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# Ethics in and Out of the Courtroom

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**University of Wyoming**

**Ethics In and Out  
of  
the Courtroom**

**A Research Paper  
Submitted to Eric Wodahl and the Honors Department  
In Partial Fulfillment of the Requirements for the Course  
Independent Study University Honors Program  
HP 4975-04**

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**Laramie, Wyoming**

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## INTRODUCTION

For my Senior Capstone Project, I investigated the role and influence of Philosophical ethics in the courtroom. I conducted this research alongside my internship at the Laramie County District Attorney's Office where I spent 242 hours between the DA's office, the county court, and the district court. Alongside this, I also conducted seven interviews formatted using open-ended semi-structured questions. As I expected it was very difficult to quantify individuals as conforming to one philosophical theory or another, but there were several general themes and overarching similarities and differences between the individuals I interviewed. Ultimately, I sought to answer the question: Is ethics something with practical value in the criminal justice system or is the bureaucratic nature of proceedings make it more procedural; cut and dry?

## OVERVIEW OF PHILOSOPHIES

In Ethical Philosophy two theories are widely considered to dominate the field: Utilitarianism and Deontology. Another theory gaining prominence in recent times is Aristotelian Virtue Based Ethics. There are also several alternative theories which lack some of the mainstream recognition of the two greats, but, still have intuitive appeal. During my research, I would ask the interviewees which approach they felt they conformed to and evaluated their answers to draw connections between their justifications, views, and ethical philosophies.

### UTILITARIANISM:

Utilitarianism is one of the best known and often straight forward philosophies. Ultimately at its core Utilitarianism follows the basic precept of the greatest pleasure for the greatest number. It is a teleological theory which means it is a system which uses the ends as the ultimate justification for something. It is derived from the Greek telos, or end, and logos, or reason AKA logic. Another designation used for the family of theories which Utilitarianism

belongs to is Consequentialist theories. Russ Shafer-Landau describes these theories in his anthology on ethical theory as “united by one central idea – that the moral assessment of actions, motives or rules is, at the bottom, a matter of how much good such things produce, or how much bad they allow us to avoid.” (Shafer-Landau, 2007, p. 453). Generally, there are two primary theories of Utilitarianism: act-based and rule-based.

Act-based is the original theory of Utilitarianism, and the first major proponent of this theory was Jeremy Bentham. Act Utilitarianism is the most fundamental form ultimately it says that every event must be gauged solely based upon the variables present and whichever action creates the greatest pleasure in that specific scenario is the most moral action. Many criticisms of this theory center on the drastic consequences which can be reached through strict adherence to the underlying maxim. For example, according to Utilitarianism if you could brutally murder one person to save the lives of two others, you are ethically obligated to do so. To take this one step further, one can hypothesize a scenario like the exaggerated gladiatorial fights depicted in film and television. In this scenario, one man’s death used as a public spectacle and entertainment could conceivably be imagined to provide a certain amount of pleasure to those who witness it. According to Utilitarianism, all it would take is a large enough audience experiencing this pleasure to outweigh the pain of the man being killed. To place this in a more modern framing imagine the lauded Super-Bowl of American culture. Every year millions of people tune in to witness this spectacle and experience the pleasure associated with the entertainment. Let us say that during the broadcast a piece of equipment falls on someone pinning them underneath it and putting them in extreme pain, but to remove the equipment would cause the broadcast to be interrupted for a short amount of time. Since the aggregate pleasure being created by the broadcast of the program is so high Utilitarianism would be forced

to say that to remove it would be unethical as the pleasure it is generating outweighs the pain of the one individual. One might try to argue that the great pain the man is suffering would outweigh that of the pleasure being generated, but this is easily rebutted within the framework of the hypothetical as one would only need to increase the size of the audience until their pleasure came to outweigh the harm being inflicted on the man. One can dream up many horrific scenarios where Act Utilitarianism creates what seems unacceptable scenarios. To mitigate some complaints and create a compromise between Utilitarianism and other deontological or intuitional theories, John Stuart Mill created rule-based Utilitarianism.

Rule-based Utilitarianism is a modified form of Utilitarianism where one creates rules which would create the greatest aggregate pleasure for all of society. In this way, one might create more pleasure for society by committing a murder, but to do so one would have to break a rule against murder. One could postulate that if everyone broke this rule, then it would create a greater amount of pain for society as everyone may run around killing than it would generate pleasure. As Brad Hookers puts it in his writing *Rule-Consequentialism* “Rule-Consequentialists believe that the rightness of an act depends not on its own consequences, but rather on the consequences of a code of rules.” (Hooker, 1999, p. 183). Hooker points out that one benefit of this system of ethics which elevates it beyond simple Act-Utilitarianism is that “we frequently lack information about the probable consequences of various acts we might do. Where we cannot even estimate the consequences, we can hardly choose on the basis of maximizing the good.” (Hooker, 1999, p. 185). He points out that Rule-Utilitarianism allows actors to refer to a system of “tried and true rules” which one knows generally produce the greatest good for society if adhered to (Hooker, 1999). Hooker points out that individuals often lack the time of perspective to accurately decide what would produce the greatest good (1999). He is saying that

one's personal biases often cause them to overestimate the potential benefit for themselves while underestimating the damage that others may experience (Hooker, 1999). One potential criticism of this justification is that it could fall into the natural fallacy. This is an is-ought argument saying simply because something is then it ought to be. Hence just because people with natural inclinations may cause them to act a certain way does not justify that behavior. A pure Act-Utilitarian would argue that just because humans rarely possess a complete conception of the consequences of an act does not justify changing how act. Another potential problem which arises within Rule-Utilitarianism is how one formulates the rules which society adheres to. For example, some people might say that one should have a rule which balances fairness with well-being, but then how do you decide when fairness override well-being and vice versa (Hooker, 1999)? This touches on two of the problems of Rule-Utilitarianism one being how does one balance the interactions between the rules and the second being what rules to decide on. It falls in danger of devolving into either Aristotelian Virtue ethics or back into Act-Utilitarianism. On the one hand, it would be easy to add in so many rules it almost becomes subjective on what is then considered in an act. On the other when trying to decide how to balance to rules which conflict in a scenario one would have to ask which would cause the greatest net gain of pleasure, but then every time you have a conflict, you devolve back into an act-based approach. This is one of the main criticisms of Rule-Utilitarianism is that it is just an attempt to make an appeal to a more deontological approach while refusing to follow through on its basic premise.

### **DEONTOLOGY:**

While Utilitarianism is the most well-known of ethical theories, its biggest competitor and the most formidable opponent is unquestionably Deontology. Deontology has its roots in the Greek Deon, or Duty, and Logos, or logic/reason. As the name implies, deontological ethics are

theories that argue that humanity has certain ethical duties or obligations which they must adhere to. In opposition to Teleological or ends based theories Deontological ethics looks at the act itself to determine whether something is ethical. Essentially it is a theory which states that acts are right or wrong in and of themselves. This theory appeals to the sense there are things which simply should never be done no matter the consequences. In some ways, it boils down to a fundamental difference between the ultimate values considered by the two differing philosophies. Shafer-Landau puts it as “Utilitarians see benevolence as the central moral virtue; Kant sees justice playing this role.” (2007, p. 522). The Kant he refers to here is Immanuel Kant; the man widely considered the father of Deontology. In one of his later works Shafer-Landau describes him as “perhaps the most important voice in opposition to utilitarianism...” (2012, p. 154). Kant believed that morality was a system of imperative duties which any rational being could reach if it considered things. In his mind it was an entity’s capacity for moral thought which grants it agency, moral responsibility, and the right to autonomy (Shafer-Landau, 2007). Kant describes these duties as categorical imperatives. A Categorical imperative in Kant’s own words “would be that which represented an action as objectively necessary of itself, without reference to another end.” (Gregor, 1998, p. 25). Kant’s theory of ethics famously has three instances, or formulations, of these categorical imperatives.

The first principal is often called the “Formula of Universal Law” (Korsgaard, 1985, p. 24). This formulation reads: “Act only according to that maxim whereby you can, at the same time, will that it should become a universal law” (Kant, Ellington, 1993, p. 30). Essentially this means you can only behave in such a manner as were you to universalize this into an action that everyone may do that it would not contradict itself. Shafer-Landau offers a three-part test that one can use to decide if an act is universalizable.

1. Formulate your maxim – state what you intend to do, and why you intend to do it.
2. Imagine a world in which everyone supports and acts on your maxim.
3. Then ask: Can the goal of my action be achieved in such a world? (Shafer-Landau, 2012, p. 159)

In this way, if one were to consider robbing a bank, you would have to imagine a world in which this was always permitted. If everyone could rob banks most bank owners would try to make it more difficult for individuals to take their money. As such by willing your action to be universal you create a world in which it is harder to accomplish it. In this sense, the action has contradicted itself. This maxim is occasionally oversimplified or misconceived. During my interview with the District Attorney Jeremiah Sandburg, I discovered that he was very knowledgeable about philosophical ethics and had debated them throughout high school and college. When we were discussing Kantian Deontology, he told me he did not take Kant seriously because according to him you could not flush a toilet. To my understanding, this was committing a straw man fallacy (attacking the weakest part of an argument which you have misconstrued). According to this argument, you cannot universalize flushing toilets because were everyone to try flushing a toilet at the exact same moment it would make your goal of flushing a toilet harder to achieve because the whole plumbing system would be destroyed. You would want yourself to flush without everyone else being able to; making an exception for yourself which deontologists are strongly opposed to. However, according to the Formula of Universal Law one need not assume that everyone is committing the same action but rather there would be a world in which everyone may commit the action. If one were to take the first version then many actions, from going outside for a walk to simply getting on the internet, would all become self-contradictory were everyone to attempt them but this is a misunderstanding

supplementing necessity in place of permissibility when judging an action. Some seek to use the same argument in opposition to homosexual sex. They argue that if everyone had only homosexual sex then the humanity would cease to exist, but the same argument could be made for celibacy, such as priests, nuns, or those who just abstain for life, that if everyone also followed this rule the whole of human kind would be wiped out (Shafer-Landau, 2012). Shafer-Landau points out that by simply changing the way the maxim is described one can suddenly come up with one which passes the test; such as describing homosexual sex instead as “having consensual, enjoyable sex.” (2012, p. 156). This seems to create a problem because it creates a test which can give two contradicting answers depending upon how the action is described (Shafer-Landau, 2012). A Kantian might respond to this problem has having its roots because it excludes that which Kant considers most important in determining the rightness of an action namely will or intent. As describes in the opening words of *Groundworks of the Metaphysics of Morals* “It is impossible to think of anything at all in the world, or indeed even beyond it, that could be considered good without limitation except a *good will*.” (Kant, Gregor, 1998, p. 7). The cases outlined here simply state an action and its consequence instead of considering the intent behind the act. As such when the intent is added in such as “having sex for enjoyment” it makes the act universalizable. Furthermore, Kant’s conception that good will is the only good thing inherently gets at the notion that for an act to be good it must be done for its own sake rather than some ulterior motive. For example, according to Kant, if one made a promise to their best friend to pick them up one evening. In one case the individual might pick up their friend that evening simply because it is the right thing to do. In another instance, the person may pick up their friend because they want to curry favor from them to get something from them. Here deontologists would argue that the act of the first individual was right while that of the second was unethical.

While the two acts may have the same consequence, it is their intent which determines whether they are ethical or not.

The 2<sup>nd</sup> formulation of the categorical imperative is “Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end.” (Kant, Ellington, 1993, p. 36). This principle, commonly known as “The Principle of Humanity” (Shafer-Landau, 2012, p.169), appeals to several intuitions that most people share. Shafer-Landau goes on to innumerate six intuitions. 1. It condemns the actions of fanatics who treat individuals as mere means to achieving their ends. 2. It gets at why some actions such as slavery and rape are always wrong. 3. It condemns paternalistic actions. As autonomous beings people may make their own decisions regarding their lives. Shafer-Landau explicitly points out an example of your roommate selling your television because they are worried “your spending watching Seinfeld reruns and too little time on your homework.” Or someone forging a letter to another significant other hoping to break them up because they feel the relationship is unhealthy. While Kant’s feelings on government were less explored use this principle to object to parental laws such as those prohibiting certain drugs or mandating arbitrary drinking laws after someone had reached the “age of reason” (commonly placed at 16 in Kant’s time). While he may have objected to some parental laws Kant’s beliefs in informal duties, such as that mandating one improve themselves, can be extrapolated to condemn most drug use clearly. 4. It encourages one to not give up on individuals as their rationality and autonomy mean they could always make that choice to change themselves. 5. The Principle of Humanity gets at universal human rights entitling every rational being to a “minimum of respect.” 6. Respecting individuals’ rationality and autonomy also is what creates and validates accountability. Shafer-Landau points out that we evaluate no hawks

actions in killing its quarry as right or wrong nor do we try to reason with or dogs when they misbehave. Because they lack the power to be reasoned into changing their behavior humans instead condition them through series of rewards and punishments. It is precisely this concept of accountability in respecting an individual's autonomy and rationality which creates the basis for punishment solely for justice's sake. Kant's theory is one of the few that can be a justification for the death penalty. (Shafer-Landau, 2012, p. 171-173). While the Principle of Humanity seems intuitively appealing like all ethical suppositions it too has its problems. For brevity, Shafer-Landau puts it most succinctly in *The Fundamentals of Ethics* when he lists the five primary problems.

1. Treating someone as an end is vague, and so the principle is difficult to apply.
2. The principle fails to give us good advice about how to determine what people deserve.
3. The principle assumes that we are genuinely autonomous, but that assumption may be false.
4. The principle assumes that the morality of our actions depends on what we can autonomously control, but moral luck calls this into question.
5. The principle cannot explain why those who lack rationality and autonomy deserve respect. (Shafer-Landau, 2012, p. 176).

Worth noting is the last point which, unintentionally, could assert that new-born infants or those with mental handicaps are entitled to fewer rights than others. It is also a justification on why mental illness or handicaps could make an individual less culpable for their actions.

The third formulation of the categorical traditionally receives less attention than the first two. Kant describes it as "the third practical principle follows [from the first two] as the ultimate

condition of their harmony with practical reason: the idea of the will of every rational being as a universally legislating will.” (Kant, Ellington, 1993, p. 43). Ultimately what this imperative is saying is that one must not try to make themselves an exception to the rules which they legislate.

One of the primary criticisms of Deontological theories is their inflexibility. According to these theories, one must do the right thing even should it mean the world would end. One common hypothetical often used as criticism is the inquiring murderer. In this scenario, you are at home with a friend. While you are chatting with your friend, in the kitchen let us say, a stranger comes knocking on your door. Upon answering the door, you are confronted with an axe murderer. The axe murderer lets you know that they are looking for your friend and ask if you know where they are. According to Kantian Deontology, one must answer this question because lying and any form of deception violate the formulations of the categorical imperative. Some attempt to make invent other ways of dodging around the problem. One approach could be jokingly called the Bill Clinton defense. The former president’s counsel offered in his defense that when he said he had not had sexual relations with Ms. Lewinsky he had not been lying because the president did not define what had taken place between the two as “sexual relations” in his mind. Like this one of the proposed ways of getting around this problem is to tell the inquiring murderer you do not know where your friend is. The defense is that you are not 100% sure where your friend is. They could be in the kitchen, bathroom, or perhaps have moved two feet from where you left them either way you do not know where they are and hence can tell the murderer where your friend is. According to some forms of deontology which are more lenient in their designations of moral duties this can be acceptable, but according to Kant because this seems like an intentional deception of the murderer it cannot be justified and is not ethical. A hardcore Kantian might get around this problem by simply refusing to answer the murderer.

While you may not deceive someone nothing prevents you from either telling the inquirer you do not wish to speak with them or just slamming the door in their face. Perhaps this seems to detract from the real issue being proposed by the hypothetical or that it then puts the individual answering the doors life in jeopardy when a simple lie might have worked, but it remains an answer which allows the actor to avoid lying while still protecting the life of their friend.

### **ARISTOTELIAN VIRTUE ETHICS:**

Aristotelian virtue-based ethics has seen a recent rise in popularity over the last few decades. Virtue ethics differs from other primary theories in that, as one may guess, it examines certain virtues that individuals should cultivate rather than fundamental moral rules (Shafer-Landau, 2007). While this lends a greater amount of flexibility in deciding what is morally right or wrong this, unfortunately, also means that the system itself is not always well defined. Moral actions are generally arrived at within this system of thought either through imitating role models or seeking to exemplify a virtue determined to be good. Shafer-Landau summarizes this by saying “Actions are morally good, for instance, because they exemplify virtuous character traits, and not because they conform to some already-specified moral rule.” (2007, p. 663). Growing up most children are told to look at their role models as a means of decision making. The oft used catechism “what would Jesus do?” is the perfect representation of the other aspect which lays at the root of much of Virtue Ethics thought. As the name implies, Aristotelian Virtue Ethics has its root in the Ancient Greek Philosopher Aristotle. Aristotle taught that Eudaimonia was the goal for all of humanity. Eudaimonia has its roots in Eu, or good, and daimon, or spirit (Hursthouse, 2007). As a combination of these two words Eudaimonia or good spirit essentially means happiness, but not happiness as one might traditionally conceive of it. Eudaimonia refers instead to a calmness of spirit or tranquility which one can achieve through proper living.

Shafer-Landau explains that “Happiness is, for him [Aristotle], activity of the soul in accordance with virtue.” (2007, 663). In his later works he tries to clarify this is by no means a hedonistic way of living, but, that Aristotle felt the good life was “an active one filled with wise choices and worthy pursuits.” (Shafer-Landau, 2012, p.260). The question then comes down to how one determines what “virtues” are desirable. The primary way of achieving this is “The Golden Mean.” The golden mean dictates that virtues which are desirable are those which find the middle ground between to traits. In this way courage is the compromise between cowardice and foolhardiness. Aristotle also instructed that one should look to leaders within their community to determine what might be right actions or desirable virtues. These individuals can be moral exemplars (Shafer-Landau, 2012).

One of the primary criticisms of Aristotelian Virtue Based Ethics is that it is overly vague in its definition of that which is virtuous or whom to look to as exemplars of moral virtue. Beyond simply defining virtuous as being moderations of other traits and virtuous individuals as those who behave virtuously the theory reaches either a dogmatic stopping point or an infinite regress. It either defines something as virtuously simply because it is or points to a point within the virtue which lends it merit ad infinitum. This is not necessarily a huge criticism of the theory as ultimately all lines of thought, especially when subjected to the Socratic Method, eventually becomes circular, dogmatic, or an endless regression. For this paper, however, we will not dive into Agrippa’s trilemma or any other epistemology. Essentially this leads to the criticism that Aristotle’s methods of choosing virtues can be morally arbitrary or overly subjective and based simply off whichever leaders are available to one.

### **FAITH BASED ETHICS:**

In my experiences and interviews in court, I found that several individuals attributed a large part of their views on ethics to their religious upbringing or background. Furthermore with at least one judge I interviewed we briefly touched upon the large influence which Christian theology has had on the legal system of the United States. While Christian theology typically remains within the realm of religion alone, there are two individuals who tried to tie ever so slightly into philosophy. These two individuals are St. Augustine and Thomas Aquinas.

### **Augustine -**

St. Augustine was one of the Christian Philosophers. While Aquinas was more inspired by Aristotle Augustine had much his work influenced by Plato. Plato taught there were perfect forms in which everything else in the world is derived from. This is illustrated by his Allegory of the cave where several men are trapped in a cave staring at shadows their whole lives thinking that is the world until one frees himself from the cave and discovers these are merely the shadows of real world being cast upon the wall resembling the true shapes that originally came before. Most Christian thinkers emphasized the separation between one's immortal soul and the earthly body. One thing which made Augustine stand out is that he was the first to emphasize a unity of both soul and body. In one of his most famous works Confessions chronicled his life. Throughout the book, he tells the story of his life and journey to god. Through this, he illustrates to the reader that indulging oneself in the joys of the flesh or other worldly pursuits eventually leaves one feeling empty, drained, and unfulfilled. He teaches that is only through the devotion to Christ that true fulfilment can be reached. Augustine was also one of the first to propose the doctrine of Original Sin. That being that each of us carries the burden of that original sin committed. Augustine felt that one sinned even if you only thought about committing the action whether you went through with the deed.

**Aquinas -**

Thomas Aquinas was the other big thinker within Christian philosophy. While mostly dealing with the epistemological possibility of the knowledge of God Aquinas also treated on right actions. If Augustine was Platonic in his thinking, Aquinas unquestionably draws his primary influence from Aristotle especially in his conceptions of what qualified as for right action. Aquinas believed there were four cardinal virtues: Prudence, Temperance, Justice, and Fortitude. He believed these virtues are discovered itself and were self-evident (Aquinas, 1952). Besides the four cardinal virtues, Aquinas also argued for three virtues within the faith itself. The three virtues were: Faith, Hope, and Charity. One of his major works was proving the existence of God (Aquinas, 1952). Aquinas sought to accomplish this through five proofs or ways. One proof sought to explain god as the ultimate cause. As Aquinas saw it everything in life resulted from cause and effect. Everything could ultimately draw its reasoning and existence from a previous cause. He thought if you took this far back enough then ultimately you would end up with the first cause and before that nothingness. According to his philosophy because everything must come from something or some cause the ultimate source of everything was a god. He was the one and only “Uncaused cause” from which all the existence sprang forth. Another of his arguments was that god’s existence was self-evident. His argument went like this: God is a perfect being. A part of perfection is existence. Therefore since god is perfect, he must exist. While these proofs were well regarded for several years, none has stood the test of time well. The first one needs to substitute only a separate thing as the uncaused cause or just point out this, while inexplicable, does not necessitate the existence of the Christian god by any means. The second can be countered simply by imagining up any other object which ones defines as perfect that one can imagine. Simply because this nothing of a perfect entity exists

within our conceptions does not necessitate its existence. One could contemplate a perfect candy unicorn flying around Pluto for example, but this does not guarantee its existence.

**EGOISM:**

Egoism refers to a family of theories which postulate that the ultimate good is that which serves a person's individual interests best. Some have pointed to Hedonism or Epicureanism as developed by the ancient Greeks as the first examples of this. This is a slight misrepresentation of these theories, however, as while they centered around pursuing happiness for oneself they postulated this could only be achieved through harmonious living with one's peers and moderation in all things. Egoism especially as it is defined in the last century does not qualify its pursuit of gain or happiness for oneself according to the society surrounding it, but, for its own sake. While not the most highly regarded of egoist the best-known thinker of Egoism is Ayn Rand. Her theory which she dubbed "objectivism" gained prominence around the time of the cold war. A refugee from Russia, many of her theories, could be reactionary to those of communism. Because of the red scare and feuding between the US and Russia her theories experienced a meteoric rise to popularity to defend capitalism through philosophical thought. She postulated that the only actions which could be moral were those that furthered one's own desires. Theories of Egoism often have their basis in Psychological Egoism. Psychological Egoism is the theory that basically all actions that human take is motivated by their own self-interest (Feinberg, 2004). What makes this theory different from that of Psychological egoism is that it does not make an ought to statement out of this instead is simply states this is how things are (Feinberg, 2004). This does not mean that people will not do a thing for other people but rather that "people are capable of desiring the happiness of others only when they take it to be a *means* to their own happiness." (Feinberg, 2004, p. 476). What marks the difference between

this and Ethical Egoism is that the latter takes this one step further by insisting that because this is the state of things man has an obligation to adhere to and pursue this. Ayn Rand puts it as:

Man must be a man – by choice; he must hold his life as a value – by choice; he must learn to sustain it – by choice; he must discover the values it requires and practice his virtues – by choice. A code of values chosen by choice is a code of morality. (1964, p. 23).

In this Rand attempts to boil down what compromises value. Ultimately, she decides that it is life itself which constitutes the ultimate value. Because nothing can have relevance unless one is living to experience its life itself is the root of the value. From this, she extrapolates those things which constitute virtue are that which enhance or prolong life “Value is that which one acts to gain and/or keep – virtue is the act by which one gain and/or keeps it.” (Rand, 1964, p. 25). Hence one is only acting virtuously if one is acting in such a way as to “gain and/or keep life.” While it holds life as the ultimate value most egoist concede to common sense argument but point out how their own philosophy also best serves this purpose. James Rachels talks about “common sense” morality which calls for us to “balance our own interests against the interests of others” (Rachels, 1986). He points out that many theories of Ethical Egoism are framed as “revisionist” theories which diametrically oppose other theories (namely altruistic ones). In response to this, he offers that Ethical Egoism theories need not take this approach, but instead can be interpreted as coinciding with “common sense morality just with radically different approaches.

- a. Each of us is intimately familiar with our own individual wants and needs. Moreover, each of us is uniquely placed to pursue those wants and needs effectively. At the same time, we know the desires and needs of other people only imperfectly, and we are not

well situated to pursue them. Therefore, it is reasonable to believe that if we set out to be “our brother’s keeper” we would often bungle the job and end up making more mischief than good.

- b. The policy of “looking out for others” is an offensive intrusion into other people’s privacy; it is essentially a policy of minding other people’s business.
- c. Making other people the object of one’s “charity” is degrading to them; it robs them of their individual dignity and self-respect. The offer of charity says that they are not competent to care for themselves; and the statement is self-fulfilling – they cease to be self-reliant and become passively dependent on others. That is why the recipient of “charity” is often so resentful rather than appreciative. (Rachels, 1986)

He also points out that it is in the best interest of every individual not to lie, cheat, steal, or harm to others as this informs their behavior towards us (Rachels, 1986). In a way this leads on an unorthodox road to the golden rule: One should do unto other SO THAT they will do the same unto you (Rachels, 1986).

Some arguments against Egoism point to how it cherry picks its arguments and does not function too well in reality. Rachels himself points out that some arguments of Egoism present a less than fair picture of altruistic theories as requiring one gives all of oneself to a cause hence sacrificing all their life’s value for others when most “common sense” theories of morality actually call for a balance between one’s own interests and those of others (Rachels, 1986). Perhaps the notion that people are resentful when given charity is fallacious. Thinking those who are receiving aid, possibly in life saving medicine or food, are concerned with being “degraded” also speaks to privilege only allowed to those who need not worry about their basic

needs regularly. It would seem under Maslow's hierarchy of needs those in need of charity are far more concerned with their physiological needs rather than esteem or self-actualization.

### INTERVIEW FORMAT

Throughout the semester I conducted seven interviews with various individuals involved in the Cheyenne County courts. I conducted seven interviews with a collection of Judges, Prosecutors, Defense Attorneys, and a former attorney who had served multiple roles (as many of the office holders had). My interviews generally ranged from 30 minutes all the way to 2+ hours depending on how much time the interviewee had available. I formatted the interviews themselves in an open-ended semi-structured format. I prepared 13 questions for each interview with an open-ended request to add a final summarizing or cap at the end of each interview which not all the participants answered.

1. What does ethics mean to you?
2. What do you see as different theories of ethics?
  - a. How familiar with ethical philosophy? Utilitarianism, Deontology, Aristotelian virtue based.
3. Have you ever heard of the trolley problem? Quick overview
4. Which ethical theory would you say you subscribe to most closely?
5. What ethical approaches do you see in colleagues and others in CJ system?
6. What kind of ethics do they teach in law school?
7. Do you think ethics have a place in the criminal justice system or is it more procedural?
8. What place do you think ethics have in your job?
9. What is an ethical dilemma do you see every day?

10. What is the biggest ethical problem you have ever seen in your career?
11. What kind of things guides you in personal life?
12. Does this translate to professional?
  - a. Facing tough personal decision, facing the dilemma of a lie
13. What do you do when personal and professional ethics conflict?
14. If you had to give one final capstone about ethics in your profession what would it be

Depending on the time allowed I was not always able to go through my full battery of questions for each interviewee, the judges had tight schedules, and I was lucky they accommodated me, but for those with additional time, I added additional content and questions into the interview. These additional questions would vary from interviewee to interviewee depending on what direction the interview took us.

**TROLLEY PROBLEM:**

1. You are a trolley conductor on a trolley whose breaks have malfunctioned. You are speeding towards five people stuck on a track. There is a handle in front of you which can switch the trolley onto a second track which has one person only on it. What do you do and why?
2. You are standing on a bridge and see a trolley out of control which will pass under the bridge and hit five people stuck on the tracks behind the bridge. Next to you, however, is a VERY fat man. You know that if you push this man off the bridge, he will die, but stop the trolley from hitting the five. What do you do and why?
3. You are a doctor in an emergency room. There has been a huge pileup resulting in five people coming into the emergency room all needing separate organ transplants. In the next room a hermit has come in for a regular check-up. You know that if you

anesthetize and kill the Hermit, you could you his organ to save the five-car crash victims for the hermit's life. What do you do and why?

## INTERVIEWS

### JUDGES:

Through the course of my internship and semester, I interviewed two of the three district court judges within Laramie County: Judge Sharpe and Judge Campbell. District court is where felony cases within state law are generally heard and tried. Felony cases are all criminal charges carrying sentences of at least one year and sometimes carrying the possibility of life imprisonment and/or the death penalty. I chose these two judges because I had observed separate felony cases presided over by each respectively. Because of the tight schedules of District court Judges, my interviews with them were the most limited and kept within the 30-minute mark for the most part. The American Bar Association has written ethical rules for Judges. These rules are called the Canons of Ethics.

#### CANON 1

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

#### CANON 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.

#### CANON 3

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

#### CANON 4

A judge or candidate for judicial office shall not engage in political or campaign activity inconsistent with the independence, integrity, or impartiality of the judiciary. (American Bar Association, 2016)

### **Campbell -**

Much like how they are described in the Canons Judge Campbell summed ethics up as “Thoughtful exercise of discretion when you have it and resisting acting outside of that discretion.” Throughout his interview, Judge Campbell stressed that the number one thing one must always think about in being a judge is the safety of the community which one presides over. He said that when doesn’t specifically state how a judge should act in a matter (when given discretion) that they must “balance the purposes of the law aka the greater good and are they served by the decision you’re making.” Judge Campbell saw the purposes of law as the promotion of positive behavior, prohibition of bad behavior, and protecting the public. He stressed that just because a crime is committed in an outrageous fashion should not mean it should be given a harsher sentence.

When questioned on what should qualify something for a harsher sentence Judge Campbell delved into a hypothetical of the differences between an assassin and an outraged husband who discovers his wife is cheating on him and commits murder. Here he would consider the crime of the assassin more heinous because it presents as more of an anti-social act. Because the consequences of these two cases are the same, I questioned him on what matters most in a case he answered first the consequences and then the intent of the actor. He mentioned how when given discretion in sentencing he will often examine the circumstances of the individual to determine how they got there. As an example of this he brought up a hypothetical of two drunk drivers: one just a drunken partier, perhaps picked up the habit in college and

another who is a self-medicating alcoholic abused as a child. In each case he would tailor his sentence to treat the problem at hand best. One man is purely irresponsible and needs to learn a lesson while the other might need treatment which would deal with the underlying issues causing the problem. A personal dilemma he sometimes faces as a judge is that you will want to cut someone a break either by personal circumstances or simply liking the guy, but you must protect the community.

During the interview, Judge Campbell brought up multiple times he felt much of the ethics of American legal justice has its roots in Christian principles. “These principles,” he said, “are given life in the form of statutes.” Effectively religious teachings influenced the legislator's views of what is and aren't wrong, and that which was considered especially heinous according to their beliefs is often prohibited by the laws they then pass.

Throughout his interview when faced with an ethical quandary Judge Campbell's primary concern was the good of the community and the consequences of certain acts. When examining the intent of the actors, it was only if they informed how best to treat the offender and protect both them and the community.

### **Sharpe -**

Judge Sharpe was the only individual who could be said to align most closely with an Aristotelian Virtue based system of ethics. He felt that each person “learns ethics from their parents. Not to lie, cheat, steal.” He pointed out that as a judge he appreciates that not everyone has had great parents, but he feels that that is where “a lot of modeling occurs.” He believed that ethics as one of his professors in law school said, is something which “you either have, or you don't.” He believed that the most important role this has played in his life is one tenant crucial to

a judge: “the appearance of impropriety.” By standing by the personal code he learned from his parents he can avoid ever appearing improper.

When Faced with an ethical dilemma in his personal life Judge Sharpe responded that you should “talk to the people you love; the people who surround you. Seek guidance from them.” Decisions take place within their context and must be judged to him. “There are lies, and then there are *lies*.” As an example of this, he points to the difference between lying to your wife about a crew cut she may have gotten and lying about something of substance. He believes that each of us “innately knows where to draw the line.”

### **PROSECUTORS:**

Prosecutors and all other attorneys, like Judges, also have a professional code of conduct written for them by the American Bar Association. Unlike the canons written for the judges, however, the attorneys “Model Rules of Professional Conduct” are much broader and encompass many behaviors. Generally, regarding ethics, the rules are procedural instructions on what attorneys must do to avoid acting improperly. They mostly caution against the appearance of impropriety and defining what a conflict of interest might look like and what to do should this arise with a client (American Bar Association, 2016).

### **District Attorney Jeremiah Sandburg -**

District Attorney Jeremiah Sandburg turned out to be very knowledgeable about ethics as he had studied and debated it in high school and college. He was a self-described rule utilitarian. He believes this is informed by his white, Anglo-Saxon, protestant upbringing which made him identify with Rule-based Utilitarianism the most. Throughout his interview, however, he also said that he makes a lot of his decisions based off what he thought the founding fathers would think with a lot of parallels in Aristotelian Virtue Based Ethics.

Mr. Sandburg believed there were a lot of areas where ethics come into play in the legal system. Within the prosecutor's office he stressed that they must be the ones "wearing the white hat" aka always following the law to the letter enforcing it with an even hand while always adhering to it. "If we don't play by the rules why would anyone else?" He stressed that as the DA it was especially important for him to be strictly upright in every way, including refraining from jay walking. To combat his own possible bias, he always avoids looking at the race on an affidavit so it cannot subconsciously affect him. He believes that the court is not so good at this, however. He has seen many cases where the court will take the attitude that since "someone has a good background, therefore, you should go easier on them." He believes that sometimes this can cause the use of privilege as an excuse for why someone should receive a lesser sentence. Amongst prosecutors in the nation, he believes that the primary problem is a "win at all costs" attitude where lawyers are more concerned with winning their case than they are about seeing justice served. He believes that prosecution should be goal based rather than ends based. By this, he meant what the goal you are trying to accomplish for society is and how can you best achieve that, rather than simply trying to get convictions all the time. He struggles with child abuse cases in his county. The problem, he said, is that the statute is "too gray." It simply states it must be "injury more than would be reasonable" leaving the decision of what would be reasonable to the prosecutor. In these instances, he felt it's difficult to determine the goal. Ultimately, he tries to figure out what would be best for the child aka being "raised in a safe environment." Sometimes instead of criminally prosecuting the parents, it is best to put them through the juvenile system instead. This system is more rehabilitative and looks to reform the offender

As an elected official himself Mr. Sandburg had to say on the matter, he believed that an oligarchy is the best form of government as those who are best informed should be in charge. He said that “The Founders didn’t believe in the direct republic” “It should be the learned individuals in society who set up the rules.”

When running for political office, one should look to the founders of America. Be like George Washington. Commit public service. Serve community then you go back to private life. Volunteering for public office is like volunteering for rocks to be slung if you are doing it for personal gain you have miscalculated. Not in people’s self-interest. The rule it creates makes the best benefit for everyone. If everyone went into with correct motivations all of society would benefit. We say looking for candidates who are not doing it for themselves but is instead giving something else. The ideal ruler is the person who does not want to be there. Serve time then walk away. Want them to be a good person. Hope that people are electing the right person for the right reasons. Ideally, those who learn to listen and decide are the best leaders. Oligarchy gets authority from the people with the authority innately given to them then you give that up when you join into a social contract (aka Locke). Government must enforce the social contract of law. Government breaches contract when they run out of money and cannot adequately fulfill their jobs. Theoretically, the checks and balances should combat the election of some of the bad politicians. Variety of individuals work and compromise. There is no guarantee there will be a greater number of good politicians. Therefore, it is the duty of everyone of society to educate themselves and try to choose the good politicians to produce a better society.

The philosopher John Rawls famously wrote about a concept known as the cone of ignorance. Within this philosophy when considering how a society should be set up one must place themselves within a “cone of ignorance” on where they would be within this society and assume that they might be placed in the most disadvantaged position. By following this plan, one ideally would come up with the fairest form of government. Mr. Sandburg sided with Rawls in this way as he felt that equal is not always fair. Within the above block quote, Mr. Sandburg hints at an ethical problem he probably feels his office is being forced into. He points out that “Government breaches a contract when they run out of money and can’t adequately fulfill their jobs.” In late December of last year, Jeremiah made a request to the legislature for more funding to increase the staff of his office which he felt could not handle the massive workload being forced upon them. His request was denied. This problem has only been exacerbated six months as staff has become burned out, elected to other positions, and some just moving to other offices. He pointed to these and the desire to spend more time with his daughter as all contributing reasons on why he will not be running for reelection when he spoke to Katie Kull over at the Wyoming Tribune Eagle in April (2018).

In capping off the interview, Jeremiah stated “In the Criminal justice system you have the ability to elect judges and lead prosecutors. Society has abdicated the right to choose judges. There is a problem of retention being too high. This often happens because society assumes the judge is good and does not pay attention. This produces worse overall good for society. Judges and prosecutors have a greater impact on people’s lives more than any other elected official. Prosecutors and judges are the only ones with the ability to take away lives locking up or death sentence.”

**Joshua Taylor -**

Joshua Taylor was the frankest of all those who were interviewed. He felt he most identified with Deontology, but with decision making he often felt like he would instead revert to Utilitarianism. As a criminal prosecutor, he had seen a lot of selfish, egotistical actions and he felt this had made him more jaded, but more realistic.

Mr. Taylor did not want to get too into it but stated that because of his background and upbringing he took a very hardline stance against drugs. He felt that drug use was wrong “inherently” not just because of all the damage he had seen it cause in cases like drunk driving or assault but also because he felt that in and of themselves drugs and alcohol have an inherently degrading characteristic. He said “Do I want to socially ostracize myself by saying someone is a bad person for doing it? Not necessarily, but they are making a bad decision.” He felt it has a corrupting influence. He also extended this to alcohol “if you use it to the extent that it impairs you’re judgement.” He felt it is still wrong even if they’re getting drunk in their own home because “It sets a precedent. What you do in your home eventually influences what you do in normal life.” “(Alcohol) shouldn’t be used to cope with yourself to relax. People who do it are damaging themselves.” In much the same way as the DA himself, Josh feels that he must be a model to those around him: acting the way he feels others should behave and being the change, he wants to see in the judicial system. To illustrate this, he got drunk was when he was 23.

While he says that drug use is inherently bad his ultimate justification comes from a utilitarian standpoint: that they are only bad because of the effect they have on everyone around them. He drove this point home in his answer to the fat man aspect of the trolley problem. (He would push a fat man off a bridge to prevent a trolley below from hitting five people). When questioned on why he made this decision he stated simply that “What makes something right or

wrong is the value of the lives. The value of lives is more important than my ethical quandaries.” We also discussed the difference between academics and actual practical application. For example, many people would say they would throw themselves onto the tracks to save five people, but in his work, he sees people “making selfish decisions for themselves every day.” He felt there also one complaint which could be leveled at both the justice system and ethical theories: that they are both too macro centric and fail on the micro level. What he meant by this is that they have broad sweeping ideas or goals, but often can fail to satisfy on the individual level.

While he was a self-espoused utilitarian when it came down to it, Mr. Taylor would also display Deontological qualities. He described a scenario where he saw an autistic man being verbally accosted in public and he stepped in but could not explain why. He simply felt that “This is just wrong I don’t know if there’s anything utilitarian about it but there’s an innocent who needs to be protected because he can’t protect himself.”

Mr. Taylor saw the biggest ethical problems in the CJ system as because some lawyers are just lazy and that the self-report system is not being upheld. He was “very upset” about this and felt that the lack of the reporting system is creating “a good ol’ boys club of letting bygones be bygones while merits go by the way side.” He felt that people do not want to hurt their friends or associates. Mr. Taylor felt that the dire consequences normally associated with reporting someone might be part of the problem. The shame and potential legal consequences, including disbarment and possible criminal charges, associated with being reported create a stigma and culture where it is rarer. He stated this might be fixed by reducing how grave the consequences can be especially for smaller offenses so they might become more likely to be reported.

With ethics within the CJ system, Mr. Taylor felt he was “Not sure if they do have a place. They exist within it, but the golden rule system uses examples set. Personal decisions do not work with the big picture philosophies. People will move from system to system to justify whatever action they are currently engaged in.” He felt that many people he sees may try to think they are moral, but when it comes down to it, they are ultimately egoists using whatever system might justify their actions. He was not sure if there were any altruistic acts in this life as everyone always receives a benefit. He stated that you would need to “find the balance between fulfilling yourself and the detriment to yourself.” And for something to be altruistic it would have to be financially or physically detrimental to the person. “Justice has to be its own reward. I would love to think that the happy feeling of doing right is that, but I’ve seen too much to believe that.”

Mr. Taylor Capped off his interview by stating simply that he “wishes ethics were more prevalent in the criminal justice system.”

### **Ben Sherman –**

Ben Sherman felt there are three ethical approaches which he sees in the court system. The first is an end always justifying the means approach where attorneys will do anything they think they can get away with to win their case. He feels this is the approach that most attorneys in the legal system adhere to. Second is a means justifying the end approach. “Do what you think is right, and the correct end will always come about.” He stated this was his approach for a long time, but recent events have caused him to shift to a compromise that makes up the third approach. This approach takes still tries to be ethical but is not afraid to take advantage of the grey areas which present themselves such a voir dire where it is not clear what an attorney is and may not do.

At the beginning of our interview, Mr. Sherman stated that ethics to him mean “Always wearing the white hat. It is hard to waka up every morning and put on the white hat. It means to me always doing what you believe is right: not sacrificing or compromising your personal beliefs about what is right or wrong even if you’re overworked, angry, or someone has done something unethical to you.” To remind himself of this Mr. Sherman hangs a white cowboy hat in the corner of his office. This way whenever he is storming out of his office or angry about something which might make him want to compromise he sees it and is reminded of what it means. While he continues to try his best to follow this attitude its possible Mr. Sherman feel he is struggling to keep standing by this. He has seen several cases lately where all he has tried to do was be ethical and he will still lose the case. It has made him wonder “Was I wrong to try and be ethical? Was it wrong to try and be the white hat in a room full of black hats?” He wonders if he is not “the fool at the poker table” where everyone else is taking advantage of the system while those who try and do right are mocked and taken advantage of. Because of this, he is not entirely ready to remove his white hat, but he is more willing to bring shades of grey into it and “tow the line.” Not to the point of prosecutorial misconduct but simply more likely to walk in those grey areas.

Like many of the other professionals in the Laramie County courts, Mr. Sherman felt that god has a huge place in his life. His two biggest guides in life are “god and the constitution.”

When I something that makes me want to talk to someone about god I will. You will never feel rested unless you have god in your life. Once I when I was listening to a defendant plead guilty to possession and said he that he “just didn’t have that rest in his life.” After this, I needed to speak to this defendant.

He ended up speaking to this defendant and sometimes even sees him in church. His religious inclinations also influenced one of his answers to the trolley problem. When asked if he would harvest the organs of a hermit who came into a hospital to save five car crash victims he stated that he would not because “it was god’s choosing that has put these five victims in need of transplants. Modern medicine has come to the place where I could change gods will. But in this scenario, they’re already needing the organ transplant the harm has already occurred.” The difference between this pushing the fat man in his opinion is “Preventing the harm from occurring vs. remediating the harm after it has already occurred.”

Mr. Sherman felt that ethics have a place within the criminal justice system especially within the DA’s office. He felt this most are most salient in prosecutorial discretion

Someone has violated the law and is guilty of breaking the law, but we have the choice not to charge them. This comes up in a scenario where a woman is stealing from a convenience store to provide for five children. Is there something we can do besides prosecuting this because it was out of necessity?

He feels that prosecutorial discretion is most important in protecting individual rights “You can’t compromise legal justice system someone’s right just to have a safer community.” He thinks he follows Kantian Deontology in his prosecution of cases. In daily life, however, he tries to find the golden mean between all things. “Not everyone is inherently good or evil I try to find the happy medium.”

The two biggest issues he sees in the CJ system today is that defense attorneys “don’t care whom they hurt so long as they get the verdict which is favorable to their client.” And the fact that “the idea of attorneys being a self-policing organization has gone out the window a little

bit.” “Ethics in Lawyers is interesting because they have an obligation to turn in other lawyers who do wrong but most never do.”

### **PRIVATE ATTORNEYS**

Private occupy an interesting space because they are asked to defend individuals accused of crimes. The US justice system says that every person may have a defense and is the responsibility of these attorneys to provide one to the best of their abilities; even if their clients are guilty. Because of the revolving door that is the legal system, many attorneys have taken on various roles as prosecutors, defense attorneys, and sometimes eventually judges.

#### **Thomas Fleener –**

Mr. Fleener comes from a background in service in the military. He was a part of the Judge Advocate General’s Corps. This is the department of the military in charge of military law and is often called JAG attorneys or lawyers. This experience has a profound effect on his views on ethics, duty, and life .

Mr. Fleener expounded that he would never describe himself as a Deontologist because of the moral rigidity it entails, but he felt that his interpretations of what makes a situation ethical or not were often derived from what he felt his duty was. For example, in the trolley case where he is the operator of the trolley he would switch to the track with one person stuck on it rather than five, but where he is just a bystander observing what is happening he would not push the fat man. His answer changed, however, when the hypothetical was altered so that with the fat man he was the local supervisor of all trolleys for the county. Here he felt that because he had a responsibility as a supervisor of all trolleys. Hence, he had to protect those down the track from being killed by the trolley and would push the fat man.

Ultimately Mr. Fleener felt that usually his personal feelings on ethics did not factor into his defense. It is simply his duty as a defense attorney to present every individual who hires him with the best defense that he can. As a defense attorney, the primary discretion afforded to him is in choosing his clients. He normally is not too picky but takes a strong stance against men who beat their significant others. He felt that individuals who do this are weak willed cowards and there is something about battering women which he considers especially heinous. Unlike some other criminal offenders, such as drug users or the poor, he sees these men as not having a disability or other problem which they could blame for their aberrant and violent behavior. He pointed out that before going private practice if an attorney is a public defender they have this discretion taken away from them. They simply must represent every client who comes in the door. To combat any personal bias and to ensure he always gives the best defense he would never ask his client if they did it. For the each of his clients he tries to find something within them he likes; something good he sees in them. Because of the strict code of professional conduct allow a defense attorney to divest themselves of responsibility he tries to live his personal life in a fashion opposite to his professional one. He tries to be more open, honest, and trustworthy because he cannot do this in his professional life.

Two things came up which have bothered him most from an ethics standpoint. The first was he once got a man acquitted of a terrible rape case where the man had allegedly held her a knife point and violently assaulted her and later the man did the same thing again (except was found guilty the second time). The second was that he had cross examined a very young girl who was the victim in a case against his client. He followed his obligation and went after her hard trying to make her look like a liar and catch her in inconsistencies when he honestly felt bad for her that her life had obviously been turned upside down by this case. He felt even worse

about the second case because in the first he had simply gone after the prosecution and shoddy police and investigative work when in the second he had directly gone after the victim. He stated that sometimes it is easier to focus on the game of “I’m better than you” in court.

Mr. Fleener brought up a point mentioned by Ben Sherman in his interview. Depending on what judge you have apparently are given leeway during voir dire. The objective is to make the jury like you and make them think about issues to come up during the trial before they do.

### **Bob Rose –**

Mr. Rose has held a wide variety of positions in the criminal justice system from a defense attorney to county attorney. Mr. Rose was a philosophy major specializing in existentialism and as such was fairly knowledgeable. Ethics to him is “the principled and disciplined application of what is best under the situation. Behave in such a way as to behave in guidelines which address the higher aspirations of society.”

Throughout my interview, Mr. Rose was one of the few individuals who struck me as most consistent with a deontological viewpoint. Unlike almost all the other individuals I interviewed Mr. Rose took a hardline against pushing the fat man of the trolley problem. He also answered the first formulation of the problem in a manner consistent with his second answer. He explained in the first answer he diverted the trolley not to kill one versus five, but instead because this creates the greatest opportunity for fate to intervene and cause no deaths. Without intending to his explanation echoed the Deontological concept of the Doctrine of Double Effect. This says that if you do one thing with the good intent of something it can have a negative consequence and long as your original intent was good. Mr. Rose would not push the fat man in the second case because to do so would guaranteeing that he would kill somebody whereas fate could still intervene to save the five if he refrains from killing the man.

Following from this Mr. Rose's approach to everything including voir dire reflects this attitude. He believes that people are hardwired to detect manipulation and deception. Because of this, he tries to be as honest, open, and straightforward in his voir dire and the court process as he can.

Selling a case to the jury has little to do with facts or law more to do with convincing through words and behavior that your story is correct. The whole process is founded on your credibility. The juries are not listening to what you say. They are evaluating with base part of the brain to assess whether you are a trustworthy person. Developed a radar from generations of survival. People consciously and unconsciously size someone up as a threat. (Someone you would like etc.) They are sizing you up from the first moment of entering the courtroom. They look at body language what you say how you move how you treat your clients is all transmitting data. Jury decides who they like then they follow that person and base their end decision on what they feel and whom they trust. The jury may not understand the law, but they know whom they trust and like and you establish this through being honest with the jury about the case including the weak points. You must be honest with yourself in a jury case. You never want to obfuscate instead stay open. Lawyers will throw out hypotheticals to explain things to a jury. Identify whom you do not want on a jury maybe by throwing out some hypotheticals. When you talk in hypotheticals with a jury, you play a game with the jury "can you really guess what I'm trying to say" the jury feels they are being manipulated and they are being manipulated. Be distrustful and suspicious of the questioner. I do not use hypotheticals at all simply tells them what I am worried about. "there's going to be evidence of ABCD my fear is that when you hear this evidence you're going to feel (X). How do you feel about that?"

Then you have something to talk about where they know you are telling the truth and they are telling the truth. When you treat jurors this way, you invest a tremendous thought into what you are trying to communicate. You put yourself in their shoes and ask yourself “what would I want to be asked if I was on a jury?” When you train yourself to treat this way on voir dire, it slops over into every other part of your life. You deal with family friends etc. this way. Honestly, directly, thoughtfully, sensitively. Profoundly changes your life. Once you let the genie out of the bottle, it cannot be contained. Expands exponentially into all other areas. Applicable straight across the board in all areas of your life. You cannot compartmentalize that honesty. Suddenly everyone you run into is a juror, and you treat them as a juror: honestly, kindly, and accepting everything he or she tell you. Validate their right to feel that way. Even if it is something opposite of what you feel. If it is honest it is a gift even, and especially, if it is bad news. You are looking for the juror who will 100% go after your client. Validate and thank him for telling you the truth. He will trust you if you allow him to do it. If you fight with him, no other juror will talk to you, but if they see you having a good report you build credibility; trustworthiness. It is not phony you're not nice to be nice you are genuinely thanking people for being honest. Every person is a juror in life because we all make judgements every second of the day. We know when someone is phony. Sense it knows it. Cannot be phony nice in front of a jury must be legitimately kind and sincere genuine or else they will turn you off. You must be real, must be honest. This spills over into other aspects of life because you receive such benefit from it. Cannot talk to them like a lawyer rather like a human on their level. Not condescending or talking down just one human talking to another human. Communicating in ways, you don't communicate

with anyone else in your life. It is too exhausting to juggle more than one ball spend time being real with jury then phony with everyone else is too hard. Wearing yourself out trying to be something or somebody who you are not. Take the path of least resistance why make life harder than it already is. Be true to yourself and accept others and love others for who they are. Really, genuinely care for people as they are. When you have a client, your job is to tell their story. Cannot tell their story if you do not believe you, client. Can tell a story but it would not be genuine. Find the part of your client you love something about them you find likeable identify with that latch onto it hold onto it then you can tell their story love them feel it as it becomes a part of you and the jury feels that too. If you like your client, they will like your client.

Just as Kant does not believe in any form of deception, Mr. Rose has taken his approach to voir dire and applied that honesty to every other aspect of his life. His philosophy offers similarities and stark differences between himself and Mr. Fleener. Both try to find the good in their clients and like them, but while Mr. Fleener tries to focus on his procedural obligation, Mr. Rose tries to follow his own code of ethics even when forced to defend someone. Perhaps this is an overly peachy way of looking at being a defense attorney which only looks at the positive elements of defense rather than the gritty realities of defense that Mr. Fleener brought up like having to defend a violent rapist.

Further establishing himself as a Deontologist, Mr. Rose said that he always tells the truth in his life even if he knew it would be grim. But where ethics comes in is how you tell that truth. Talent is telling clients terrible news in a way they like it. He ultimately believes that everything is ok. No matter what happens things are the way they ought to be, and one just must manage the bad things.

## **IMPLICATIONS**

Throughout my interviews several themes emerged. For one while some interviewees knew of philosophical ethics none of them felt it was something that individuals learned in law school or was exposed to them during their time at law school. There was a theme running throughout of Utilitarianism used as a justification for what makes something right or wrong, but many would also espouse intuitions that were more Deontological. Several individuals, I spoke to felt that realistically this lack of ethical knowledge led people to adapt their justifications of what made something right to fit whatever they felt most comfortable with. It formed an ethical intuitionism where people would go with their gut. This is not always a bad thing, but almost every attorney I spoke to expressed concern there should be more education on philosophical ethics so it could play a larger role in the legal world. While much of the criminal justice system is procedural, it seemed consistent throughout my interviews the people's personal ethical beliefs have a significant impact on how they conduct themselves within and without the courtroom. No ethical theory can stand above the others, and each has its problems, but every individual I interviewed felt that simply being exposed to these theories might help people make more informed decisions as professionals in the criminal justice system. The University has an ethics class that criminal justice students take so it seems it would not be too great a leap that Law Schools around the nation might implement mandatory philosophical ethics classes.

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