

MORAL MEANING IN FELONY JURY TRIALS: A DRAMATURGIC PERSPECTIVE

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INTRODUCTION

Sociologists are only now beginning the vast amount of research required to determine through study of social usage the meanings of morality. Douglas (1970 9) has called for systematic participant observation studies of moral meaning in use.

This paper involves a systematic participant observation study of moral meaning in use in the jury trial. The study design recognizes the principle of the contextual determination of meaning. This incorporates the idea that the concrete meaning of anything is adequately given to actors only when its concrete or situated context is provided (Douglas 1967 235). Rather than focusing on moral experiences in the abstract, I focus on them as firmly tied to their social context. I am interested in ongoing everyday use of morality, and in morality as process rather than as structure.

DEFINING MORAL & MORALITY

We must discuss what is meant by the terms *moral* and *morality*. Definition is difficult because morality is such a basic term that it is hard to find more basic terms for the definition. Many articles embracing the dramaturgic perspective deal with matters of explicitly moral nature without ever setting forth what these terms mean (Brisset & Edgley 1975).

The dictionary definition is:

MORAL— a: of or relating to principles of right or wrong in behavior; **ETHICAL** b: expressing or teaching a conception of right behavior. c: conforming to a standard of right behavior. d: sanctioned by or operative on one's conscience or ethical judgment. e: capable of right or wrong action.

The definition of the term *morality* shows it to be dependent on the definition of *moral*: **MORALITY**— 1a: a moral discourse, statement or lesson. b: a literary or other imaginative work teaching a moral lesson. 2a: a doctrine or system of morals. b: particular moral principles or rules of conduct. 3: conformity to ideals of right human conduct 4: moral conduct.

Sociologists generally have chosen not to deal directly in research or theory with morality

or immorality and related concepts applicable in everyday life. They choose instead to follow "... the positivist practice of substituting phenomena of their own construction for those of common sense everyday life, and then studying their own ad hoc phenomena as if these constituted reality (Douglas 1970). They have generally substituted *values* or *mores* for the term *morality* in its usual sense of right versus wrong. Though this substitution is made to avoid the complexity and bias of common sense terms, it has simply created another level of complexity. Wanting their studies to be ultimately related to everyday life, sociologists have "... had to shift back and forth between their ad hoc phenomena and the everyday phenomena constructing post hoc systems of translating devices.. " (Douglas 1970 8). I will avoid these terminological problems and keep this study closely related to the common sense meaning of everyday life.

The early research of Hartshorne and May (1928) on morality yielded some findings of great interest. They defined moral character as a set of culturally defined virtues, such as honesty, which could be checked by observing a child's ability to resist temptation to break a rule by cheating when the chance of detection or punishment is small. They found that the most influential factors determining resistance to temptation to disobey or cheat were *situational factors* rather than some fixed individual moral character trait of honesty. Thus, moral behavior is determined by situational factors rather than by internal disposition of conscience or character.

In an essay called "Fragments on Ethics" Mead said: "In moral judgments we have to work out a social hypothesis, and one never can do it simply from his own point of view. We have to look at it from the point of view of a social situation." (Mead 1962 387) I certainly concur with this situational emphasis in the study of moral meanings. Since the purpose is to see what is meant by the terms *moral* and *morality*, such situational emphasis leads me to accept Wittgenstein's edict that the meaning of language is provided by its use.

I take morality as a general reference to right or wrong behavior, and use these terms as sensitizing instruments. Blumer (1970) advocates such usage of concepts and suggests referring to them as *sensitizing concepts*. As such, these terms are used to give a general sense of reference and guidance in approaching empirical cases. Though lacking a precise reference which allows clearcut identification, they provide a general sense of what is relevant.

CRIMINAL TRIALS

Our legal system is vitally concerned with the assignment of moral meaning. Here we will focus on criminal proceedings, where moral overtones and meanings are most apparent. Douglas (1970) asserts that each actor gains in moral worth to the extent that others lose in moral worth. Thus moral evaluation becomes a zero-sum game. There is a necessary dependency between moral opposites.

Burke (1969 21) shows why this is true: to tell what something is, one must refer to something that it is not. One tells what a thing is by placing it in terms of something else. Douglas agrees, arguing that as a result of this necessary linkage in social meanings between good and evil: "...we will always have evil at the same time that - and precisely because - we have good." (Douglas 1970 4). It follows then that the stronger the belief in good, the stronger will be the belief in evil.

This explains why people choose to construct images of deviants and criminals. Labeling others as deviant enables one to see oneself as nondeviant. It also helps explain why they devise official means by the criminal justice system to stigmatize certain persons as deviants and as criminals. The stigmatization process illustrates what Garfinkel (1956) labeled a *status degradation ceremony*. He asserts that these ceremonies fall within the scope of the sociology of moral indignation, and that the paradigm of moral indignation is a form of public denunciation. Degradation ceremonies serve to dramatize evil. The court and its officers have a monopoly on degradation ceremonies.

The courtroom criminal trial is a degradation ceremony par excellence. The state invokes moral indignation for the ritual destruction of the moral identity of the accused. Despite the

myth of the presumption of innocence until guilt is proved, the defendant's moral identity has already been severely damaged by the accusations. The defendant, aided by attorneys and others enlisted to aid the defense must try to prevent further damage to the defendant's moral identity, and must try to undo some of the damage already suffered.

A variety of interpretations are possible for any behavior. The state publicly subscribes to an account of the action that is very damning to the defendant's moral identity. This is why the formal accusation was made, and the trial initiated. The defendant must try to provide an account for the behavior in question that will prove to be more acceptable than the motivation ascribed to the defendant by the state. He tries to provide an account that will supersede the state's version and vitiate its negative effect. Many defendants are unfamiliar with the type of account or motive that will be acceptable in court. This may be because their social position places them outside the mainstream of legitimated morality. Or it could arise from unfamiliarity with our legal system. Here it is the defense attorney's task to legitimize the account given in court. Thus the defense attorney, under the guise of explaining the law, can coax the client to give a version of the crime that will allow him to claim that he was not responsible for his actions (Travers 1959).

My research dealt with the motives and accounts cited by both sides in the process of the construction of moral identities in the criminal trial. I studied the criminal trial process in felony cases involving jury trials. In a jury trial a courtroom observer witnesses the presentations made by both sides, and the observer has as much background information as do the jurors. The jury members officially decide questions as to the defendant's true moral identity. The observer has the same information as those passing moral judgment. As an observer at the trial, I concentrated on the construction of moral meaning by both sides. The central question in my research was: How is the defendant's moral identity constructed? I observed what the actors did, how they did it, and how other actors responded to the actions, using the dramaturgic perspective.

MORAL MEANING IN COURT

The dramaturgic perspective of meaning reveals three widely accepted principles (Becker 1975; Berger 1963; Stone 1962; Strauss 1964; Travisano 1975). 1) Meaning is not a given; it is not seen as being stable and dependable. 2) Meaning is created by people and the meaning of any object is constantly being re-established by behavior toward that object. 3) Meaning is seen as emerging from the behavioral consensus between human actors, and thus, is vitally linked to behavior and interaction.

In felony jury trials there are diverse persons trying to attach meaning to the behavior of the defendant. Not only do they wish to make the defendant's behavior meaningful, they wish to make it *morally* meaningful, with clearly negative overtones. Those representing the state generally try to establish that the defendant did a bad thing, or more generally that the defendant is a bad person. Those representing the defendant present morally positive, or at least morally neutral meaning for validation.

Basically, it is the meaning of experiences that constitutes their reality, and the process of establishing meaning in the courtroom is part of the process of constructing reality. The goal of both sides at the trial is to have the meaning they wish to assign to the defendant's behavior consensually validated by the jury and other actors in the courtroom drama. Since the meanings subscribed to by the two sides are mutually contradictory, and at least discrepant, it is usually impossible for both versions to be consensually validated by the jury, judge, press, and spectators. This results in a situation in which the defense and the state must compete in trying to convince others to validate the meaning which they seek to assign to the defendant's action. This is the basis of the adversarial system of justice.

This version of meaning building is oversimplified because there are often parties other than direct representatives of the state and the defense who have a vested interest in the validation of a particular meaning for certain of the events in question. The situation is further complicated by the fact that either the state or the defense may subscribe to more than one version of the meaning of

the events. One side may subscribe to one version, then encounter difficulties selling this version, and end by modifying or repudiating it. Or a side may simultaneously offer several different meanings for the defendant's actions. It should be noted that since no acts take place in a social void, it is often necessary to offer and have accepted meanings for the actions of persons other than the defendant in order to make the advocated meaning of the defendant's action viable. If the defense contends that the defendant killed in self-defense, they must first convince the jurors that the victim meant to harm the defendant.

In order to establish concrete meaning a situated context must be provided, according to the principle of contextual determination of meaning. In a trial, both sides try to do this. Both the state and the defense have a vested interest in establishing a particular definition of the situation. Sometimes, contradictory "facts" about the situation are elicited from witnesses while in others, the "facts" or the situation are agreed on, but different interpretations involving moral meanings are said to apply. Definition of the situation is at the heart of the problem of establishing moral meaning.

NOW, THEN, AND THE FUTURE

Goffman (1959) focuses discussion on an individual in the presence of others, and notes the process whereby they seek information about each other, bringing into play information already acquired in order to help define the immediate situation. Such a definition of the situation is seen as essential to help all parties know what to expect of one another. Individuals try to manage the impression that they make to gain some control over the response of others.

Goffman stresses the idea that a projected definition of the situation is being offered and its acceptance is being urged. The concept of a team can be applied to such situations. A team refers to a set of individuals whose cooperation is required for a given definition of the situation to be maintained (Goffman 1959 104). In the courtroom, where the defense team cooperates to establish and maintain one definition of the situation, a blameless or at least technically innocent defendant struggles for acquittal. The state

team may be working to establish and maintain quite a different definition of the situation. The defense presents a morally acceptable view of the defendant while the state portrays the defendant as immoral. The jury must then synthesize these opposing views, and assign moral meaning to the defendant by their verdict.

But Goffman focuses on definition of the present situation, one of face-to-face interaction. He does consider bits of information from the past, but these are used to define the current situation. While individuals in court do have to define the current situation, a basic goal of the trial is to arrive at a consensually validated definition of the situation that occurred at a time and place when the members of the jury were not present, and were not in face-to-face interaction with the defendant. This problem demands consideration of added dimensions of time. McHugh (1968) stresses the importance of time and the idea of building meaning for past situations through the concept of *emergence*.

Emergence concerns the temporal dimension of activity, wherein past, present, and the future are analytically distinct, and at the same time, inextricable, for they are not correspondingly distinct in their influence upon concrete behavior. (McHugh 1968 24)

Of import here is the fact that an event is always becoming and never complete. Such an event is continuously achieved as we reconstruct past situations. In the courtroom competing interests strive to restructure the past along lines that will result in future programs which they endorse. The defense may project a definition of the alleged criminal action as an unavoidable accident. The defendant is therefore not responsible, and should not now be convicted or punished for such actions. The defense claims that the defendant is not morally culpable.

The importance lies not in whether the past action occurred as depicted, but rather in how it is called forth to make the present meaningful. This would support Goffman's emphasis on the use of the past merely as an aid in defining the present situation. However, in the courtroom, much emphasis is placed on whether the past occurred as depicted by the defense or by the prosecution. Since the depiction of past events is often the center of

controversy, the reconstruction is an important focus of interest. It is only after a definition of events in the past has been consensually validated by the jury that meaning of the present is sufficiently clear to allow the jury to consider future events. It is only after it has been decided that the defendant's action was criminal that it is clear that we are dealing with a criminal and that it is time to decide on an appropriate measure of punishment. The jury is presented with several versions of past events. It officially defines these past events using one or a combination of the presented versions. Subsequent action is based on the definition of the past situation arrived at by the jury. This well illustrates the Thomas theorem: in the court, situations defined from the past are now defined as real, and are assuredly real in their consequences (Thomas 1928).

Basically, the jury, the judge, and others present in the courtroom must concurrently define several different situations. The present situation at the trial must be defined. This is a continuous process, since the definition of the current situation is always subject to change. At the same time, one or several situations occurring at various times in the past are also being defined, negotiated and redefined. All of this is done with an eye to possible future programs of action. The multiple awareness of the current situation, one of several past situations and possible future situations is crucial in understanding the trial process. The idea of such *multiple awareness* is extremely useful in understanding the interaction process in court during felony jury trials.

NOW

The courtroom situation must be defined. The immediate present can be conceived as a razor's edge constantly moving forward. The present moment can never be accurately captured because as soon as one turns one's thoughts to it, it becomes the moment just past. This narrow view of the present *now* is too ephemeral to be useful in dealing with the situation of everyday life. In the courtroom experience during a trial, *now* is used more loosely, and can be considered in at least two general ways.

First, *now* can be considered to be the trial itself. The trial is seen as a unified event taking place in the present. That the trial may last

a week or more does not preclude considering it a unified event occurring in an elongated present – now. Participants often contribute to this view by trying to maintain a consistent image for the duration. This is especially true for the defendant, who often wears the same clothes and maintains the same basic appearance throughout the trial. The manner in which defendants dress is linked to their presentation of self and the moral identity they wish to establish.

It might seem that the basic definition of the situation during a trial is generally agreed upon, and is fairly consistent over various different criminal cases. This is so because trials are generally conceded to be formal proceedings where interaction is strictly regulated by the rules of the court. Built into these rules is an enforced respect for the judge, who is actually referred to as “the court.” This enforced respect for the judge is signaled by the instruction to everyone in the courtroom to rise when the judge enters or leaves. The court functionaries, such as the judge, attorneys, bailiff, and recorder know the rules for interaction and usually guide witnesses and defendants through their more fleeting appearances.

It can be considered a moral obligation for participants and spectators to accept the official definition of the trial process. However, the meaning of the ongoing situation in court must be continuously re-established. It is based on behavioral consensus, and as such is unstable and vulnerable. In court, as elsewhere, we can find evidence of the fragility of meaning, and hence of the subtype, *moral meaning*. The entire definition of the situation in court can be shaken when one or several of the participants fail to validate the generally accepted meaning. Any participant can disrupt the definition of the situation in court.

In a second sense, *now* can be used to refer to the *status quo* in other areas. It can denote the existing state of affairs in various aspects of the defendant's life, and the setting where the alleged crime occurred. Thus if the defendant was unemployed at the time of the crime, he may be working full time *now*. The defendant certainly is not working during attendance at the trial. The point is that the defendant's life outside the courtroom setting and during the time of the trial involved having a

full-time job.

It may not always be possible to distinguish empirically these two uses of the concept *now*. Consider a man who previously wore his hair in a long ponytail. If he gets a crew cut just before the trial, this new hair style will be part of the impression he makes in the courtroom. It will also be a central part of his appearance and the impression he makes on people in other settings during this period. One of the basic uses of *now*, whatever the sense of employment, is for comparison to the state of affairs extant at some previous time: *then*.

COMPARING NOW AND THEN

We have noted that a basic goal of the trial, besides agreeing on a definition of the in-court situation, is to arrive at a consensually validated definition of past situations. During the trial, competing interest groups strive to reconstruct the past, *then* along lines that will lead to the trial outcome which they advocate. One commonly used technique to establish meaning at the trial is to compare the situation now with the situation then. This comparison may be used to support the endorsed definitions and meanings of either the current or the past situation. The technique is used by both the state and the defense.

We will now consider elements of the situation that may be cited to compare *now* and *then*. The purpose is to show how this technique is used to build meaning, especially, moral meaning. The term *moral* is used in the general sense to connote right or wrong action. In each comparison of *now* and *then* it is relevant to ask who is doing the comparison, to what end, and to emphasize the meaning of which situation. We have distinguished between *now* referring to courtroom proceedings, and *now* referring generally to the status quo in other matters at the present time. We will use this distinction when citing the elements of the situation to be compared.

First, consider comparisons drawn between the courtroom situation *now* and the situation back *then*. It is in the face-to-face situation that the other is fully real, while all other forms of relating to the other are in varying degrees, remote (Berger & Luckman 1966 29). The implications of this must be considered in the courtroom situation. It is possible that the well-behaved and neatly dressed defen-

dant in the courtroom may seem more real to the jury than the violent or evil character that witnesses and the prosecutor describe. The defendant now present in court often bears little resemblance to the defendant as described to those present *then* at the time of the alleged offense. This seems to indicate that it is the prosecution that most often calls up elements of comparison in order to contrast the courtroom situation with the situation at the time of the alleged criminal action. There is a moral overtone inherent in such comparisons.

Physical appearance may be compared across the two situations. Often is it the physical appearance of the defendant that is at issue. In this instance it is usually the prosecutor who is attempting to show that the defendant's appearance at the time of the alleged crime was very different from the defendant's appearance now in court. This is because the defense attorneys can have the defendant dress in a manner consistent with the moral image they intend to present. They generally do not have to contest their client's courtroom appearance.

It is not only the defendant's appearance in court that is compared to that of earlier occasions. The appearance of a victim may also be the subject of such a *now-then* comparison. In the case of the victim it is often the prosecutor who planned, or is content with the victim's appearance in the courtroom while it is the defense who may contrast this appearance with that of the victim at the time of the alleged offense. In a rape case the victim was a nursing student who appeared in court in her crisp white nursing uniform, wearing thick glasses, with her hair pulled back severely into a ponytail. During closing arguments the defense attorney pointed out that on the night in question, the alleged victim had been in her room nude, and had started to paint before the arrival of the defendant. The defense was grounded in an attack on the propriety and morality of the victim.

Statements made from the stand during the trial may be compared to statements made by the same person at the time of the alleged crime. Statements are usually taken by the police shortly after an alleged offense. The statements made in court may be compared with the witness' statements at the time of the

crime in an effort by either the defense or the state to impeach the witness' current testimony and decrease its impact on the jury and other audiences. This is done when the statement made from the stand does not corroborate, or actually contradicts the version of the situation *then* which an attorney is trying to build.

The two sides do not consistently support the validity of statements made at the time of the incident when compared to statements made in court. The parties at a trial generally take a very pragmatic approach supporting and making a case for the validity of those statements which most nearly support the definition of the situation which they advocate. The defense may challenge the validity of the defendant's statements to police immediately following the alleged crime by having the defendant testify to being under duress, or not having been advised about constitutional rights.

Since a distinction was made between *now*, referring to affairs in the courtroom, and *now* referring more generally to the status quo in other matters at present, we should also consider some of the comparisons that can be drawn between *now* in the more general sense of the status quo and the status quo *then* at the time of the event in question.

Finances may be the subject of such a comparison. Consider the case in which the defendant was unemployed at the time of the robbery of a convenience store, but had since received a grant to go to upholstery school. In this case, it is the defense that makes the comparison since the present situation compares favorably to that in the past. Using such an approach is actually looking to the future, since the inference is made that the individual now has a recourse and may stay out of trouble in the future.

These examples are merely illustrative. While I have been referring to *comparisons* between *now* and *then*, most of the examples have actually involved the *contrasting* of *now* and *then* by one side or the other to support the definitions and moral meanings of the situation, both current and past, which they are trying to construct. We must note that some comparisons do involve a claim of consistency across the past and present situations. This occurs when the defense maintains

that the alleged crime was in fact an unfortunate accident that was unavoidable. Such a contention was made in a case involving a couple charged with injuring their infant son after his death. The defense held that the child vomited and choked on the vomitus, which caused his death. The defense contended that this sort of accident occurs even when a child is being cared for in the hospital nursery. Thus, since this was an accident, the parents were defined as morally blameless both then and now.

At this point it becomes clear that this still represents an oversimplified conception of the process of building meaning in court. This is so because the foregoing refers to the situation *then* as a single entity to be considered and defined during the trial. Such is often not the case. Since time is a continuous variable, there are infinitely many different *thens* which could be intended. While this is not done in practice, it is true that there are often numerous different *thens* whose moral meanings need agreement to permit a jury's verdict.

MULTIPLE THENS

It may be that situations occurring at discrete times in the past are being compared, as Time 1, Time 2, and Time 3. In the case of the injury of the child, the doctor on duty in the hospital emergency room when the child was brought in testified that he weighed six pounds seven ounces at death. This doctor also testified that the hospital records showed that this child had weighed seven pounds eight ounces when born. Here, two distinct times in the past are being considered: the time of the child's birth and the time of his death, four months later. The state compared the weight of the child across these two past situations and contended that the fact that the child weighed less at death than at his birth four months earlier showed the parents' criminal neglect and immorality.

In some cases one side may strive to restrict the consideration of past events to one particular *then*, the time of the alleged offense. The other side may wish to introduce evidence describing and defining situations that occurred at other times in the past. In fact, the situation is not simply one in which one side wants to restrict consideration to just one *then* while the other side wants to consider other past

situations. Each side wants to get in discussion of those past situations which can be construed as supporting their theory of the moral meanings involved in the case. They want to discuss those past situations that are consistent with and support their definition of the situation at the actual time of the alleged offense, and that seem to support their definition of the situation *now*. They try to block discussion of any situation that does not support the moral meanings they are advocating for such situations.

Such a process is obviously an exercise in information control. The bank robbery trial of Patricia Hearst clearly illustrates how each side struggles to present those past situations consistent with their theory of the case, and to suppress those that are inconsistent. It is obvious that much of the testimony in the Hearst case and the disagreement between the state and the defense centered on the question of the moral identity of the defendant. The state strove to depict the defendant as an enthusiastic and voluntary bandit and a willing convert to terrorism – an unacceptable moral identity. The defense sought to depict the defendant as a captive, frightened kidnap victim struggling for survival – a blameless moral identity. There was a very selective use of *thens* by the two sides. The defense sought to bring in testimony regarding past situations that tended to support the moral view of the defendant which they were constructing, and tried to suppress any mention of those situations that seemed to contradict this image. The state likewise tended to select those past situations supporting their theory of the moral meaning of the case, and tried to suppress seemingly discrepant past situations.

IN THE FUTURE

There are various definitions of possible future situations. Not surprisingly, consensual validation of future situations can be instrumental in effecting the moral meaning of present and past situations. In one sense the entire trial is geared to the future in an attempt to determine what should happen to the defendant. It is evident that different futures are usually envisioned by different parties at the trial. During the course of the trial, however, a party may find it necessary to modify the future situation that it endorses.

Generally, the state endorses a definition of the future with the defendant as a convicted felon who receives punishment. The defense endorses a definition of the future with the defendant either acquitted of the charges, or if convicted, placed on probation or given a minimal sentence. The question of the possible range of punishment for the offense charged usually arises during voir dire when the attorneys ask jurors if they could consider the full range of punishment allowable under the law. The prosecutor usually asks jurors if they could conceivably give the maximum allowable, while the defense asks if they could conceivably give the minimum allowable. Jurors who acknowledge that they cannot consider the full range of punishment are usually dismissed.

This procedure is consistent with the state's version of the future, since they see the defendant as criminal and immoral, and they seek the maximum level of punishment. For the defense this presents a dilemma. The defense often maintains that the defendant is morally innocent, and should be acquitted. Yet at this phase of the trial, the defense must ask if the jurors could consider probation or short prison terms, if the defendant were to be convicted. They do this to exclude jurors who could not give lighter sentences. This puts the defense attorney in the position of saying: "My client is not guilty, but if you decide on conviction, could you consider a minimal sentence?" The attorney must admit that there is a chance of a guilty verdict which may lead some jurors to think that the defendant indeed may be guilty.

The futures depicted may vary by the phase of the trial. During the guilt phase, the state usually maintains that the defendant is guilty and should be convicted. The defense maintains that the defendant is innocent and should be acquitted. But here again there are problems of consistency. The jury may have the option of acquitting, or of convicting the defendant of one of several offenses. In cases with such multiple conviction options both the state and the defense may have trouble maintaining consistency. The defense has the main dilemma. The state may consistently maintain that the defendant is guilty and morally to blame, and argue for a conviction on the maximum charge while conceding that the jury

may choose to convict on a lesser charge. The defense must argue that the defendant is innocent and morally blameless, but if the defendant is determined to be guilty, then the jury should convict on one of the lesser charges.

After the guilt phase of the trial the jury decides the question of guilt or innocence. If the defendant is acquitted, the defense view of the future is validated, and the state has no recourse – the trial is ended. But if the defendant is convicted on at least one charge, the trial goes on to the punishment phase. This presents yet another dilemma for the defense. At this point they must modify their version of the future. The defendant is now a convicted felon with a morally unacceptable identity. The defense has not been able to salvage a moral identity for the defendant. During the punishment phase of the trial the defense generally tries to convince the jury to endorse a definition of the future situation that includes probation or a minimal prison sentence for the defendant. Having failed to avoid punishment, the defense efforts shift to minimizing punishment. The state is faced with no such dilemma. The jury has thus far validated their program for the future, and they may continue the same line of prosecution, pressing for the sentence they advocate.

Another question that arises when discussing possible future situations is: "Whose future is being considered?" While it is obvious that the defendant's future is at issue, the futures of the victim and of society may also be considered. The defense often places more emphasis on the defendant's future, pointing out some change in the defendant's life that indicates that such an offense will not recur. If there is family support for the defendant, the defense will often put several family members on the witness stand to testify that they are willing to help the defendant, perhaps with a place to live, a job, and emotional support. This would fulfill the conditions of probation. The defense may build sympathy indirectly for the defendant's family in an attempt to secure a light sentence. Direct solicitation of sympathy is not allowed.

The state, on the other hand, is more likely to look at the future of other parties. The state may cite the altered future of the victim and attribute this future to the defendant's actions.

The state is also likely to broaden the scope of the discussion and talk about the future of society. This generally leads to a discussion of the safety of society and of the jury's moral obligation to protect society. The state may point out that at least three different ways in which a long prison term protects society. 1) In prison the defendant will not be able to repeat this, or commit new crimes. 2) A long prison term may serve to deter the defendant. 3) A long prison term for the defendant may serve to deter others in society who may be contemplating such an offense.

The defense generally does not take such an expansive perspective when considering the future. However, we must note that when the defense indicates that the defendant is non-violent or harmless, or will not commit the offense again, they are implicitly considering the future of the society and asserting that the defendant is not a threat in the future. The argument may be made that the defendant, though with some moral defects, does not pose a threat to society. Or the defense may argue that since the time of the crime, the defendant has experienced some form of moral regeneration as a result of treatment. Thus, it seems that in the process of envisioning different possible futures, the state tends to emphasize the protection of potential victims in society, while the defense focuses narrowly on the protection of the defendant.

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