Talk in Institutions

Talk in Institutions:
A LANSI Volume

Edited by

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and Hansun Zhang Waring

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TO HZW: SCHOLAR, MENTOR, FRIEND.
THANK YOU FOR THE QUESTIONS
AND THE GUIDANCE IN ANSWERING THEM.
CMJ & CDB

TABLE OF CONTENTS

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CHAPTER ONE

INTRODUCTION

CHRISTINE M. JACKNICK, CATHERINE BOX
AND HANSUN ZHANG WARING

Language and social interaction is a vibrant area of inquiry with numerous journals devoted to its study. Although well represented at major international conferences, it rarely constitutes the focus of an entire conference. LANSI (The Language and Social Interaction Working Group) is one of the few exceptions. This volume brings together a collection of papers that began as presentations and ensuing dialogues at the first two LANSI conferences, providing a snapshot and broad sampling of current research in a variety of institutional contexts such as jury deliberations, educational settings, medical interaction, and service encounters.

LANSI

Driven by a long-standing desire to create an "agora" for language and social interaction researchers on the East Coast of the United States, Hansun Zhang Waring, Associate Professor of Applied Linguistics and TESOL at Teachers College, Columbia University, founded LANSI in 2010. Sponsored by the program in Applied Linguistics and TESOL, LANSI provides an opportunity for students and scholars in the greater New York City area to jointly build their analytical repertoire via mutual engagement over time. Through monthly data sessions held at Teachers College devoted to the meticulous examination of audio/video recorded data, participants find a safe house to flex their analytical muscles in a collaborative environment, where budding analysts learn the ropes of closely reading transcripts of naturally-occurring interaction, and all benefit from the multiple perspectives presented and mulled over.

From the outset, Hansun also envisioned an international conference as part of the LANSI infrastructure. Indeed, as the regular data sessions thrived, interest grew in creating a forum for language and social interaction researchers not just from the immediate region, but from the worldwide research community. The first meeting of LANSI was held in October 2011, co-chaired by Hansun Zhang Waring, Drew Fagan, and Sarah Creider. With Anita Pomerantz and Joan Kelly Hall as the inaugural plenary speakers, the conference was received with great enthusiasm by students and scholars alike. Researchers from all over the world gravitated towards the intimate one-room environment, where substantive dialogs flowed and flourished. Energized by the momentum of the inaugural conference, the three of us co-chaired the second LANSI meeting the following year, with Irene Koshik and Timothy Koschmann as plenary speakers. With that, we reached a turning point —LANSI's status as an annual conference became official. Presenters at LANSI approach the study of language and social interaction from a variety of analytic perspectives, including conversation analysis, critical discourse analysis, interactional sociolinguistics, ethnography, etc., with data from contexts as diverse as education, family, medical, and emergency talk. What binds us is a common interest in examining *language in use*.

The chapters in this volume report on research presented at LANSI, and in particular, represent the robust area of talk in institutions. Research on language use in institutions has been approached from a variety of perspectives, but one methodological framework of particular note has been conversation analysis (henceforth CA) (see ten Have 2007 for an introduction to CA as a methodology), which informs many of the chapters in this volume. CA is one of several approaches to the analysis of discourse, though some would argue that it has become the "dominant" approach to the study of talk in interaction (Stivers and Sidnell 2013, 1). CA begins with an assumption of the orderliness of talk, and the analysis proceeds to uncover the construction of that social order. Recently, applied CA on institutional talk has begun to direct more attention to implications for practice (cf. Antaki 2011), and several of the chapters in this volume likewise show an interest in informing professional practice.

Overview of the volume

The majority of the research included in this volume represents four major areas of institutional discourse: legal discourse, interaction in educational settings, medical interaction, and service encounters, with

individual chapters highlighting the multiplicity of contexts and approaches.

While institutional talk typically features official institutional representatives, the first data chapter showcases the unique situation of lay individuals interacting in an institutional context. Using documentary footage of a jury deliberation, Anita Pomerantz and Robert E. Sanders demonstrate how jurors draw on models or categories of persons as they discuss sentencing. Language in the legal system has been a site of research inquiry for many years, though due to the non-public nature of their work, talk among juries has been studied less often than courtroom discourse (Drew 1992) or informal court proceedings (Atkinson 1992). Of the few studies that exist of jury deliberations, many focus on mock juries, because of the difficulty of gaining access to jury deliberations themselves. As Heritage and Clayman (2010) note, much of our knowledge about how juries work comes from decidedly unreliable sources, including post-trial interviews with jurors, and popular culture (e.g., procedural television dramas and films like *Twelve Angry Men*). Research on jury deliberation has addressed issues such as turn-taking (Manzo 1996), as well as jurors' orientation to their accountability for their positions (Maynard and Manzo 1993). In Chapter 2, Pomerantz and Sanders examine how jurors stake out and defend their positions during the sentencing phase of the trial. This study thus represents not only a welcome addition to research on jury deliberation, but also a new direction in this area of inquiry. By looking at jury deliberations in the sentencing phase, Pomerantz and Sanders show the ways in which jurors negotiate the issue of blameworthiness when deciding upon a sentence, even when a jury has come to consensus about the guilt of the defendant. This analysis also sheds light on the use of categories in talk, such as "altar boy" or "loving son." As such, it also contributes to the growing literature on membership categorization (Sacks 1991; Schegloff 2007), a thriving area in recent years.

In Chapter 3, Irene Checa-Garcia reveals the ways in which very young children in a bilingual preschool embody requests in interactions with their caregivers. The chapter contributes to the large body of research on talk in educational institutions, as well as the burgeoning literature on the multimodality of talk. The literature on classroom discourse is extensive, with earlier work focused on turn-taking in classrooms, and particularly on the three-part initiation-response-feedback sequence (McHoul 1978, 1985; Mehan 1979; Sinclair and Coulthard, 1975). More recent research within conversation analysis has turned the focus to participation more broadly, examining how learners take responsibility for their own participation (Jacknick 2011; Mondada and Pekarek Doehler 2004). Checa-Garcia's

chapter adds to this line of research, showing how children use embodiments to request next actions from their caregivers. This focus on the multimodality of talk also reflects a trend within conversation analytic research towards greater integration of non-verbal behaviors in the analysis of "talk" in interaction, and the acknowledgment of the role gesture plays in classroom interaction (cf. McCafferty and Stam 2006).

Medical interaction has been a rich site of inquiry for discourse analysts, and this collection includes a number of studies in this area, again showing the diversity within this sub-field. The roots linking CA to psychotherapeutic discourse run deep, with the seminal work of Harvey Sacks drawn from calls to a suicide hotline. Those studies from the 1970s focus on recurring patterns in conversation *per se*, such as storytelling (Jefferson 1978) or categorization (Sacks 1992), rather than an analysis of the kinds of talk indicative of psychotherapeutic interaction. Nevertheless, the decades that followed brought important insights into therapist-client interactions in various settings such as family therapy, group therapy, and individual talk therapy (e.g., Antaki 2008, Davis 1986). In Chapter 4, Alan Zemel furthers this line of inquiry by examining a current, specific approach to therapeutic talk, *emotional response therapy* (ERT). This investigation of couples' therapy talk identifies the ways in which patients and their therapists jointly accomplish enactment sequences, in which the therapist will often embody and/or direct the voice of a patient during the course of the session. He also identifies a phenomenon he terms *direct-modeled speech*, building on Holt's (1996) discussion of *direct-reported speech*.

As Iedema (2013) notes, the doctor-patient consult is paramount in medicine. Thus, it has traditionally been a fruitful area of inquiry, with a focus on the talk of diagnosis and treatment prescriptions (see Gill and Roberts 2013). More recently, with the rising tendency towards patient-centered behavior, in which doctor and patient work together to diagnose and treat illness, CA has been drawn to studying the delicate work of doctors and patients co-constructing the medical visit. Chapters 5 and 6 center on such interactions between doctors and their patients. In the first of the two studies (Leah Wingard, David Olsher, Christina Sabee, Ilona Vandergriff, and Christopher Koenig), the authors closely examine doctor-patient discussions to highlight the construction of interactional sensitivity while disclosing or ascertaining blood sugar levels. In the second study (Selaine Niedel, Martin McKee, and Michael Traynor), the research centers on doctors' interactions with the parents of children with diabetes as they collaboratively build parental knowledge.

As Gill and Roberts (2013) mention, another nascent avenue of inquiry in CA has explored medical interactions outside of the canonical doctor-patient interaction to include configurations such as doctor mentoring, or patient communications with paraprofessionals. Chapter 7, by Anna Dina L. Joaquin, reaches beyond the hospital or office walls, focusing on storytelling strategies of an individual with frontotemporal dementia as she interacts with researchers, highlighting the interactional competence of the subject.

In Chapter 8, Irene Koshik examines apologies during online library reference service encounters. Of particular interest is not only the nature of such interactions in general, but also the specific constraints and affordances offered by the medium of online chat. Language use on the Internet is a growing area of inquiry within CA, and more generally within related fields such as sociology. As online technology became more commonplace around the turn of the century, researchers grappled with methodological issues inherent in the study of this new medium (e.g., Hutchby 2001). The application of conversation analytic methods to computer-mediated communication has been growing, and recent years have witnessed the arrival of new books and journals devoted to language and technology, with researchers examining how different media affect normative structures in conversation. Koshik's examination of apologies in library chat reference sits at the intersection of CA, computer-mediated interaction, and institutional service encounters, contributing methodologically and theoretically to each.

Summary

Taken together, the chapters in this volume form a unique ensemble of the highlights and possibilities that characterize the staggering pace in the study of talk and institutions. Some embody the robustness of current work (e.g., therapeutic and medical interactions). Some exemplify the growing interests in a broadened conceptualization of social interaction (e.g., gestures). Some push the boundary of existing work by investigating rarely accessible data (e.g., jury deliberation) or data not typically dealt with by language and social interaction researchers (e.g., online chat). We hereby present these chapters as both a stimulant for further inquiries and an invitation to future LANSI gatherings.

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CHAPTER TWO

THE USE OF CATEGORIES AND THEIR VULNERABILITY IN JURORS' CLAIMS ABOUT THE DEFENDANT'S BLAMEWORTHINESS

ANITA POMERANTZ AND ROBERT E. SANDERS

Introduction

In doing their deliberations, jurors in criminal trials engage in a process of mutually working through issues and evidence to identify their relevance and importance, and arrive at what each member considers a defensible position, preferably a consensus position, with respect to the task with which they were charged: to determine guilt/innocence on each of the charges made against the defendant, or to determine the appropriate penalty for the defendant. In jury deliberation, it is incumbent on participants to air their differences--to register it if they oppose what others say rather than conceal it. Jurors often register opposition to what another says by calling attention directly or indirectly to some insufficiency or flaw in what was said, or sometimes by making a contrary, incompatible assertion.

Our study moves our understanding of jury deliberation forward in three main ways. First, there are few recordings of actual juries deliberating (as opposed to mock juries), and there are relatively few studies that have gained access to them. Our study is thus one of relatively few that examine such naturally occurring data (others we know of are Gibson and Fox 2012; Manzo 1993, 1994, 1996; Manzo and Maynard 1993; and a collection of studies in a special issue of *Small Group Research*, 2010).

Second, ours is one of a subset among those studies that examine the details of the talk and interaction that jurors produce in stating and

defending their positions. Other studies that have examined naturally-occurring deliberations have examined such overarching matters as the tension jurors may encounter between the dictates of the law and their ideas of justice (Manzo and Maynard 1993), or large-scale patterns in the talk that reveal (a) differences in the same jury's deliberations on the question of guilt and then on the question of the penalty (Poole and Dobosh 2010), or (b) that group argument is not so much "a linear (or even cyclical) process to influence outcomes" as it is "a multistructured, multifunctional, and evolving process" (Meyers, Seibold, and Kang 2010, 469).

Third, of the studies that do examine details of jurors' talk and interaction, most share the interest we have in the reliance of jurors on what is often referred to as commonsense reasoning, practical reasoning, or in our terms, the discursive resources and social knowledge jurors draw on in everyday life. Like Manzo (1994) and Gibson and Fox (2012), we have focused on particular ways in which jurors state and defend their positions. But unlike theirs, our study focuses on jurors' application of shared models and categories of persons in making judgments about the defendant's acts and his blameworthiness. While Garfinkel (1967) has made clear the use and usefulness of models and categories of persons in jury deliberation, we have gone further. In addition to examining the jurors' use of such models and categories to state and defend their positions, we have found and detailed the vulnerabilities of their application that are detected and exposed by other jurors who take issue with their application for the purposes at hand.

As both Sacks (1992) and Garfinkel (1967) point out, when a speaker applies a category of persons to someone, he or she relies on a shared understanding of the typical motives, ways of acting, personalities, relationships, etc. of persons in the category. In interaction, when speakers place persons in categories, it is done in the service of accomplishing specific actions or activities, for example, excusing or holding a person responsible for an occurrence.

> In performing locally relevant conversational actions or activities, participants incorporate explicit relationship categories anticipating that recipients will draw on their understanding of the activities, motives, rights, responsibilities, and/or competencies associated with incumbents of the category. The understanding that the recipient is presumed to have provides, in part, for the intelligibility and force of the conversational action. (Pomerantz and Mandelbaum 2005, 152-153)

Sacks (1992) referred to this feature of categories as "inference-rich":

> ...its categories are what we can call 'inference rich.' By that I mean, a great deal of the knowledge that members of a society have about the society is stored in terms of these categories. And by 'stored in terms of' I mean that much knowledge has some category term from this class as its subject. (Sacks 1992, vol. 1, 40)

> Suppose some event occurs and is known about by reference to the name of the person who did it. The way you get a piece of knowledge involves pulling out the name and putting in some category. Then one gets, not 'John did X,' but 'a such-and-such did X.' (Sacks 1992, vol. 1, 42)

> And what we find is that an enormous amount of what we could call lay theories of social action are fitted onto these categories. (Sacks 1992, vol. 1, 42)

In writing about the specific context of jury deliberations, Garfinkel (1967, 110) contended that jurors bring with them these categories, or common sense models of persons, from everyday life into the jury room, so that "A person is 95% juror before he comes near the court:"

> Those common sense models are models jurors use to depict, for example, what culturally known types of persons drive in what culturally known types of ways at what typical speeds at what types of intersections for what typical motives. The test runs that the matter that is meaningfully consistent may be correctly treated as the thing that actually occurred. (Garfinkel 1967, 106)

Garfinkel's focus in that statement was on deliberations about a defendant's guilt or liability, in which the jurors decide the facts of the matter according to their goodness of fit with the common sense model of the type of person who is on trial. However, the jury whose deliberations we analyzed had already found the defendant guilty of two drug-related murders, and now was deliberating on the question of the penalty. In the service of supporting either the death penalty or a sentence of life imprisonment without or with the possibility of parole, the jurors placed the defendant in one or another category of persons, attributing to the defendant the qualities associated with membership in that category.

For this jury at least, in the segments we examined, deciding on the appropriate and just penalty seemed to turn on their consideration of factors that could mitigate the defendant's blameworthiness for his crimes. One kind of mitigating factor they considered was whether he had positive qualities that made him undeserving of the death penalty. The other kind of mitigating factor they discussed was whether some kind of impairment

or incompetence made him less responsible for committing the offenses and hence undeserving of the death penalty. Goffman (1971) described this second type of mitigating factor:

> …there are pleas that claim reduced responsibility by virtue of reduced competence, the understanding often being that although the actor is guilty of something, it is guilt for being incompetent and not guilt for the specific deed resulting therefrom. Here are claims of mitigation based on sleepiness, drunkenness, youthfulness, senility, druggedness, passion, lack of training, subordination to the will of superiors, mental deficiency, and so forth. (111)

Some jurors placed the defendant in two categories, "loving son" and "altar boy," which are associated with positive qualities that support one of the life sentence options rather than the death penalty. Some jurors placed the defendant in two other categories, "little kid" and "person under the influence of drugs," that are associated with reduced competence.

When a juror supported a lesser penalty by placing the defendant in a category that was relevant for mitigation, it was incumbent on jurors who supported the death penalty to call attention to some flaw or insufficiency in the employment of that category. Hence, we also are interested in what vulnerabilities are exposed in placing persons in specific types of categories in the service of a contentious decision. We determine the vulnerabilities based on what was exposed by jurors who took issue with others jurors' categorizations of the defendant. These responses reveal three general ways these categorizations are vulnerable. One is whether the defendant belongs in the category. A second is whether those qualities associated with the category that make it mitigating apply to the defendant. A third is whether those qualities typically associated with the category that make it mitigating actually are associated with the category.

In short, two central aims of our analysis are 1) to illuminate how jurors supported a lesser penalty by placing the defendant in a category with its associated qualities, and 2) to examine vulnerabilities associated with placing people in specific types of categories in a situation where the parties are not equally supportive of the outcome that the categorizations serve. One clarification is in order. Although we discuss placing the defendant in a category and responding to the placement as if these were discrete and different sorts of actions, it is often the case that the initial placement of the defendant in a category is a response to a prior argument, sometimes even a prior placement in a different category. However for the purpose of our analysis and the aims we have, we limit our discussion to the features and function of placing the defendant in those categories that

serve to support a lesser penalty, and to the vulnerabilities of those placements as they are exposed by the responses of other jurors.

Background

The particular jury we studied sat on the case of the State of Ohio versus Mark Ducic. Ducic is a Caucasian male in his late 40s who was accused of a double murder, regarded as mass murder under Ohio law, and as such subject to the death penalty. The first victim was Ducic's domestic partner, Barbara Davis, herself an addict, who had threatened to report his drug trafficking to the police. Her death was at first thought to involve a drug overdose and not murder, until police informants reported and then recorded Ducic bragging about killing her. The second victim was a fellow drug user who could implicate Ducic in Barbara's murder. After the jury found Ducic guilty of both murders, there was a second trial on the question of the penalty, and then the jury had to deliberate again on whether the penalty should be death by lethal injection. Our data are from the initial part of this second deliberation on the penalty.

The jury comprised 10 women and 2 men--7 Caucasian females (J2, J4, J6, J7, J8, J10, and J12), 3 African American females (J3, J5, and J9), and 2 Caucasian males (J1 and J7). The jurors elected J1 to serve as the foreman in each of the two deliberations. The jurors sat around a rectangular table with J1 at the head and J7, the other male, at the opposite end. J2-J6 sat along the side to J1's right, and J8-J12, opposite them.

As instructed by the judge, the death penalty was the first sentencing option the jury was to consider. If, however, the jury did not unanimously agree that the prosecution had shown that the aggravating circumstances of the crimes outweighed any mitigating factors, thus calling for the death penalty, they would then have to consider and unanimously agree on one of three lesser penalties: a life sentence with no chance of parole, a life sentence with a chance of parole after 30 years, or a life sentence with a chance of parole after 25 years. It became clear early in this sentencing deliberation that rather than assess the prosecution case, several jurors were intent on finding "mitigating factors" that would disallow the death penalty. One that many cited was the influence of drugs on the defendant, which, as one juror put it, prevented him from making good choices; another was positive qualities of character they found in the defendant's history.

During their prior deliberation on the question of guilt, J12 found herself the sole juror holding out for a not-guilty verdict and reported tremendous pressure from others to change her position and support a

guilty verdict. She asked the judge to be excused from the jury, but the judge, after some questioning, declined her request. After asking to review the instructions, she went along with the other jurors. During their second deliberation, on the penalty, it was J12 who most strongly and unyieldingly favored the lightest of the sentencing options, a life sentence with the possibility of parole after 25 years, saying she still was not convinced of the defendant's guilt. While many of the other jurors, and after a while all of them, agreed to support a prison term rather than the death sentence, only one other juror, J11, was willing to support the lightest sentence, resulting in a hung jury regarding the penalty. It is possible that J12 and J11 favored the penalty of a life sentence with a chance of parole after 25 years for the same reason that the others opposed it--because as the jurors noted at other points in their deliberation, that penalty in particular made it possible that Ducic would live long enough to be released.

The jury began deliberations on the penalty late in the afternoon, right after the sentencing trial ended. They broke for dinner, continued for a time afterwards, and continued over the next two days. The examples we analyze came on the first day just before their dinner break and the following morning. In these segments of their deliberation, there was contention about whether Ducic's character had positive aspects that they could regard as mitigating and whether Ducic was fully competent and in control when he engaged in condemnable actions.

Data and Method

This jury deliberation was one of seven that ABC News recorded for a documentary series the network aired in 2004, "In the Jury Room." Part of the agreement for the court to allow the videotaping was that the network agreed to produce a transcript of the deliberations and make it publicly available. Based on our reviewing the transcript, we selected portions of the interaction for close analysis in which there was sustained contention, and worked up a preliminary analysis of those portions, taking into account that this transcript was less accurate and less detailed than we needed. With the assistance and support of representatives of ABC News, we obtained access to the unedited video of those portions. We searched the unedited videotapes at the ABC News unit in New York that oversees archived materials to find the portions we had selected for close analysis, and were given copies of those portions to be used in producing the transcript and analysis we present here.

Using conversation analytic methods, we initially focused on how the jurors were taking issue with one another in these contentious segments. It is worth noting that the contentious segments we found had in common that they stemmed from efforts of advocates of imprisonment to justify that rather than the death penalty. We did not find the reverse, where advocates of the death penalty actively made efforts to justify that rather than imprisonment. It was in the course of examining those segments that we discovered that jurors justified their positions about what punishment the defendant deserved by making claims about what category of person the defendant's actions put him in, and what a just punishment would be for his actions as a member of that category (e.g., "person under the influence of drugs," "competent and sane person," or "loving son").

Analysis

In considering whether mitigating factors outweighed the aggravated offense, some jurors who supported a lesser penalty than death for Ducic justified it by placing him in categories with positive qualities attributed to its members ("loving sons" and "altar boys"). Others justified it by placing him in categories with reduced competence attributed to its members ("little kids" and "persons in a drug induced state"). For each of the four instances we examine, we first discuss the placement of Ducic in the category and follow with a discussion of the vulnerabilities of placing him as such.

Example 1

Categorization of the Defendant as "Little Kid"

In this example, which occurs early on the first day of their deliberations, J12 first likens Ducic's conduct to that of a "little kid" and then cites recorded interaction by an informant in Ducic's mother's home to illustrate Ducic's extreme neediness for his mother's attention and approval.

Excerpt 1

1	J12:	… see, he was acting like a l<u>i</u>ttle (.) k<u>i</u>d. "Hey M<u>o</u>m. (0.2)
2		M<u>o</u>m."
3	J ?:	Yeah.
4	J12:	"(>Glad (t' give ya)<) money (0.2) M<u>om</u>. (0.2) M<u>om</u>."
5		And you hear it- like five times. "(Hey), M<u>o</u>m. (0.2)
6		M<u>o</u>m." This is a fifty five year old guy tryin' to get his

7 <mother's (.) attention.>
8 ((in the deliberation, several jurors correct J12,
9 saying that the defendant is 47, and was 43))
10 J12: ( ) Forty seven, fifty seven, ·hh This is a guy that's not a
11 little- (0.2) kid, going (.) and repetitively trying to get his
12 mother's attention and she's in the same room et as him.=
13 J7?: =No.=
14 J12: =He wants her approval.

By placing Ducic in the category of someone "acting like a little (.) kid." (line 1) who "wants [his mother's] approval" (line 14). J12 relies on other jurors to attribute the qualities associated with little kids to Ducic. Specifically, relevant for the business of identifying mitigating factors, a "little kid" is prone to engage in unreasoned actions and perhaps impulsiveness that give children a reduced competency as compared to adults. In this way, her categorization of Ducic as "like a little kid" with the implication of reduced competence is a way to support the choice of a lesser penalty than death.

Vulnerability

J12's implication of Ducic's reduced competence through categorizing him as "like a little kid" is vulnerable in that the validity of the claim of lesser competence is contingent on, and may be overturned by, an expert. J4 exposes precisely that vulnerability in referring to the testimony of a psychiatrist.

Excerpt 2
1 J4: And this, (0.2) the:: (.) doctor himself, who you're saying is hh
2 qualified and competent ·hh sai::d, the man is competent, the
3 man is sane::. ·hh He knows what he's doing. ·hh He may
4 bra:g, he may boast (0.2) ·hh but he knows what he's doing.

J4 categorizes Ducic as "competent and sane" on the basis of expert testimony. In putting Ducic in that category, J4 can assume that the other jurors know the main quality associated with competent and sane persons: that they are knowing agents in control of their own actions and hence responsible for them. In the context of the deliberation over the penalty, the upshot of categorizing the defendant as competent and sane is that it rules out any mitigating factor to lessen the penalty that turns on categorizing the defendant as someone who is mentally deficient or has reduced competence.

Example 2

Categorization of the Defendant as "Loving Son"

After portraying the defendant as being like a little kid who desperately needs his mother's approval and acceptance, J12 adds that she thinks "he loves her too" (line 14). Here, J12 places Ducic in the category of "loving son" but, unlike her prior categorization, she does not include any illustrations of Ducic's conduct that are consistent with the qualities associated with "loving son."

Excerpt 1 (extended)

1	J12:	… see, he was acting like a little (.) kid. "Hey Mom. (0.2)
2		Mom."
3	J ?:	Yeah.
4	J12:	"(>Glad (t' give ya)<) money (0.2) Mom. (0.2) Mom." And
5		you hear it- like five times. "(Hey), Mom. (0.2) Mom." This is
6		a fifty five year old guy tryin' to get his <mother's (.)
7		attention.>
8		((several jurors correct J12, saying that the defendant
9		is 47, and was 43 at the time))
10	J12:	( ) Forty seven, fifty seven, ·hh This is a guy that's not a
11		little- (0.2) kid, going (.) and repetitively trying to get his
12		mother's attention and she's in the same room et as him.=
13	J7?:	=No.=
14	J12:	→=He wants her approval. >And I believe he loves her too.<

"Loving son" is a cultural category that observers in the community can confer upon people based on the display of specific positive qualities. In placing Ducic in this category, J12 implicitly attributes to Ducic a host of positive qualities, including being considerate of his mother, showing respect and regard for her, and caring for her. But more than that, to be a loving son, one must be capable of empathy and other-directedness. If it is accepted that Ducic has the positive qualities associated with the category "loving son," then that would support J12's presenting it as a mitigating factor with respect to the choice of penalty – his having those positive qualities would support a lesser penalty than the death penalty.

Vulnerability

After J12's placement of Ducic in the category "loving son," J12 herself and J2 expose a vulnerability of that categorization, which is its inconsistency with known, relevant facts. This vulnerability is exposed by

J12, in an effort to offset that vulnerability, and by J2, albeit on a different basis. J12 anticipates that the other jurors know what kind of conduct is typical of loving children, including treating their parents well, not causing harm to their parents, etc. J12 also is aware that all the jurors know that Ducic, who she claimed is a loving son, had acted in ways that are inconsistent with the typical conduct of loving sons.

Excerpt 2

1	J12:	He wants her approval. >And I believe he loves her too.<
2	??:	Yes.
3	??:	[I
4	J12:	[I don't believe he's happy with a- any of his actions. ·hhhh
5		(0.5)
6	J1:	You what?
7	J12:	I don't believe he's happy:. ·hh that he: (0.5) has this
8		addiction, (0.2) and shit on his mother. I don't think [it was=
9	J7?:	((whispers)) [(he's
10		a murderer)
11	J12:	=his intent and go out (0.2) ·hh at seventeen years old,
12		(0.2) and do that.

J12 attempts to minimize the inconsistency between the positive qualities associated with the category "loving son" and Ducic's actual conduct in which he "shit on his mother" (line 8). She does so by attempting to establish Ducic's moral character as better than this actions suggested. In a sense, J12 is engaged in doing what Goffman (1971) terms "remedial work," but not on her own behalf, on behalf of Ducic:

> Note, the more an actor can argue mitigating circumstances successfully, the more he can establish that the act is not to be taken as an expression of his moral character; contrarily, the more he is held responsible for his act, the more fully it will define him for others. (112)

As part of the remedial work that J12 does on Ducic's behalf (and on behalf of her categorization of Ducic as "loving son"), she portrays Ducic as viewing his own conduct from the perspective of a moral person, that is, as being unhappy about it, and not intending it

Like J12, J2 exposes that categorizing the defendant as a "loving son" is vulnerable to being invalidated by known facts. She proposes a test of belonging in the category of "loving child" that Ducic self-evidently fails. This test fits a practice that has been analyzed by Gibson and Fox (2012, 4) as an inculpation: "statements, and sometimes questions, comparing the behavior of the defendant to the imagined behavior of someone who is

both innocent and normal, as a device for incriminating (inculpating) him or her."

Excerpt 3

J2: No, I was, I was thinking about, (0.7) I was backing up what you ((Juror 1)) had to say. (0.7) If he really loved his mother, I can think of (1.5) I don't think my kids (1.0) would stay (0.5) if they're gonna do something, they're not gonna do it in my house. (1.2) They would have more respect for the house (0.2) I think, for (0.2) my home (1.5) and go away.

Using her own children as "innocent and normal" exemplars of loving children, J2 proposes that the typical behavior of people in the category "loving child" is that they do not engage in blameworthy, harmful conduct in their parents' homes as Ducic did. In somewhat truncated syllogistic reasoning, she offers the premise that "If he really loved his mother" (line 2) he would have acted in a certain way, but he acted in quite the opposite way (as the jurors well knew), and therefore must not have "really loved his mother." In setting up this test of the categorization of Ducic as a "loving child," J2 tacitly creates a contrasting categorization ("disrespectful and uncaring child"), where the qualities she cites of people in that category are undisputedly true of Ducic. In refuting that he loved his mother, and thus rightfully should be placed in the category of "disrespectful and uncaring child," J2 disallows a mitigating factor that would support a lesser penalty and lends support for a stronger penalty.

Example 3

Categorization of the Defendant as "Person Under the Influence of Drugs"

Three jurors offered characteristics of a "person under the influence of drugs," specifically that persons of that kind are not in control of their actions, with the implication that they should not be held fully responsible for their bad deeds, and that they should not be judged by the same moral standards as sober, non-addicted people. We should note that there is a certain slipperiness about what these jurors mean when they refer to a "person under the influence of drugs." It seems that sometimes they are talking about someone who is under the influence of drugs at the time of specific actions, and at other times about the constant pressure addiction exerts on all one's acts to ensure uninterrupted access to and use of drugs. However, with reference to specific actions, these two aspects of this

category often have the same upshot regarding the blameworthiness of people in that category, and so we have not attempted to guess which meaning speakers had in mind but have focused on what they said.

J3 in Excerpt 4, J11 in Except 5, and J7 in Excerpt 6 each put forward a case that a central, critical characteristic of a "person under the influence of drugs" is that such persons are not in control of their actions:

Excerpt 4

1	J3:	When ahm: (0.2) someone's (0.2) under the influence of ah,
2		drugs, (0.2) ·hh they will do <anythi:ng>.
3	J?:	°Hm mm, [↑true°.
4	J3:	[They will do anything, ·hh whether it's in
5		your house (.) or outside, ·hh They don't want to do
6		it but they'll do it. They'll do it, they will, (0.2) they
7		will ro::b your momma.

Excerpt 5

1	J11:	Well, [she kind of said w- a little bit but, uh, talkin' about, you=
2	J1:	[Your hand was up.
3	J11:	=can't look at your household, and somebody else's household,
4		especially when youre involving with drugs. ·hh (0.2) Th- (0.2)
5		Two different lifestyles, you can't look at that. (0.2) Ya know? And
6		when you're addicted like that you're gonna do anything, (0.2) ya
7		know.

Excerpt 6

1	J7:	Then this is just to show the influence of drugs. (0.5) This- (1.5)
2		Why would a, why would a crack addict ((referring to Ducic's
3		common-law wife and first viction)) (0.5) lose, all of her children
4		(1.7) if drugs did not have control of her life? Where is her
5		judgment? (0.7) that she loses all of her children?
6	J?:	R[ight.
7	J7:	[I me[an- (0.5) drugs, I mean we all know drugs (1.7) destroy
8	J?:	[Right.
9	J?:	hm mm
10	J7:	everything (.) it touches and everything it comes in contact with.

These jurors propose that a defining characteristic of "persons under the influence of drugs" is that they are not in control of their actions, they will "do anything," and they lose their judgment. The willingness of such persons to "do <anythi:ng>" no matter how immoral (J3, Excerpt 4, line 2) suggests a compromised moral code in relation to the morals of those not using drugs. J3, J11, and J7 imply that the immoral behavior that persons

who are under the influence of drugs engage in does not represent those persons' moral code but their inability to adhere to one. Therefore, categorizing Ducic as a "person under the influence of drugs" attributes to him a lack of control over his actions and hence reduced responsibility for his actions. This quality constitutes a mitigating circumstance and would support a lesser penalty for Ducic.

Vulnerabilities

One vulnerability of categorizing Ducic as a "person under the influence of drugs" (in the sense of being in a drug-induced state at the time of his bad acts), is that such persons may not actually have been under the influence of drugs at the time, and thus would be responsible for their acts. Whether Ducic belonged in that category in that sense was questioned by J4, but other jurors cited evidence for his having been under the influence at the time.

However, without disputing that persons "under the influence of drugs" (in either sense) are not responsible for their actions, or that Ducic was such a person, J1 exposes another vulnerability of this category. Membership in the category is arguably voluntary. Since members are responsible for putting themselves under the influence of drugs, they also are responsible for the actions they perform when in that state.

Excerpt 7

1	J1:	H- he was in a drug (.) induced state. (0.5) We're gonna have
2		leniency. (0.5) We're gonna we're gonna be (0.2) to:lerant (0.5)
3		of that fact and give him credit
4		[(0.5)
5	J6?:	[((chuckle))
6	J1:	for the fact that he's not responsible for his actions (0.5) ·hh
7		when he's in (0.2) a- and have (.) a mitigating (0.5) position on
8		this, (0.2) when (0.5) °it's his own choice,° (0.7) °nobody put
9		the- needle in his arm.° (0.7) Do I agree with you that he's in a
10		terrible place?= Do I agree with you (.) ·hh that drugs (.) are
11		hideous? I've already said- (.) we already agreed (0.2) what
12		they do (0.2) to lives.
13		(0.5)
14		·hh But- that's- (0.2) in my opinion, that is not a mitigating
15		circumstance. (0.5) That is a circumstance (.) that (.) he has to
16		be held ac↑countable for.

J1 makes clear (line 1) that he agrees that the facts about the defendant are fully consistent with categorizing him as a person "under the influence of