaining sessions. It treats plea bargaining as a naturally occurring activity and seeks to discover formal decision-making patterns. In plea bargaining, participants have ways of exhibiting and responding to positions on how the case they are involved in should be handled. A decision is reached when the negotiating parties agree on a single position, and this is achieved by one of three different patterns or modes. Each pattern involves the presentation of (A) an opportunity for arriving at a mutually acceptable *disposition* and (B) the option of delaying determination of the disposition by *continuance* or *trial.* The ordered ways in which opportunities and options are related to each other constitute a discourse system for negotiation. This system exerts a "pressure" for the here-and-now resolution of cases, independent of negotiating parties' desires and inclinations. The focus on patterns of decision-making reveals a diversity of results and an interesting distribution of cases among the decision-making patterns.

I. INTRODUCTION

Research on plea bargaining has flourished during the past fifteen years. Approximately two-thirds of the extant books, articles, and studies of plea bargaining have been written during this period (Matheny, 1979; Miller *et al.,* 1978: iii-iv). However, virtually no research has been directed to plea bargaining talk with an eye toward discovering its basic structure as a discourse phenomenon.[1] The failure to attend to

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[1] Social psychological studies of negotiation have been carried out almost exclusively in experimental settings (see the review by Rubin and Brown, 1975). "Everyday" interaction in locales such as the court are largely unstudied. Research in natural settings where negotiation is a prominent activity, as in industry (Gouldner, 1954), national politics (Riker, 1962), international relations (Ikle, 1964), and so forth, has yielded studies that are narrative in form, analyze only one or two cases, and are generally uninterested in the microscopic analysis of the negotiations themselves (Strauss, 1978: 97-101). In contrast, the research here consists of the close scrutiny and analysis of tape-recorded and

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actual discourse has a theoretical impetus. Plea bargaining has traditionally been approached from an exchange perspective that explains the high number of negotiated guilty pleas in criminal courts by reference to the trading of benefits by prosecution and defense. When defendants plead guilty, they receive some dispositional "consideration," in the form of reduced charges or sentences, from the state. The latter, in turn, gets the convictions it desires (Alschuler, 1968: 50; Baldwin and McConville, 1977: 23; Bottoms and McClean, 1976: 123; Feeley, 1979: 185; Grosman, 1969: Chapter 7; Klein, 1976: Chapter 1; Miller *et al.,* 1978: xxi).

Exchange theory, from which this perspective on plea bargaining derives, has been criticized along two interrelated lines relevant to this study. One is that it tends to reduce social activity to the behavior and expectations of individuals (Ekeh, 1974). Thus, in plea bargaining, decisions are "dictated" by participants' "interests"—their "personal or professional gain" (Buckle and Buckle, 1977: 150). The other is that exchange theory is overrationalistic and so understates the importance of routine in everyday interactions (Collins, 1981; Heath, 1976). Those who engage in plea negotiations are thought first to weigh logically and reasonably the rewards and sanctions associated with various outcomes, and then decide on the one that accords with their objectives. Some researchers, to be sure, have characterized plea bargaining as a stylized process into which participants are socialized (Alschuler, 1975; Eisenstein and Jacob, 1977; Heumann, 1978), but no one has yet investigated actual discourse for socially organized practices that, while accommodating personal and professional interests, cannot be reduced either to those interests or to the participants' rational analyses of costs and rewards. The task of this paper is to describe a discourse system by which legal practitioners routinely settle misdemeanor cases in direct interaction with one another. A central theme is that plea bargaining outcomes, including decisions on charges, sentences, continuances, and trial, can be related to specific patterns by which they are achieved, and this reveals heterogeneity of a sort not previously appreciated.

The neglect of plea bargaining discourse reflects the kind of data researchers have used. They have relied largely on respondents' assessments of hypothetical cases, on interviews that reconstruct actual bargaining episodes, or on observations

transcribed talk concerning fifty-two misdemeanor cases processed in the court. The data are further described in Section II.

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of, and hurried note-taking on, transactions between prosecution and defense lawyers. This study, in contrast, explores negotiations over misdemeanor offenses by scrutinizing the tape-recorded and transcribed conversations in fifty-two misdemeanor cases that were processed over a five-month period in a California municipal court.

II. THE DATA AND METHOD

Tape-recordings were obtained at weekly "Pretrial and Settlement" conferences, during which defense lawyers and district attorneys assemble to discuss misdemeanor cases, "bargain," and present the results of their negotiations to defendants and to the judge. A few cases were negotiated and taped, not at the pretrial conference, but on their scheduled trial dates.

The fifty-two cases include fifteen theft, eleven drunk driving, eight battery, three drinking in public, and two loitering offenses, and one case each of hit and run driving, resisting public officers, assault with a deadly weapon, removing vehicle parts, vandalism, and burglary. In all, nearly ten hours of recordings were obtained. Some recordings involve only a prosecutor and defense attorney conversing in an unused jury room. Other negotiations include 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 a probability sample. Rather, discussions in approximately one-eighth of all the cases handled during the three-month period were recorded as the logistics of getting a recorder to the various settings of plea discussions within the courtroom would allow.

The methodological perspective in the paper is that of conversational analysis (Sacks *et al.,* 1974; Schegloff and Sacks, 1974). Although research in this area has primarily been concerned with the sequential organization of non-instrumental, casual talk in everyday settings, conversational analysis can also be profitably employed in the study of talk that is instrumental in character and occurs in settings where "people-processing" (Hasenfeld, 1972) is an ongoing task. Since participants in plea bargaining must decide on what to do with criminal defendants and their cases, the question to be addressed is how that task is accomplished by discrete decision-making patterns. Such patterns can be identified by close inspection of tapes and transcripts of bargaining episodes and are the "seen but unnoticed" practices (Garfinkel, 1967)

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that constitute negotiational discourse as a coherent phenomenon. The practices are "seen" in the sense that practitioners and observers know what makes plea bargaining recognizable. But the practices are not usually subject to inquiry because they are taken for granted as commonsense or trivial, and thus remain "unnoticed." The thrust of this paper is to reveal a social organization consisting of those mundane discourse skills whereby courtroom negotiators meet their mandate to process cases. The investigation reveals a discourse system which accommodates itself to a variety of cases in the corpus. It also suggests the importance of attending to discourse to better identify decision patterns that may otherwise be missed.

Since the data in this study were collected in one courthouse in one local U.S. jurisdiction, the question of generalizability arises. In part, this must remain an open question, and one contribution of this study is to lay a foundation for comparative research. However, there are reasons to believe that the results of this study are not unique to the court studied. The operations and activities of this court resemble those of lower courts that have been described ethnographically (e.g., Heumann, 1978; Feeley, 1979), and it is similar to the majority of courts surveyed by Long (1974), who contends that lower courts in the United States are becoming increasingly similar.

III. DECISION-MAKING PATTERNS IN PLEA BARGAINING

When defense and prosecution meet at a pretrial conference, there is a list of cases that have been scheduled for official action. The meetings occur in a designated courtroom, and a judge is periodically present to help settle intractable cases, ratify negotiated decisions, and hear pleas. For each case, the defense and prosecution must determine some disposition (which may be anything from a dismissal to a jail sentence), or must agree to a trial date, or must agree to continue the case for reconsideration at a later time. These are the only options for a given case at the pretrial hearing, which is to say that "no action" is precluded. The "instrumental" task the legal professionals face in each case is to assign or obtain one of these outcomes.

The question is, how are these decisions made? In general, we see in these discussions a basic unit that we may term a "bargaining sequence." The sequence consists of two turns: one in which a given party articulates a position by means of

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an *announcement* of a preference or a *proposal;* and a second in which the other party *replies* by exhibiting agreement or disagreement with the presented position.[2] A decision is achieved when both parties take the same position, whether for dismissal, guilty plea, trial, or continuance.

The investigation will show that this achievement can be realized by three different patterns. Each pattern involves (A) the presentation of ways to handle the case, which can be considered as "opportunities" for the prosecution and defense to arrive at a mutually acceptable disposition. When an opportunity is not taken up, the system allows (B) the option of delaying the determination of a disposition by "continuing" the case or setting it for trial. Both dispositions and delay are accomplished through the use of bargaining sequences. The orderly relations among bargaining sequences within single episodes of negotiation are the focus of our attention.

The three kinds of opportunities for determining a disposition represent logical possibilities, given the two parties and the "sides" they represent: (1) one party takes up a position and the second agrees to it; (2) both parties advance positions but one relinquishes his position to agree with the other's; and (3) the parties compromise. However, knowing logical possibilities does not tell us whether they will be realized, how they will be realized, or how cases will be distributed among these possibilities. We will see that, empirically, all logical possibilities do occur. Each opportunity is presented in order and may or may not be successful depending on what else happens in the talk regarding any given case. For this group of cases, there is a distinctive pattern in the way that cases are distributed among the possibilities.

In the bargaining literature the three possibilities I identify are generally considered to be separate kinds of bargaining "games." Schelling argues that (1) involves "implicit" bargaining, which is akin to what Stevens (1963: 18) calls a "take it or leave it" or "unnatural purposive game." Possibility (2) is discussed as a "move-symmetrical" bargaining game (Schelling, 1963: 268-70). Only (3) is treated as a real negotiation game (Stevens, 1963: 27-37); and, in the experimental literature, the sequential presentation of

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[2] Technically, it is not a matter of whether parties agree but whether they simply align with the same position. That is, alignment and agreement can be separate matters, as discussed in Maynard (1982b). For purposes of readability, however, the terms "agreement" and "disagreement" rather than "alignment" and "non-alignment" are used in this paper.

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demands and subsequent concessions is viewed as a *necessary* feature of negotiation (Rubin and Brown, 1975: 14). The evidence here shows that the three possibilities are not separate games, nor is the last a necessary component of bargaining. Instead, all three occur within a single discourse system for negotiation. That is, they are outcomes contingently produced in an organized fashion as negotiation proceeds in each case.

Finally, while it has been recognized that continuances and trials are often used strategically as delay options to win concessions on charges or sentences (Feeley, 1979: 175; Mather, 1973: 299-311; Rosett and Cressey, 1976: 21), the related point that these outcomes do not necessarily represent the "failure" of negotiation (Utz, 1978: 35) has not been given sufficient attention. In this paper, delays of this sort are viewed in relation to the ways in which they are decided upon. As sequential phenomena, proposals for continuances and trials are made after opportunities for immediate disposition have been presented. With respect to the large number of agreed upon dispositions, this fact has important implications, which will be drawn after the empirical investigation.

Negotiations in each of the fifty-two cases studied fit one of the three patterns, but not all of the cases can be presented here (although they are summarized in Table 1). Rather, defense and prosecution negotiations that exemplify each pattern will be considered. Additionally, since some negotiations include the judge, segments which illustrate judicial participation as a type of "third-party" intervention will be analyzed.[3] Because of space limitations, the examples were selected partly on the basis of brevity. However, the final example will be discussed at length in order to make clear the relation of the decision-making patterns to one another as a *system* of negotiation.

1A. Unilateral opportunity: one party makes an offer to which the other agrees.

This is the most straightforward way in which a decision is made. An "offer" is put forward by one party and accepted by the other. In example (1), the defendant (Delaney) was

[3] The judge was involved only in those cases that the attorneys could not settle on their own. Although he might urge a particular outcome, the judge's presence did not influence the *system* of negotiation (see example 2 and discussion). That is, the judge's contributions were accommodated by the decision-making patterns. For more on this point, see Maynard (1982b).

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charged with malicious mischief ("mal mish," line 2), having, according to the police report, "tore up a bar" after being refused more drinks.

(1) 30.048 [Malicious mischief] (jury room)[4]

1. PD2: Okay uh is there an offer in Delaney
2. DA3: Yeah, plea to mal mish and uh, uhm modest
3. fine and uh restitution
4. PD2: Okay, fifty dollars
5. DA3: Yes

Here, DA3 indicates the charge to which he would accept a guilty plea and, in general terms, the sentence. PD2 expresses a willingness to accept the proposal, so long as the fine is fifty dollars (line 4). When DA3 agrees (line 5), the bargain is consummated.

Had PD2 suggested a less serious charge, or DA3 attempted to secure a heavier penalty, the outcome might have been different, even if the mal mish plea and fifty-dollar fine were ultimately acceptable to both sides. That each recipient "takes" rather than "leaves" his counterpart's offer may be due to the "concerting of expectations" that occurs implicitly before an offer is made (Schelling, 1963). The concerting of expectations, as Schelling (1963: 93) argues, is no mystical process. It means simply that participants are able to read situations in a like manner and infer what resolution will be mutually acceptable. Such a process in plea bargaining is surely aided by the participants' knowledge of the courtroom subculture. The establishment by legal practitioners of "going rates" for run-of-the-mill, "normal crimes" (Sudnow, 1965) in local jurisdictions and the administration of these rates as a matter of course (Feeley, 1979: 67-68; Mather, 1979: 66; Neubauer, 1974: 238) is a well-documented practice.

When the defense attorney and prosecutor cannot reach agreement on their own, the judge may join in the discussion by revealing an attitude toward the proposal that has just been made. In the following, the PD proposes a lesser charge

[4] 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 number and line number in the original transcript where the excerpt starts. In square brackets is the offense or offenses charged. In parentheses, the location of the discussion is noted. Those in the jury room did not involve a judge; those in chambers did. In the transcript, personnel are labelled with abbreviations and numbers: J1 = Judge #1, PD2 = Public Defender #2, DA2 = Assistant District Attorney #2, PA1 = Private Defense Attorney #1, etc. Other transcript notations are given in the appendix.

Tape-recordings were originally transcribed in great detail according to the system devised by Gail Jefferson (see Schenkein, 1978: xi-xvi). Detail unnecessary to the analysis of this paper has been omitted, so the segments presented should be considered as simplified transcriptions.

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("speeding," line 3, is an infraction; "speed contest" is a misdemeanor) and a fine for the defendant. But his offer gets no immediate response from the DA: note the silences at lines 4 and 6.

(2) 47.001 [Speed contest] (judge's chambers)

1. J1: Next is Jerry Romney, which is 23109B
2. PD2: Ya we haven't discussed that yet but if you'll
3. take a speeding and a thirty five dollars
4. (0.6)
5. J1: Oh I'm sure the people'll do that, right
6. (0.4)
7. J1: Looks like [it's just] breaking traction
8. DA3: [Sure]
9. DA3: Sure

These silences occasion utterances by J1 which urge agreement. First, he provides a "candidate statement" of the DA's position that modally ("people'll do that," line 5) and by way of the tag ("right") expects a positive reply. Next, he provides a characterization that minimizes the offense (line 7). In lines 8-9, DA3 agrees with the judge, which means he accepts the PD's proposal and completes the bargaining sequence.

One can speculate as to why the judge's intervention should lead a prosecutor to accept a proposal he might otherwise hesitate (indeed, did hesitate) to accept. The prosecutor might be responding to the judge's power or status; the judge might have validated a position the DA was already inclined to accept; or the DA, as a member of the courtroom workgroup (Eisenstein and Jacob, 1977), may have been unwilling to disrupt relations for the modest return of a higher sentence in a minor case. Whatever the reasons for the prosecutor's agreement with the PD's proposal, the judge's participation did not require a compromise or some other form of resolution. Rather, it enabled the DA to accept the PD's initial position. Thus, third-party intervention in a two-sided negotiation, although it may facilitate a particular outcome, need not change the structure by which it is achieved. This case fits the basic unilateral pattern in which one party makes an offer and the other agrees to it.

1B. Delay

If some factor prevents the recipient of an offer from accepting it, a continuance or trial may be suggested.

Continuances. When continuances arise after unilateral opportunities have been presented, they occur because the defense or prosecution needs additional time to obtain

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information that might affect a reply to the other's offer. For example, in one drunk driving case the DA suggested reducing the charge to reckless driving, but with a regular drunk driving penalty. The PD responded:

(3a) 9.086 [Drunk driving] (judge's chambers)
PD2: I wanted to redo the blood in that case, do you mind?

By this, the PD is requesting time to have the blood alcohol level remeasured, because the first test had barely placed the level above the statutorily defined threshold for driving under the influence.

(3b) 9.094
DA2: Ya wanna continue it for two uh two weeks to redo the blood?
PD2: Sure

Here the DA grants the PD's implicit request for a continuance by formally suggesting one. After the blood test, PD2 would presumably be in a better position to decide whether the offer of reckless driving should be accepted, or whether a further reduction or even a dismissal of the case should be pursued. In this case, when the blood was retested, the alcohol level remained above the statutory limit, and PD2 accepted the DA's offer. The defendant pleaded guilty and received the regular sentence for drunken driving.

In the last example, it was the PD who requested a continuance. In the following, the DA proposes a continuance after the PD, arguing that his client had not really committed an offense, suggested dismissing the case.

(4) 15.022 [Misdemeanor exhibition of speed] (judge's chambers)
DA1: What I recommend is a continuance so I can get a, you know, narration from the officer as to what happened.

Subsequent statements from the officer supported the charge, and the defendant pleaded guilty. The important point, for our purposes, is that 1B continuances regularly exhibit a concern with getting necessary "facts" that would bear on the negotiational stance a party might take. In other words, when one party suggests a disposition and the other asks for more time to check on the facts, it is because the additional information matters. We will see that continuances may be requested for other reasons, such as the sheer benefit of delay. Such postponements are not proposed immediately after a unilateral opportunity for resolution has been attempted but at a later point in the negotiations.

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Trials. When proposals to try a case occur after an initially suggested disposition, they indicate intransigence of a particular kind. On the one hand, the district attorney may propose a guilty plea and sentence in the face of a claim of innocence by the defense. On the other hand, the defense attorney may suggest dismissing a case that the DA thinks is worth pursuing. Either way, the guilt of the defendant is a salient issue and the case is often characterized as a "dismiss or go." In the following example discussion begins with the PD telling a version of the incident.

(5a) 3.003 [Petty theft] (judge's chambers)
J1: Let me come back to Kathy Nelson
PD3: Um this is a very unusual petty theft your honor. Uh Nelson's employed in Sands, and there's been some theft of employee purses and—
J1: She herself is an employee?
PD3: She's employed and uh there's been some theft of employee purses, employee money 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, and the store detective comes in and uh she gets busted. And she says no, I wasn't going through that purse to steal, I had no intention of stealing anything. I didn't recognize the purse. I knew there'd been the thefts, I lost some money, and uh I wasn't trying to steal anything. Um the store detective says she was trying to hide some money. She says that's not true.

After further discussion, the judge solicits an offer from the DA.

(5b) 3.115
J1: Well what can you do on it, maybe the DA isn't as tough as the judges'd be on this one . . .
DA1: Well I'd want her on probation for a good suspended time and probably uh in the neighborhood of fifteen days in jail besides

Subsequently, the DA proposed a more specific amount of time suspended (sixty days), while still holding to the fifteen-day jail sentence. In the next segment, the judge assesses the proposal (line 4), and the PD reports his client's "rigid" position (lines 5-9).

(5c) 3.134
1. J1: If she's the hysterical type she's not gonna
2. wanna go to jail at all, on the other hand
3. PD3: Yeah
4. J1: For what this is, uh fifteen days ain't bad
5. PD3: Well in one sense it's reasonable except

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6. that she doesn't budge. She is emPHAtic
7. that she was NOT going through those
8. purses to steal anything. She is just
9. absolutely rigid
10. J1: Well so it's gotta go, that's it arright
11. PD3: That's what I think

After the PD's report of his defendant's position, the judge proposes a trial (line 10), which both PD3 and DAl agree to (DAl's assent is nonverbal). In this case, the lawyers were able to settle at a later date, and the trial did not actually take place.

Thus, discussions like those in examples (3), (4), and (5) lead to continuance or trial and so delay the resolution of the case. Both of these options, however, are exercised after some concrete proposal for immediately settling the case has been made by one party and rejected by the other. This is particularly interesting with respect to continuances; if the need for a continuance had been absolute rather than contingent upon the other party's position, it could have been proposed at the start of the negotiations.

2A. Bilateral opportunity: each party advances a position; one relinquishes and agrees to adopt the other's.

A negotiator may reject a proposal but continue discussion by suggesting an alternative disposition. In this event, the party who first made an offer may agree to the alternative position, or the initial offerer may stand firm and the counterofferer may eventually back down. The following case illustrates the acceptance of a counteroffer. Discussion again starts with the PD telling "what happened."

(6a) 12.025 [Drunk driving] (judge's chambers)

PD3: Um his girlfriend was in the car up to about five or ten minutes before the detention. He'd had something to drink seven, seven thirty at night, he had three beers, and uh he had a little whiskey earlier in the day, went to sleep, woke up to take her to work, drops her off at work. He's got his kid with 'em and he's driving home. And um, he says I was not doing anything wrong, said I didn't feel the alcohol, I wasn't under the influence. And she says well I was in the car with him, he was driving perfectly, and I wouldn't have went with him, I would've taken the car myself if I thought he couldn't drive

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After this, the DA provides his own characterization of the offense (lines 1-8 below), and says how he thinks the case should be handled (lines 8-9).

(6b) 12.052

1. DA2: What we've got here is a— for driving is, we
2. got a couple of unsafe lane changes. He's
3. weaving at least three times within a
4. single lane, he's outside of the lane, he's on
5. ((highway)) 115 least a couple times.
6. He's speeding along, you know at sixty. He
7. really doesn't do very well on the field
8. sobriety. It's a triable drunk driving. We're
9. obviously offering a reckless

Thus, the state's offer is for a lesser charge (reckless driving) than the original drunk driving offense.[5] However, in subsequent talk, the PD suggests an even lesser charge. "Movers," in the following segment (line 1), refer to moving violations that are infractions rather than misdemeanors like drunk or reckless driving.

(6c) 12.136

1. PD3: Well what about some movers
2. DA2: It's really a question of whether're not—
3. We'd have a pretty good shot at convicting
4. him of driving under the influence

When the DA refused to accede immediately (lines 2-4) to his suggestion, PD2 went on to mention conflicting stories of the arresting officers, the disputable blood alcohol level of the defendant, which was found to be just barely at the legal threshold for driving under the influence, and other items that weakened the state's case.

After this, the judge indicates the "borderline" status of the case (lines 1-2 below), assesses the DA's offer as "good" (line 6), and finally displays a favorable attitude toward the PD's proposal for moving violations (lines 9-11).

(6d) 12.089

1. J2: Yeah it's one of those that's on the
2. borderline. If the guy says well I don't want
3. to take the sure thing, I wanna take the

[5] Note here that since "reckless driving" is a lesser charge than "drunk driving," the DA's offer might be considered a concession. However, there are "going rates" for such offenses as drunk driving, and it was standard practice in the jurisdiction studied to reduce drunk driving to reckless driving on first offenses where the blood alcohol level was borderline. The defendant's blood alcohol level in this case was one-tenth of one percent, precisely the level at which a person was legally considered to be driving under the influence of alcohol. This is not to say that there is not the *appearance* of a concession by the state when the defendant is presented with the offer of reckless driving. However, in plea bargaining the latter is a well-known *starting* point for cases such as this. See the discussions in Alschuler (1975: 1194) and Neubauer (1974: 238-44).

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4. chance, that's pretty much up to him. I'd
5. like to, you know, dispose of the case, I
6. think it's a good offer, but on the other
7. hand um the jury might choose to believe
8. that his driving ability was not impaired
9. . . . it could be best to give it to him, and
10. that's just give him you know, the speeding
11. and the illegal lane change uh

Following this, DA2 changes his position:

(6e) 12.241
DA2: I've reconsidered my position and I'll offer a 22348a and a 22107 and would recommend a hundred and twenty five dollar fine.

The 22348a charge is speeding, and the 22107 is an unsafe lane change, the "movers" specifically suggested by the judge. Moreover, this was clearly an agreement with the course of action *originally* proposed by the public defender as an alternative to the DA's initial preference for reckless driving, which he relinquished. As in extract (2), the judge plays a facilitative role that may have been crucial to the agreement. Note also that the DA proposed the penalty to which the PD agreed; but because the DA gave in on the charge, he was considerably restricted in the parameters of the penalty he could propose. We saw this kind of conditioned agreement in extract (1). Having two kinds of currency in plea negotiations (i.e., charge and sentence) may allow the party who relinquishes on the one to decide the other.[6] This preserves an appearance of autonomous participation for both parties.

Pattern 2A or bilateral decisions, then, are reached as advocates take opposing stances and one gives up his position and accepts the other's. However, as we know from the existence of the unilateral pattern, it is not an essential feature of plea negotiations that contrasting positions be advanced before a decision is reached. Also, the order of presentation does not determine which position will "win." At times, the party who first makes an offer will back down and agree to a suggested alternative. At other times the party who proposed an alternative will yield to the course of action initially presented.

Thus, bilateral opportunities are neither required nor do they reflect any mechanical procedure. Whether a negotiation

[6] This is not to lose sight of the fact that, as Rosett and Cressey (1976: 80-81) observe, the core issue in plea bargaining is the question of punishment. Setting the charge level overshadows the decision on a specific sentence by restricting the alternatives. The charge issue also may have been important in this case since it has implications for how any future offense would be handled.

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will fall into the 2A pattern depends upon what is revealed and the strategies used during the course of negotiations. Given one party's statement of a position, the second party may make an alternative proposal. The two positions thus advanced become the focus of arguments designed to show weaknesses in the other side's case, to induce a third party (judge) to express a view of the case, to test the firmness of the opponent's position, or to accomplish other ends. Depending on the outcome of these moves, one or the other party may yield and agree with the opponent's position.

2B. Delay

When both parties propose dispositions and neither is willing to accept the other's, there is the option of delaying the determination of the disposition by agreeing to a continuance or trial. Attempts to delay matters when both parties have proposed dispositions have a different meaning from similar proposals in the pattern 1B situation.

Continuances. Requests for continuances in response to initial proposals have the appearance of being necessary to obtain information relevant to a reply. But when such requests are made after both sides have suggested particular dispositions, they appear as tactics designed to weaken an opponent's resolve. Consider the following example from a case in which the defendant allegedly took a package of "Mini-wash" soap from a store.

(7a) 42.019 [Petty theft] (jury room)

1. DA3: What ya wanna do
2. PD4: Why don't you let me plead her for a fine
3. . . .
4. DA3: Why
5. PD4: Well she has no previous record, it's a very
6. small item, uh she says she was going to
7. pay, she says when they stopped her, she
8. offered to pay, uh
9. DA3: I have difficulty making this other than the
10. standard disposition
11. PD4: For a dollar 'n some odd cents worth of
12. Mini-wash?
13. DA3: Yeah, I mean I can buy the logic, within
14. the limits of the, you know, the items of
15. necessity by somebody very poor, but a
16. PD4: Yeah
17. DA3: cosmetic item by a young um lady who's
18. just uh in too much of a hurry to go pay
19. for it, uh I can't buy that

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Clearly, the PD and DA have different views of the case that are reflected in their positions about how the matter should be resolved. While PD4 is willing to have the defendant plead guilty to the petty theft charge, he proposes that the penalty be a fine (line 2). The DA, however, wants the "standard disposition" (lines 9-10), which is twenty-four hours in jail.

Following this segment, the PD again claimed that the defendant planned to come back and pay for the soap and noted that this would have been easy because she lived "very close to the store." Still, the DA asserted, "I can't see making the exception here." Then:

(7b) 42.089

1. PD4: Well, on this particular case, let's continue it
2. for a couple of weeks, let me talk to her and
3. see what she says about it
4. DA3: Uhhhhh
5. PD4: Uhm I don't mind twenty four hours. Thing
6. is there's something to the case

PD4's proposal for a continuance is dealt with by DA3's minimal utterance (line 4). Although PD4 then expresses some agreement with the DA's position (line 5), he immediately adds an utterance that prefaces further arguments for his own position. First, PD4 stated that "in the past, we've had exceptions." To this, DA3 replied that this is an "ordinary, average, mickey mouse petty theft" and exceptions cannot be made for these. Second, PD4 reiterated the "insignificance" of the stolen object, arguing that there was nothing in the defendant's record that indicated she was regularly involved in shoplifting. He further remarked that twenty-four hours in jail therefore did not "make any sense." When DA3 disagreed, a third tactic of PD4 was to revert to the contention that this case was exceptional and did not warrant the standard disposition.

(7c) 42.203

DA3: We can disagree as to the wisdom of it but I think it applies in this case
PD4: Okay
DA3: Wanna continue it two weeks?
PD4: Uh why don't we continue this one three weeks. I want to look into it a little better. And it's a first continuance. Okay?
DA3: Sure
PD4: Arright. And I wanna see if I can find out something more about it that'll make a difference to you

Thus, in this case, a continuance was agreed to only after extended discussion in which neither the prosecutor nor the defense counsel was willing to retreat from his original

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position. And while PD4 wanted the continuance to "find out something more,"[7] it was apparent during the negotiation that both parties had the relevant "facts" at hand and the real issue was their different views of those facts and whether this was a routine or exceptional case. (The continuance strategy worked here to eventually obtain a different charge—trespass; the defendant pleaded guilty and spent the twenty-four hours in jail.) This is very different from the continuances suggested after a unilateral opportunity, which were proposed so that the recipient of an offer could obtain the information necessary to take an initial position.

Trials. Just as 2B (bilateral) continuances differ from 1B (unilateral) continuances, proposals for trial after both parties have rejected each other's position are unlike those occurring after one party has posed a course of action refused by the other. In the unilateral situation, the issue of the defendant's guilt figures prominently in the decision for trial. In the bilateral case, the defendant's guilt poses less of a problem. That is, 2B trials are suggested because the defense and prosecution, assuming the defendant's guilt, disagree over what charge or sentence is appropriate (cf. Rosett and Cressey, 1976: 101-102; Mather, 1979: 140).

(8) 32.018 [Drunk driving] (jury room)

1. DA3: What are you proposing we do with this
2. PD2: If you want a reckless and a hundred and
3. eighty dollar fine, he'll do it
4. (6.0) ((DA3 looks through file))
5. DA3: Should do at least one weekend nothing less,
6. it's what it says here
7. PD3: Well. In that case you get to try it
8. DA3: Okay
9. PD2: You refuse his offer
10. DA3: Yes
11. PD2: Okay

A trial decision was made in this case because PD2 would not move from his proposal for a reckless charge and fine (lines 2-3), and the DA remained firm on the recommended "at least one weekend" (line 5) in the county jail. The defendant's guilt was not a question, and the risk each *appeared* to take was not

[7] While it was PD4 who originally proposed the continuance in (7b), in (7c) DA3 makes the offer and PD4 is in the position of accepting it. Thus, while PD4 may believe "finding out something more" may "make a difference" to the DA, the latter may also be oriented to the way the delay may bring about a weakening of the PD's position. Rosett and Cressey (1976: 21) have observed, ". . . time is a major weapon used by both sides to bring about the settlement of cases without trial."

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who would win or lose the trial but who would win or lose at sentencing after the defendant was found guilty at trial. In fact, a week later, before trial, the prosecutor agreed to accept the defendant's offer. Clearly, the suggestion to go to trial may, like the request for a delay, be a negotiating ploy. The difference between continuances and trials appears to be in the posture a party is willing to take. Trial proposals contain an element of challenge not present in continuances.

3A. Compromise: each party takes a position and relinquishes it for an intermediate one.

We have examined two basic ways in which, if parties take opposing positions, they can reach a decision that terminates negotiation at the pretrial conference. In the first, one party yields and agrees with the other. In the second, final resolution is delayed by continuance or trial. A third alternative is a compromise. For an attempt at compromise to be successful, *both* parties must depart from their earlier positions and agree on an intermediate stance. Thus, in a disorderly conduct case, the PD suggested a $25.00 fine, the DA suggested $75.00, and the PD responded, "Why don't we compromise and make it fifty?" The DA accepted, and the case was closed.

Of course, there can be further rounds of counterproposing or other negotiating work involved in obtaining a compromise. As we see in the following example, parties may trade concessions on both the charge and sentence. As the discussion started, the PD, whose client was charged with misdemeanor speeding, asked the DA if he wanted to make an "offer." The DA replied that he did not know whether it was a "bankrupt" (i.e., empty or bad) charge or not, and that he could not "make an offer," whereupon the PD himself made a proposal:

(9) 33.011 [Speed contest] (jury room)

1. PD2: Forty five in a twenty five, I mean you know
2. what are we doin' here
3. DA3: I'll be happy uh— would you give me forty
4. five in a twenty five on that
5. PD2: Twenty five dollar fine
6. DA3: How 'bout a fifty dollar fine
7. PD2: How 'bout a twenty five dollar heh fine heh
8. real misdemeanors go for fifty dollars
9. DA3: How 'bout thirty five including p.a.
10. PD2: Eh yeah, I think that's not a bad deal

This is a classic example of what many students consider to be "real bargaining," and it will pay us to examine it in

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detail. PD's proposal (line 1) is for an excessive speed *infraction,* a lesser violation than the original misdemeanor charge. In line 3, DA3 starts an utterance, "I'll be happy uh," that may have been an acceptance. But he cuts it off and then produces a "questioning repeat" (Pomerantz, 1975: 72-73) that returns the "forty five in a twenty five" proposal to PD2 for a reply.

A "questioning repeat" is a means by which a recipient can, among other things, check what he has heard or call attention to a speaker's mistake. The device here appears to be testing the "seriousness" of PD2's proposal. Rather than replying to the return-proposal, however, PD2 responds with a suggestion for a "twenty five dollar fine" (line 5), leaving the issue of the *charge* ("forty five in a twenty five") and turning to the *sentence.* Note the apparent strategy. DA3 has already described the original charge as "bankrupt," has indicated here he would be "happy" with the infraction charge, and has characterized it as something PD2 would "give" him. Reading these cues as an indication that the prosecutor is unsure of the strength of his case, PD2 can condition agreement to the charge on obtaining a favorable sentence.

However, the sentence proposal ("twenty five dollar fine," line 5) is followed by DA3's counterproposal of "a fifty dollar fine" (line 6). Then, PD2 reasserts his "twenty five dollar" offer (line 7), which he justifies by characterizing the "fifty dollars" as appropriate to "real misdemeanors" (line 8). This appeals to DA3's acknowledged uncertainty regarding the worth of the case and successfully induces further concessions from him, as we see when DA3 proposes a compromise of "thirty five including p.a." (line 9, the initials meaning "penalty assessment," a fee attached to some fines), which PD2 accepts (line 10).

We already know from the analysis of unilateral and bilateral patterns that attempts to compromise are not a necessary component of negotiation. To generalize from example (9), compromise is a phenomenon tenuously achieved as participants test each other's, and signal their own, willingness to trade concessions before actually doing so. At every point where concessions are elicited, there is the possibility of derailment. Finding an intermediate solution that is mutually acceptable requires substantial but delicate conversational work.

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3B. Delay. A Discourse System for Negotiation

Just as other decision modes can falter, attempts at compromise are not always successful. When they are not, the determination of a disposition can be postponed. The data provide only one case in this category, which results in a continuance. If it is possible to generalize from this one instance, a postponement occurring after a compromise attempt is similar to the bilateral (2B) postponements we examined in that the obstacle to resolution is not a debate over the guilt or innocence of the defendant but irreconcilable defense and prosecution views on what the charge or sentence should be.

On this note, it is not necessary to view the example of a 3B postponement, because no new information would be provided. On another note, however, it will be useful to examine this case. It was asserted, at the beginning of the paper, that the decision-making patterns (1A through 3B) comprise a discourse *system* for negotiation, and analysis of this case highlights the systemic nature of the patterns, as they are related to one another in an ordered fashion. The patterns and their interrelations are depicted in Figure 1.

Two notions, "opportunity" and "option," are central to this model. Each of the patterns, 1A, 2A, and 3A, describes an *opportunity* for a disposition decision in terms of (1) the statement of a position that the other can agree to and (2) the place that statement occupies relative to other proposals. Thus, if a prosecutor's or defender's proposal is the first one in the discussion, a unilateral opportunity for agreement by pattern 1A is present. If the proposal occurs after one party has already taken a position, a bilateral opportunity for agreement by pattern 2A is available. If neither party accepts the other's proposal, one side can move to an intermediate position and thereby open an opportunity for compromise, which is pattern 3A. Each opportunity is followed by the *option* of postponing the determination of the disposition (patterns 1B, 2B, 3B in Figure 1). In each case, the possibility that a given pattern will be the outcome depends on decisions to take or pass over the opportunities that are presented, or to exercise various options, according to contingencies that develop within the course of negotiations.

The specific case to be examined is that of Cliff Johnson, a sixty-one-year-old man who was found rummaging through a car and who was arrested by the police. Because the defendant was on probation at the time of his arrest, he was jailed to

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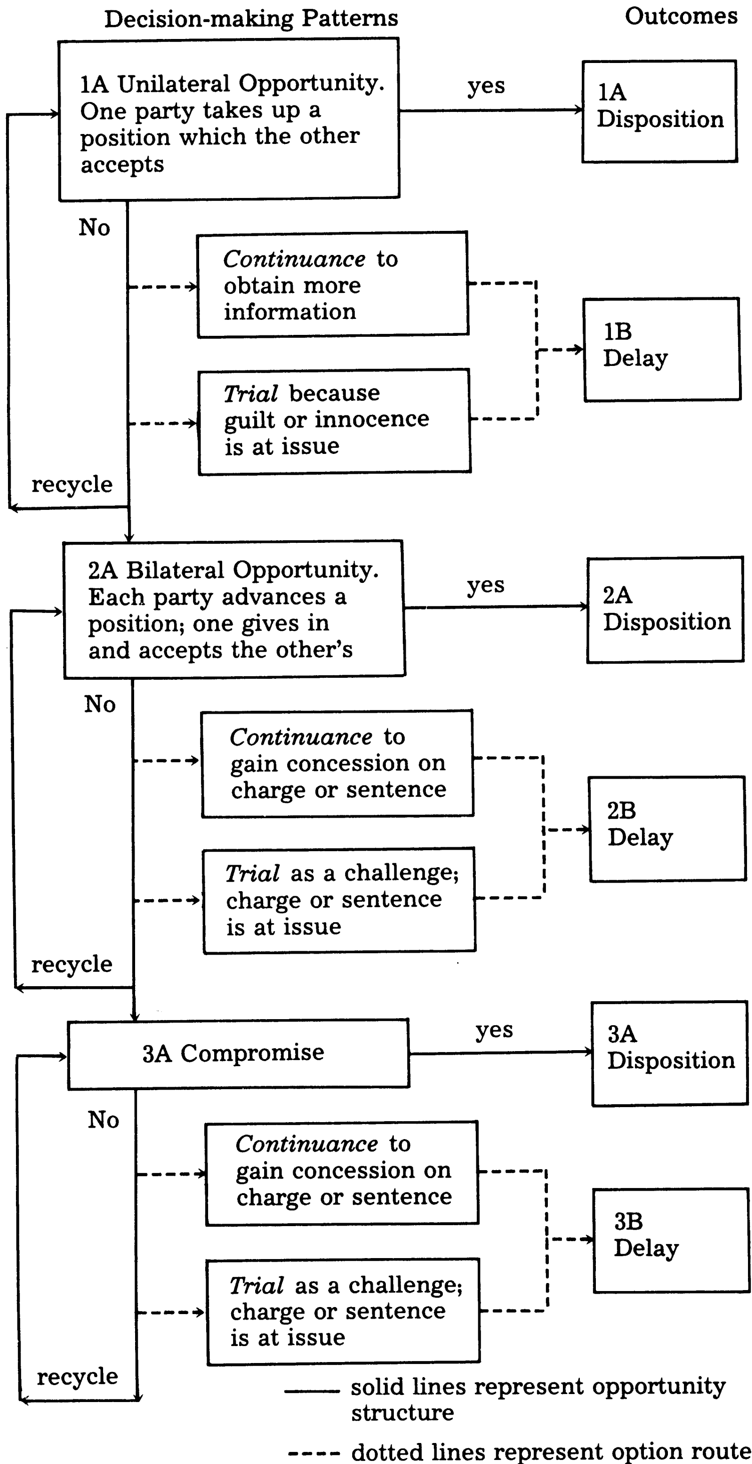
Figure 1. A Discourse System for Negotiation at the Pretrial Conference



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serve a thirty-five day suspended sentence resulting from the prior offense. In meeting with the DA at the pretrial and settlement conference, the PD mentioned that the "defendant is very frank about what he does" and admitted to getting caught in the act of stealing, although he was discovered before he actually removed anything from the car. Then:

(10a) 25.189 [Breaking or removing vehicle parts] (jury room)

1. DA3: I want some time on this
2. PD1: Oh well don't be too hard on him
3. DA3: How about three months
4. PD1: Nah that's too much
5. (4.0)
6. PD1: That's too much
7. DA3: How about four months with credit for
8. time served
9. PD1: How about uh, how about wiping it out
10. with forty five days
11. DA3: With credit for the time served? That
12. he's done already?
13. PD1: Yeah credit for the time he's been in

In line 3, DA3 makes a proposal for a three-month jail sentence. If PD1 had accepted the proposal, a decision would have been reached and, as in examples (1) and (2), the discussion could have been brought to a close. Instead, PD1 rejects the suggested sentence and assesses it as "too much" (line 4). That occasions a substantial silence (line 5), an indication that both parties are waiting to see who will take the next move. PD1, in line 6, again characterizes the proposal as "too much," and DA3 then proposes a slightly lower penalty (lines 7-8): "four months with credit for time served" would be four months minus the thirty-five days for the probation violation. Such a strategy is here considered as a *recycling* of the unilateral opportunity in that, although the proposing party had "come down" from his initial offer, the second party had not yet suggested an alternative course of action.

PD1 then responds with a proposal of his own, "forty five days" (lines 9-10). Following this, DA3 questions PD1's position (lines 11-12, in a possible display of "incredulity") and obtains a reply establishing that forty-five days would include "credit for the time served" (line 13). With these utterances (lines 9-13), then, a unilateral opportunity for agreeing on a disposition is passed. Furthermore, the option of a postponement (1B) is not invoked. Rather, each party takes up a position, and it is clear that there is a substantial discrepancy between them.

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One way the discrepancy can be eliminated is for one party to give up his own position and accept the other's, thus taking up a bilateral opportunity (pattern 2A; see examples 6 and 7). In this case, the discrepancy is preserved when the PD and DA take contrasting views of the defendant's character and activity. The following occurred immediately after line 13 of (10a):

(10b) 25.208

1. PD1: He's just an old codger that
2. DA3: Steals a lot
3. PD1: Yeah but you're not gonna be able to—
4. DA3: Yeah well the old codgers that steal a lot
5. are just as big of thieves as—
6. PD1: Uh he didn't steal anything in this one
7. though
8. DA3: Oh god knows he was trying

Given this sort of opposition, it would be difficult for either party to accept the other's position on the sentence, although they might have utilized the delay option (pattern 2B, see examples 7 and 8). The DA next presents an opportunity for compromise (3A):

(10c) 25.240

1. DA3: Uh I'll give you ninety days with credit for
2. time served
3. PD1: Nah that's no good

DA3's proposal (lines 1-2) is for one month less than his prior offer. This is a substantial reduction, since the sentence would be about a third shorter. Still, PD3 rejects the offer (line 3). Following this, DA3 argued he could "get more" jail time, PDl disagreed with this by arguing that it was "too much time," and the two negotiators discussed the defendant's record. The DA concluded that the record was not terribly significant. Then:

(10d) 25.300

1. DA3: What did I say? Three months for that,
2. ninety days
3. PD1: Give him forty five
4. DA3: Give him sixty
5. DA3: [C—c'mon sixty] [last offer]
6. PD1: [Oh come on Jeffrey] come [o::::n J—]
7. listen forty five, give him forty five and
8. credit for time served.
9. PD1: That ['s plenty] good
10. DA3: [Na::::::h]
11. PD1: Uh listen he didn't steal anything it isn't
12. tampering it's not a theft
13. DA3: It's a good burg is what it is, it's a good
14. auto burg

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In line 1, DA3 reasserts his suggestion of "three months," his first offer of compromise. PDl, however, counters that suggestion by reiterating his own prior recommendation of "forty five" days (line 3). Next, DA3 proposes "sixty" days (line 4), which is an intermediate position that recycles the opportunity for compromise.

However, in their subsequent overlapping turns, DA3 and PDl both make an appeal on behalf of their own positions: DA3, in line 5, indicates his "sixty" is a "last offer," while PDl, in line 6, issues pleadings ("come on Jeffrey, come on J—") and then repeats his proposed disposition (lines 7-8).[8] An assessment "that's plenty good" (line 9) is overlapped by DA3's rejection (line 10), and then PDl claims the defendant ". . . didn't steal anything," and that the act ". . . isn't tampering it's not a theft" (lines 11-12). But DA3 responds with a contrasting characterization of the case, "it's a good burg is what it is, it's a good auto burg" (lines 13-14). Thus, while the difference in sentence proposals diminishes to fifteen days, that discrepancy is maintained through successive reassertions of each party's position and opposing assessments of the case.[9]

To summarize, we have seen three segments in the negotiations regarding Johnson in which specific concrete prosecution and/or defense positions were exhibited. The prosecution proposed four different dispositions (three months, four months with credit for thirty-five days, ninety days with credit, and sixty days assumedly with credit). Each successive one demanded less time than the prior one. The defense, on the other hand, suggested one course of action (forty-five days with credit), a position held across the series of segments. Through this, three types of opportunity for settlement—unilateral (1A), bilateral (2A), and compromise (3A)—were presented, sometimes recycled, and ultimately passed over.

[8] Note that there is considerable competition for turn space here. PDl's first "come on Jeffrey" is overlapped by DA3's appeal "c—c'mon sixty" and is repeated, an instance of a "segmental adjustment," a way of signaling to the other party that the speaker is not dropping and the other party should (Jefferson and Schegloff, n.d.). The repeated appeal ("C'mon J—") is cut off just when DA3's next utterance, "last offer" (line 6), is completed. PDl then starts up a next utterance with an item, "listen," that pushes his repeated proposal until later in the turn. This may function to delay the substantive proposal long enough for PDl to determine whether DA3 would continue talking or drop out of overlap. Thus, PDl could ensure that his proposal would not be disrupted by simultaneous speech.

[9] One could speculate that the rather minimal difference in sentencing proposals is a significant barrier to resolving the case because the opposing positions of the PD and DA involve not just a question of punishment but also assessments of the defendant's moral character. In plea bargaining, the question of punishment is often subordinated to that of the essential morality of the defendant (Mather, 1973; Maynard, 1982a; Rosett and Cressey, 1976).

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Postponement options (trial, continuance) were neither posed nor exercised after opportunities 1A and 2A. However, a proposal for postponement did occur after the above attempts at a compromise (3A) were made:

(10e) 25.325
PD1: Well why don't we do this. Let's put it over 'til after the probation violation hearing . . . just put the thing over for a week . . .
DA3: I think it was coming up this Friday
PD1: Coming up this Friday
PD1: No okay put it on for Friday
DA3: Arright
PD1: Okay

In open court, the case was "continued" until Friday, the day of the probation violation hearing.

III. DISCUSSION

There are two main implications of the empirical analysis. The first has to do with the relationship between the outcomes of plea bargaining and the means by which they are achieved. The second concerns the way in which the discourse system described in Section II provides large numbers of negotiated dispositions.

A. Outcomes

Not all negotiated dispositions are bargained in the same way. Examining the different decision patterns yields some important information and suggests directions for future research.

Table 1 shows that many of the sample cases were settled simply by one party proposing a disposition and the other agreeing to it. Furthermore, in only a small number of cases was there a visible compromise. In most cases where the two sides advanced different positions this did not prompt proposals for an intermediate solution but instead simply raised the issue of which original proposal would be accepted. Thus, it is clear that settling cases by agreement is not the same as "compromise"; the overwhelming majority of cases settled at an initial hearing are resolved when the defense or prosecution agrees with the other's initially-stated position by taking up a unilateral or bilateral opportunity. In the literature on negotiation, this is considered to be a different bargaining game altogether, or at least a rare phenomenon (Ross, 1979: 149).

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Table 1. Cases Settled By Each Decision-Making Pattern

			Subtotal	Total
1A.	Unilateral opportunity: one party takes up a position which the other accepts			15
		Proposal by PD	9	
		Proposal by DA	6	
1B.	Delay determination of disposition			12
		Continuances	6	
		Trials	6	
2A.	Bilateral opportunity: each party advances a position; one gives up his position and accepts the other's			13
		Position advanced first	6	
		Position advanced second	7	
2B.	Delay determination of disposition			8
		Continuances	4	
		Trials	4	
3A.	Compromise			3
3B.	Delay determination of disposition (continuance)			1
		TOTAL		52

The received learning on negotiation is that one's first proposal should be an extreme position that will help define the boundaries of the dispute, but one should eventually move toward some middle ground.[10] In their investigation of felony plea bargaining, Eisenstein and Jacob (1977: 32) suggest, "in the course of negotiations, both parties are likely to move from their original positions toward a mutually acceptable outcome." This appears to be a rare situation in misdemeanor plea bargaining, if the evidence here is representative. Furthermore, Mather (1973: 198), who also studied a California court, suggests that felony plea bargaining is not dissimilar (most cases in Superior Court were "light" and "dead bang," i.e., not serious and settled with little haggling). Future research should explicitly investigate whether, and how frequently, each of the patterns identified here occurs in felony negotiations.

A general point is that when the ends of negotiational interaction are viewed in relation to the *means* by which they are achieved, the dichotomy between cases that are settled and

[10] In a review of experimental research, Rubin and Brown (1975: 267) report, "Bargainers achieved higher outcomes when they made extreme initial demands, coupled with gradual concessions, than when they made a large initial concession and remained firmly at that level."

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cases that are tried appears too simple. In the group in which dispositions are negotiated, three distinct decision-making patterns emerge. The differences among these patterns have not figured in any of the research that explores the influence of various offense- and offender-related characteristics on sentencing (Maynard, 1982a). Thus, another research goal is to determine whether there is systematic variation in the types of cases, defendants, and sentences associated with given decision-making patterns.

Finally, consider those negotiating sessions that result not in a disposition but in the delay occasioned by the granting of a continuance or the setting of a case for trial. Outcomes that postpone final determination also have different meanings and are reached by different paths. With *continuances* occurring after unilateral opportunities, delay is justified by the requesting party's need to get information relevant to a reply. Type 1B *trial* decisions arise when there is a true dispute over the guilt or innocence of the defendant. Delays occurring after bilateral or compromise opportunities are less concerned with either information-getting or the defendant's guilt. Rather, 2B and 3B continuances and trials are set because the defense and prosecution, assuming the defendant's guilt, refuse to retreat from their last-stated positions regarding the appropriate charge or sentence. Thus, these delays and trials are not ends in themselves but are used as bargaining strategies whose desired effect is to mitigate or enhance the penalty the defendant will receive.

B. Arranged Dispositions

In the sample of cases in this study, proposals for trials and continuances occur when neither party accepts the other's position—that is, after unilateral, bilateral, or compromise opportunities have been refused. Thus, postponement options do not appear as initial negotiating positions but as maneuvers employed after specific dispositions have been proposed. An implication of this is that even if a negotiator "wants" a trial or continuance, the request for delay must be presented as "no other choice"; i.e., one must make or hear some proposal for immediate settlement before such a course of action is broached and provide a reason that justifies the delay.

Stated differently, a *systemic* preference for a negotiated disposition is evidenced in the way that decision opportunities and options are regularly provided during the discourse that constitutes negotiation. Only after there have been an attempt

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or attempts to agree on a disposition are proposals for trials and continuances employed. Moreover, while achieving 2A and 3A dispositions requires the presentation of earlier decision opportunities,[11] delays are optionally proposed. This means they may be ignored as the full range of opportunities is explored (see example 10).

When the decision is to delay, the case usually will be discussed again, either when the continuance expires or on the eve of the trial. This means that opportunities for immediate disposition by agreement will once more be presented and will precede further requests for delay. Thus, there often are *rounds* of negotiation, and each round exerts systemic "pressure," by the way in which opportunities and options are ordered, for an arranged guilty plea. It is through such rounds that, in the fifty-two cases studied, dismissals or guilty pleas were ultimately obtained in forty-six.[12]

Consider, finally, that continuances and trials represent not only delay but the reliance on "formal" mechanisms for achieving an ultimate disposition. Continuances, at the very least, keep the cases in the court system and allow for pretrial motions to be filed. Trials may have to be postponed until the court can make room for them, and they represent the ultimate in court ceremony. At the level of discourse, trials and continuances occur less often than agreed-upon dispositions because of the structure of negotiation. That structure puts a priority on the here-and-now informal resolution of cases and deters delay and formal modes of decision-making by the patterned ways that proposals for these outcomes are presented.

IV. CONCLUSION

We can now relate this system of negotiation to exchange approaches to plea bargaining. It may be that prosecution and

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[11] That is, for a bilateral pattern to be realized, the unilateral opportunity must have been presented. For a compromise to be achieved, both unilateral and bilateral opportunities must have been attempted.

[12] The focus here has been on plea bargaining discourse and the way that dispositions are arrived at in that discourse. Another question raised by the large number of cases disposed of without trial is why defendants accept the results of their attorneys' negotiations. This issue is not addressed here, but others have argued that, in addition to obtaining perceived sentencing concessions by pleading guilty, defendants desire to "return to the streets" as fast as possible (Buckle and Buckle, 1977: 153) and to minimize the time of the dispositional process, which is in itself a certain punishment (Feeley, 1979). Pleading not guilty prolongs the disposition of the case. Rosett and Cressey (1976: 135) discuss the institutional, organizational, and tacit features of the court that "coerce" defendants into pleading guilty.

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defense can and do trade real benefits by engaging in plea bargaining. But their exchange is mediated by a discourse system in which routine practices, rather than rational calculations, are the central phenomena (cf. Collins, 1981). The taken-for-granted mechanics of negotiation exert a pressure for guilty pleas that is independent of whatever reason the participants may have for agreeing to the exchange. This does not deny the existence of such reasons, but it does imply the importance of empirical inquiry into those structures of interaction that accommodate parties' practical interests and motivations.

This study examined the ways in which decisions are a product of direct interaction, and it shows how trial options are devalued by the system of discourse employed in negotiation. It has also identified distinct patterns of negotiation and a mix of bargaining outcomes that any comprehensive theory of case processing will need to address. My general recommendation is that we attend to the ways in which phenomenal aspects of court processes, such as disposition decisions, are outcomes of courtroom actors' everyday routines, including their organized discourse practices (Garfinkel, 1967; Giddens, 1979). In other words, the courtroom "subculture" needs to be discussed not only in terms of beliefs, attitudes, interests, and other cognitive concepts but also as a set of activities or skills that are involved in its ongoing production and reproduction.

APPENDIX
TRANSCRIBING CONVENTIONS

1. Silences A: And I'm not used to it (1.4) B: Yeah me neither	Numbers in parentheses indicate elapsed time in seconds.
2. Cut-off A: I told them that there was—well there is a job opening	The dash indicates the prior word or sound was cut off or halted.
3. Stressing A: That's where I REALLY want to go	Capital letters indicate various forms of stressing, and may involve pitch and/or volume.
4. Overlapping talk A: Oh you do? R[eally] B: [Um hmm]	A left-hand bracket marks the point of overlap, while a right-hand bracket indicates where overlapping talk ends.

5. Stretches

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B: I did oka::y	Colon(s) indicate the prior syllable is prolonged. The more colons there are, the longer the prolongation.
6. Ellipses	
A: Are they?	Ellipses indicate where part of
B: Uh huh they are because . . .	an utterance is left out of the transcript.
7. Double parentheses	
A: I gave him a six forty seven ((disorderly conduct)).	Materials in double parentheses are explanatory and not part of actual talk. "Six forty seven" is the penal code number for disorderly conduct.

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