



SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788
(631) 234-5588



LAW DAY RECOGNITION
“Civics, Civility, Collaboration”
Cornerstones of Democracy

Faculty:

Hon. Anthony Cannataro, Acting Chief Judge
Harvey B. Besunder, Esq.
Charles Fox, MA
Elizabeth A. Justesen, Esq., MSW
Daniel Weitz, Esq.

May 1, 2023
Suffolk County Bar Association, New York

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LAW DAY RECOGNITION

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Friday, April 28, 2023
1:00 p.m. – 2:30 p.m.
Hybrid - Live in the Great Hall
and Virtual Webinar

- 9:00 – 9:05 am **Welcome, Introductions and Remarks**
Hon. John J. Leo, J.S. C., SCBA Second Vice President
- 9:05 – 9:15 am **Law Day Opening Remarks**
Hon. Anthony Cannataro
- 9:15 – 10:15 am **EPIC Program – Enriching, Protecting, and Improving our Communities- Know your Criminal Rights**
Elizabeth A. Justesen, Esq., MSW
- Introduction with overview of the Criminal Justice System
 - Types of charges
 - Violations
 - Misdemeanors
 - Felonies
 - Types of sentences, collateral consequences
 - Police Approach and Questioning
 - Car stops
 - Passengers
 - Searches, warrants
 - Reforms for arrests
 - What to Expect if you are Arrested
 - Arraignment
 - Court choices for release or bail
- 10:15 – 10:30 am **Break**



- 10:30 – 11:00 am **Cultural Humility**
Charles Fox, MA
- Cultural Competency
 - Professional Obligations as Attorneys
 - Cultural Humility in the Legal Profession
 - Principles of Cultural Humility
- 11:00 – 11:25 am **Reflective Listening and Collaboration**
Daniel Weitz, Esq.
- Listening for Understanding
 - Summarizing, Reflecting and Framing
- 11:25 – 11:55 am **Civility**
Harvey B. Besunder, Esq.
- 11:55 – 12:30 pm **Q & A**



HON. ANTHONY CANNATARO, ASSOCIATE JUDGE OF THE COURT OF APPEALS

Hon. Anthony Cannataro, Associate Judge of the Court of Appeals, was born in New Jersey in July 1965. On May 25, 2021, Governor Andrew M. Cuomo nominated him to the Court of Appeals, and the New York State Senate confirmed his appointment on June 8, 2021.

A career public servant, Judge Cannataro began his legal career in 1996 as an Assistant Corporation Counsel with the New York City Law Department. From 2000-2003, he served as Law Clerk to Carmen Beauchamp Ciparick, Associate Judge of the New York Court of Appeals. He then served as Law Clerk to Hon. Lottie E. Wilkins in Supreme Court, New York County from 2003-2011. In 2011, he was elected Judge of the Civil Court of the City of New York, receiving assignments to the Kings County Family Court and the Bronx County Civil Court, until his appointment in 2016 as Supervising Judge of the New York County Civil Court. In 2017, he was elected Justice of the Supreme Court for the First Judicial District. Upon taking office as a Supreme Court Justice in January 2018, he was concurrently appointed Citywide Administrative Judge for the New York City Civil Court.

Judge Cannataro received his B.A. (cum laude) from Columbia University in 1993 and his J.D. (cum laude) from New York Law School in 1996. He was admitted to practice law in April 1997. He currently resides with his husband in Westchester County.



Elizabeth A. Justesen, Esq., MSW – Chief Community Outreach Officer of the Legal Aid Society of Suffolk County

Elizabeth graduated magna cum laude from the dual degree program at Touro and SUNY Stony Brook for law and social work in 2006. She is currently the Chief Community Outreach Officer of the Legal Aid Society of Suffolk County and conducts numerous programs educating community members on the various issues they confront in the court system and knowing their rights. Additionally, she oversees the “holistic lawyering” practices for the organization, educating attorneys and support staff on holistic practices and collateral consequences. In the last ten years she has helped to develop and oversee the Social Work Bureau within the organization’s criminal division. Prior to that, Elizabeth was a practicing defense attorney at the Legal Aid Society of Suffolk County for ten years, working in family and criminal court.

Elizabeth is the chair of the resources sub-committee for the Suffolk County Re-Entry Task Force which works to improve the lives of people re-entering the community post-conviction. She is on the Board for New Hour, a non-profit working with incarcerated women and their families with programs while in custody and services as they transition home to the community. Elizabeth is the supervising attorney for Breaking Barriers, a cooperative pro bono project with The Legal Aid Society of Suffolk County and Touro Law Center assisting persons with criminal convictions overcome barriers to employment and educational licenses through the application of post-conviction certificates and sealing motions.

Elizabeth is currently an adjunct professor at SUNY Stony Brook where she teaches Forensic Social Work for the master’s degree program. Since the Spring of 2020 she is an adjunct professor for the Holistic Criminal Defender and Post-Conviction Clinics at Touro Law School. In May 2021, Elizabeth became a certified trainer for SAMHSA on “How Being Trauma-Informed Improves Criminal Justice Outcomes”. She is a member of the Suffolk County Bar Association, participates in the Access to Justice - Community Legal Help Project, and was named co-chair for The Suffolk County Women in the Courts Committee 2021-2023 session.

ejustesen@sclas.org



Charles Fox – Director of Diversity & Development for the Legal Aid Society of Suffolk County

He has been in this position for just over a year, developing trainings, workshops and strategies to promote equity and inclusion within and outside of the organization. His work has been centered on facilitating critical conversations around innovative approaches to diversity and the importance of fostering an inclusive organizational environment. Mr. Fox has spent over 15 years in community/not for profit work, education and youth development where he has partnered with school districts and CBO's to implement comprehensive after school programming and community programs. Prior to Legal Aid, Mr. Fox was Director of Programs for the Economic Opportunity Council of Suffolk, the federally designated anti-poverty community action program in Suffolk County. Mr. Fox holds a Bachelors Degree in Political Science/Africana Studies and a Masters Degree in Public Policy from Stony Brook University.



Daniel M. Weitz, Esq.
New York State Unified Court System
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Dan is the Director of the Division of Professional and Court Services for the New York State Unified Court System (UCS). Dan oversees the statewide offices of alternative dispute resolution, continuing legal education, language access, grants and contracts, records management, legal information, production of the court record, trial court support, as well as the children's centers program, parent education and awareness program, guardianship assistance network and 800-Court-NY. From 1998-2016, Dan served as Statewide ADR Coordinator, overseeing a statewide program of court-annexed ADR initiatives involving mediation, arbitration, neutral evaluation, parenting coordination and collaborative law. He also directed the Community Dispute Resolution Centers Program.

Dan serves on UCS Advisory Committees on Language Access, ADR, and Access for People with Disabilities. Dan previously served as Co-Counsel to the Board of Governors of the New York State Attorney-Client Fee Dispute Resolution Program. He is a past Chair of the New York City Bar Association ADR Committee and past Co-Chair of the ABA Dispute Resolution Section, Court ADR Committee. Dan has also served on the NYC Bar Domestic Violence Committee and Science and Law Committee. Dan also served on the UCS Matrimonial Commission for which he Co-Chaired the Subcommittee on The Use of Experts.

Dan has over twenty-three years of experience as a court administrator and over thirty years of experience in the field of ADR. He is an Adjunct Clinical Professor of Mediation at Cardozo School of Law, an Adjunct Professor of Clinical Law at NYU School of Law and has taught ADR and conflict resolution related courses at Vermont Law School, Mitchell Hamline School of Law, Pepperdine School of Law, Idaho College of Law, John Jay College of Criminal Justice and Long Island University. Dan is an international ADR speaker having presented across the United States and beyond including Japan, China, Thailand and South Africa. He has also served as mediator in a wide range of matters including, general civil, family, employment, human rights, community, and police conduct cases.

Dan received his law degree from the Benjamin N. Cardozo School of Law, where he participated in the Mediation Clinic and was a Teaching Assistant in Legal Negotiation. While in law school he worked at JAMS and the United States Court of Appeals for the Second Circuit (The Civil Appeals Management Plan), and before law school he served as an original member of FutureLinks Inc., working in South Africa with youth leaders from all backgrounds to conduct workshops in non-violent social change, conflict resolution, and community development.

Highlighted Awards and Recognition

Association for Conflict Resolution of Greater NY "Frontline Champion Award" recognizing individuals who have made a meaningful impact on the field of mediation. 2018

The Lawyers Committee Against Domestic Violence "In the Trenches Award" Recognizing Indomitable Courage, Vision and Dedication to Ending Domestic Violence 2013

The New York City Bar Bernard Botein Award for Outstanding Contributions to the Administration of the Courts 2011

Highlighted Publications

The Brains Behind Mediation: Reflections on Neuroscience, Conflict Resolution and Decision Making, 12 *CARDOZO J. CONFLICT RESOL.* 2 471 (2011)



HARVEY B. BESUNDER, ESQ.

Mr. Besunder was admitted to the practice of law in 1967, and from 1991-2010 had had his own law practice in Suffolk County. In September 2010 he merged his firm with that of Bracken & Margolin, to form Bracken Margolin Besunder LLP. Prior to that time, he was a member of the firm of Cruser, Hills, Hills & Besunder, an Assistant County Attorney for Suffolk County in the Condemnation Department, a member of the Suffolk County Attorney's Office and a Law Assistant in the Suffolk County District Court.

From 1993-1994, Mr. Besunder served as President of the Suffolk County Bar Association, and has been a member and/or Chair of that Association's Condemnation Committee, Grievance Committee, Judiciary Committee, and Bench-Bar Committee.

Mr. Besunder is also an active member of the New York State Bar Association. From 1993 to 1997, he served on the Executive Committee of the Association's Real Property Section, and was a member of the Association's House of Delegates, Committee on Lawyer Discipline, By-Laws Committee and the Nominating Committee. From 1996-1999, he served as Chair of the Committee on Lawyer Discipline.

From 1988 to 1996, he served as a member of the Grievance Committee for the Tenth Judicial District, and in 1997, he was appointed to serve on the Judicial Salaries Commission and served on the Independent Judicial Qualifications Commission from 2007- 2011. He is currently a member of the Committee on Character and Fitness.

He has lectured extensively on behalf of the Suffolk Academy of Law, on such topics as ethics and the disciplinary process, real property issues, and for the State Bar on Condemnation valuation issues.

Mr. Besunder has received several awards of Recognition including a Special Award of Recognition, as well as two awards for Pro Bono service. In 2010 Mr. Besunder received the prestigious Presidents Award for Service to the Legal Profession.



E.P.I.C.

**Enriching, Protecting, and Improving our
Communities**

BY THE LEGAL AID SOCIETY OF SUFFOLK COUNTY

Elizabeth A. Justesen, Esq.

WHO HAS A CRIMINAL CONVICTION?

- **1 in 3 adults in the United States has a criminal conviction**
- **Since the 1970's we have seen a 500% increase in the number of people convicted and incarcerated; and we have seen a decrease in crime since the 1990's**
- **"Tough on Crime", "War on Drugs", "3 Strikes", and Mandatory Minimum Sentencing have disproportionately affected the poor and minority populations**
- **NYS – over 30,000 incarcerated in prison**
 - **95% will come home one day!**

OTHER INTERESTING FACTS

- **OVER 95% of ALL cases PLEA BARGAIN**
 - That means very few people are found guilty “beyond a reasonable doubt”
- **NYS averages 50% of people in our local jails are there because they cannot post bail**
 - If a person is out of custody they can start treatment, stabilize their mental health, keep their job, home, children....pay up front restitution
 - If they cannot post bail- they are more likely to accept ANY plea that will allow them to go home in the shortest amount of time
 - Many prosecutors make an offer within first few days following arraignment- which is less jail time than it will take to get a case to trial, or they offer probation = client can go home today
- **Most people involved for the first time, and/or with minimal contact will get an offer for a reduced charge (many times non-criminal)**

Criminal Court Hierarchy

Vehicle and Traffic Bureau

- Traffic Infractions, Violations, and Misdemeanors
- Fines and Surcharges
- Points and Penalties

Town and Village Courts

- Town Code Violations
- Traffic Infractions and Violations
- Misdemeanors

DISTRICT COURT

- Violations
- Misdemeanors
- Some Felonies- FP1, Specialized Treatment Courts, Youth Court

COUNTY COURT

- Felonies

DIFFERENT TYPES OF CHARGES

VIOLATIONS

- Non-Criminal Offenses of the law
- Automatically Sealed- No Record on general level security check
 - Not a Conviction
 - Can be offered as unsealed as a reduced charge
- ACOD- Adjournment in Contemplation of Dismissal
 - 6 months or one year on first time marijuana charge

Most Common

- Harassment and Disorderly Conduct
- Orders of Protection
- Up to 15 days in Jail
- Conditional Discharge
- Fine up to \$250
- Surcharge \$120
- Time to Pay
- Traffic – DMV Abstract
- License and Registration Violations
- Leaving the Scene of an Accident
- Driving Impaired
- Fines
- Surcharge
- License Implications- Suspension

MISDEMEANORS

B Misdemeanor

- Certain Crimes
- Attempted- A Misdemeanor
- Up to 90 days in jail
- One Year Probation
- Conditional Discharge
- Fine
- Surcharge / DNA Fee

A Misdemeanor

- Crimes
- Up to 1 year in Jail
- Three Years Probation
- Conditional Discharge
- Fine
- Surcharge / DNA fee

Traffic

- License and Registration Crimes
- DWI
- Fines
- Surcharge
- License Implications
- Collateral Consequences – Interlock, License Revocation

THE \$15,000 CAB RIDE

Collateral Consequences of the DWI / DWAI

- Hire attorney.....\$5000
- OASAS Evaluation.....\$400
- Treatment.....\$30/wk
- Probation Fees.....\$475 PSI, \$30/wk
- Impound Fees.....\$100/ day
- Conviction Fine.....\$755
- Interlock\$300 install/ \$70 month/ \$145 reset
- IDP (7 wk DMV program).....\$225
- Civil DMV Refusal Fine.....\$750
- 3 yr DMV Safe Driver surcharge.....\$750
- License reapplication fees.....\$300
- Insurance fees.....???????
- Long term DMV Suspensions/Revocations?????
- Second DWI within 10 years – charged as a Felony

Common Misdemeanor Crimes

- Petit Larceny- deprive the rightful owner without their permission and give them nothing in return
 - under \$1000
 - pass all points to pay or take from another
- Criminal Possession of Controlled Substance 7th – if you have a script, but not in bottle, can still be charge (likely get a violation)
- Criminal Trespass - enter upon property without permission
- Assault – cause injury of substantial pain
- Criminal Impersonation - giving a police officer the name of a real person, not yourself
 - fake name is lesser charge of false impersonation
- Unauthorized Use of an Automobile- taking another's car without permission
- Driving While Intoxicated by Alcohol or Drugs
- Sexual Misconduct- engage in sexual intercourse, or oral or anal sexual conduct without the person's consent
 - consent: underage, disabled, or intoxicated
- Sexual Abuse- subjects another person to sexual contact who is unable to consent due to disability or intoxication, or under 14
 - lesser charge if parties are within 5 years of each other

VIOLATIONS AND MISDEMEANORS

- First Appearance- this is your assigned courtroom and judge
- Conferencing with your attorney and the district attorney
 - This will likely be over several court dates
- Plea bargaining for reduced charge or sentence
 - You may be in treatment, or partake in another bargained for program such as counseling for DV, anger management, or community service
 - Remember- OVER 98% of cases settle pre-trial
- Trial preparation
 - Investigation
 - Motions
 - Hearings
- Trial- bench for violations, bench or jury for misdemeanors
- Verdict
 - If not guilty- go home and celebrate
 - If guilty- court will adjourn for sentencing – court may re-set bail at this time

FELONIES

- Categorized by the Legislature
- Violent versus Non-Violent
- Sentencing variations
- Mandated Minimums for Certain Crimes
- Prior Felony Offender Designation
- Jail versus Prison sentences
- Five Years Probation
- Condition Discharge
- Fines and Surcharges
- DNA
- Collateral Consequences of Felony Conviction

Traffic

- Traffic Felonies
- Penalties
- License Consequences
 - DMV additional penalties

FELONIES

- In custody time limits to indict versus out of custody time limits
- CPL “180.80” – DA has 144 hours from arrest, if you are in custody, to present case to the Grand Jury, if not, must release you; then have the balance of 6 months to indict
 - Waivers for plea bargaining
 - Superior Court Information
- If not indicted, must be released, and DA has balance of 6 months to indict the case
- Grand Jury Presentation- NOT A TRIAL
 - Presentation of evidence
 - Whether: Likely a felony committed, likely defendant committed it
 - Very low burden of proof
 - Right to testify – but just a statement; DA uses as opportunity to review your RAP sheet
 - True Bill rendered
- If Indicted, Transfer to the County Court
 - Subsequent Arraignment
 - Bail can be re-set

COMMON FELONIES

- Grand Larceny- (4 degrees depending on dollar amount)
- Burglary - enter a property with intent to commit a crime therein
- Robbery - taking property from another by force
- Criminal Possession of a Controlled Substance
- Criminal Sale of a Controlled Substance – “passing” drugs constitutes a sale; regardless of the amount
- Rape
 - First Degree- forcible compulsion; or under 11; or less than 13, if actor is 18 or over
 - B Felony
 - Second Degree- actor is 18 or over, and victim is less than 15; or victim is mentally disabled
 - D Felony
 - Third Degree – victim unable to consent due to disability or intoxication; or actor is 21 or over and victim is less than 17
 - E Felony
- Possession of Child Pornography – Obscene performance; C and E Felony
- Disseminating Indecent Material to Minors – less than 17; D and E Felony

SENTENCING ALTERNATIVES

Conditional Discharge (CD)

- One or three years- stay out of trouble
- May have to participate in a program
- If DWI- includes interlock installation and maintenance
- If you pick up new charges during the period, the DA can restore you case to the calendar for re-sentencing

Probation

- Three or five years of community supervision
- One year interim probation option for a reduced charge or CD
- Includes weekly visits to the office, consent to searches of your person and home, alcohol and narcotic conditions with random testing
- Requirements to participate in various programs
- Keep a log of all contacts

SENTENCING

Alternative Sentences

- ACOD- adjournment in contemplation of dismissal
 - DA must consent
- Fine- yes sometimes you can just get a fine
- Community service
- Counseling programs
- TASC
- Specialized Treatment Courts

Jail or Prison

- Violations- up to 15 days
- Misdemeanors
 - Up to one year local jail
 - Can be a split jail and probation sentence
 - Community service alternative in lieu of jail
- Felonies
 - Can be a split jail and probation sentence
 - Community service alternative in lieu of jail
 - Can offer local or upstate sentence
 - PFO status effects sentencing
 - Statutory minimum and maximums
 - Alternatives with JDP and the specialized treatment courts
 - Post- release parole

FINES, SURCHARGES and COLLATERAL PENALTIES

- ALL Convictions will have a surcharge
 - Statutory and CANNOT be waived, can go directly for judgment
 - Failure to pay by the specified time results in a judgment
 - For VTL's- also will result in the suspension of your driving privileges
- Some convictions have mandatory fines
 - DUI, DWI, Aggravated Unlicensed Driver
- Some convictions have License suspension or revocation
 - DUI, DWI, Drug convictions, Leaving the scene of an accident
 - Enhanced penalties for CDL
- ALL DRUG CONVICTIONS, even violations, Can affect your Financial Aid
- Criminal convictions statutorily require the collection of your DNA - \$50 fee
- For driving offenses/convictions- DMV can have more penalties and fines that have nothing to do with the court
- Most violations and criminal convictions will have negative effects on immigration status- you should ALWAYS speak to an attorney that specializes in immigration BEFORE you take any plea
- Felony convictions can affect your ability to be licensed in certain professions, deny you the right to vote, and can affect your ability to qualify for certain assistance programs

KNOWING YOUR RIGHTS

THE 4TH AMENDMENT OF THE UNITED STATES CONSTITUTION and

ARTICLE 1, SECTION 12 OF THE CONSTITUTION OF NEW YORK

GUARANTEES THE RIGHT OF EACH PERSON TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE

THIS RIGHT IS FOUGHT FOR IN THE COURTROOM THROUGH MOTIONS AND SUBSEQUENT HEARINGS- NOT WHEN YOU ARE ENCOUNTERING POLICE

POLICE APPROACH AND QUESTIONING

STREET ENCOUNTERS- 4 LEVELS

Created by Case Law- Debour

POLICE APPROACH AND QUESTIONING
STREET ENCOUNTERS-
4 LEVELS Created by Case Law- Debour

1. THE APPROACH TO REQUEST INFORMATION

- To request information

2. THE COMMON LAW RIGHT TO INQUIRE

- Activated by “founded suspicion that criminal activity is afoot”

3. THE RIGHT TO FORCIBLY STOP AN INDIVIDUAL

- Officer reasonably suspects that the person is committing, has committed, or is about to commit a felony or misdemeanor
- Authorizes officer to search for weapons when “reasonably suspects” he is in danger of physical injury

4. THE RIGHT TO ARREST AND TAKE INTO CUSTODY

- Officer has probable cause to believe the person has committed a crime or offense in their presence

CAR STOPS

- Police stopping a vehicle is a “seizure”
- Police may stop a vehicle when:
 - Stop is conducted pursuant to “non-arbitrary, nondiscriminatory, and uniform” traffic procedures, OR
 - “reasonable suspicion” that the occupant is committing, has committed, or is about to commit a crime
- IF A CAR IS SEARCHED, AND CONTRABAND IS FOUND....ALL OCCUPANTS OF THE CAR CAN BE CHARGED WITH THE VIOLATION OR CRIME
 - Rebuttable Presumption- means you have to prove you didn't know the contraband was in the car

ONCE YOUR CAR IS STOPPED

- Leave your hands on the wheel, in view
- Wait for the officer to approach
- Provide identifying information
- Inquire why you are stopped
- Do not argue with the officer
- Police can look in and observe items in plain view
- They can observe whether you smell of alcohol or marijuana
- An officer does not have to write you a ticket for you to be charged with a subsequent crime
 - DWI, possession of a weapon/drugs (in plain view)
 - If they suspect or observe possible criminality, they have the right to order you out of the vehicle

PASSENGERS IN THE CAR

- A passenger can challenge the legality of the stop if subsequently charged with a crime
- Recent decisions do allow the police to order a passenger out of the car- more of a protective measure
- To frisk the passenger- police must have:
 - Reliable information that an occupant has a weapon (admitted by occupant)
 - “reasonable belief” a passenger is armed
 - “protective frisk”- for weapons- not to empty pockets
 - Purpose is the safety of the officer and prevent an escape
 - Do not argue with police- asserting these rights are done in the courtroom

SEARCHES

- ALL SEARCHES REQUIRE A WARRANT- (SORT OF)
- PERSONS HAVE A LEGITIMATE EXPECTATION OF PRIVACY IN THE PREMISES OR OBJECT SEARCHED
- WHEN POLICE VIOLATE THAT PRIVACY RIGHT, THE RESULT IS SUPPRESSION
- SUPPRESSION INCLUDES- STATEMENTS, OBSERVATIONS, AND TANGIBLE ITEMS
- SUPPRESSION IS THE RESULT AFTER A MOTION AND HEARINGS

EXCEPTIONS TO WARRANTLESS SEARCH

- Search incident to arrest- of your person and the items you have immediate access to
- Items in plain view
- Emergency doctrine- fear evidence will be destroyed
- Crime scene preservation
- Inventory search – car impounded

IF SOMEONE ELSE, NOT UNDER POLICE DIRECTION, FINDS AND GIVES THE POLICE THE ITEM/CONTRABAND- IT IS NOT A SEARCH FOR SUPPRESSION PURPOSES

ACTUAL ARREST

- New bail reform governs whether arrested or if you get a desk appearance ticket to appear at a date in the future
- REQUIRES PROBABLE CAUSE- assessed by officer
- DO NOT RESIST- IT ONLY RESULTS IN ADDITIONAL CHARGES- (Assault, Resisting)
- DO NOT CONSENT TO ANY SEARCH- Requires a warrant
 - requires they articulate specific facts to a judge signing the warrant

SO – WHAT ARE THE REFORMS?

- ARRESTS HAVE CHANGED
- Police must issue a desk appearance ticket (DAT) for all misdemeanors and non-violent E felonies, EXCEPT:
 - If person has open warrant, OR failed to appear in the last 2 years
 - If the person already has one case pending and now a new charge
 - Person is on probation or parole
 - After a reasonable opportunity, person has not satisfactorily verified his/her identity
 - Domestic Violence arrest
 - Arrest for ANY Sex Offense (Penal Law Article 130)
 - If an order of protection is *likely* to be issued (victim sensitive crimes)
 - Offense where driver's license is subject to revocation or suspension (DWI)
 - Officer reasonably arrestee is "in distress" and may harm him/herself

BUT YOU CAN BE ARRESTED

- Appearance tickets are NOT mandatory on all class “A,B,C, & D” felonies
- and on many “E” felonies
 - Rape 3rd degree
 - Criminal Sex Act 3rd degree
 - Escape 2nd degree
 - Absconding Temporary Release 1st degree
 - Absconding Community Treatment Facility
 - Bail Jumping 2nd degree

OTHER RELATED CHANGES

- Stationhouse bail is REPEALED
- DAT must be returnable “as soon as possible”, but NOT later than 20 days
- Court appearance reminders - no METS tickets
 - text messages
 - Telephone
 - Email
 - 1st class mail

ONCE ARRESTED- REQUEST AN ATTORNEY

- You have the right to remain silent – you are only required to provide your name, address, and date of birth
 - Request and attorney BEFORE making any other statements or signing anything
- ANY PROMISES BY THE POLICE ARE UNENFORCEABLE UNLESS AN ADA AND LAWYER ARE IN THE ROOM
- This applies to children as well
- IF YOU WANT TO “COOPERATE”- YOU NEED A LAWYER

Concerning Statistics...

- One study – of 250 prisoners exonerated by DNA evidence, 16% made a “false confession” - admitting to a crime they did not commit
 - Of those men and women later exonerated by DNA evidence, 25% made either a false confession or an incriminating statement
 - A study of 125 proven false confessions found that 33% of suspects were juveniles at the time of arrest, and at least 43% were mentally disturbed or ill
-
- Duane, James. You Have the Right to Remain Innocent. Little A, New York 2016
 - “False Confessions or Admissions,” Innocence Project, <http://www.innocenceproject.org/causes/false-confessions-admissions/>.

WHEN STATEMENTS CAN BE SUPPRESSED?

GOOD OLD MIRANDA.....not so much

Statements are used against you when made knowingly and voluntarily, suppressed if:

- Forced or threatened to say or sign
- Coerced into signing
- Person not given Miranda warnings
 - ONLY ONCE ARRESTED- pre-arrest statements WILL be used and WILL NOT be suppressed

FACT:

The high courts have held that the police can LIE, DECEIVE, and MISREPRESENT FACTS to get you to make verbal or written statements.

DO NOT SAY OR SIGN ANYTHING WITHOUT SPEAKING TO AN ATTORNEY PRE-ARREST OR POST-ARREST

PARENTS- THIS ADVICE IS FOR YOUR CHILDREN AS WELL- ALL THE SAME RULES APPLY!!! IT IS NOT BETTER FOR YOUR CHILDREN TO "COOPERATE" WITH POLICE WITHOUT AN ATTORNEY

WHAT TO EXPECT IF YOU ARE ARRESTED



POLICE INQUIRY AND QUESTIONING PRE AND POST ARREST

Pre- Arrest

- If there is any indication you may be a suspect -The question is:
“Am I free to leave?”
 - If not- YOU WANT A LAWYER
 - If yes- LEAVE
- Do not volunteer information, anything you say can be used against you (example-placing yourself at the scene)
- DO NOT SIGN ANYTHING without an attorney

Post-Arrest

- Police required to give you Miranda warnings
- RIGHT TO REMAIN SILENT
- RIGHT TO A LAWYER
- EXERCISE YOUR RIGHTS
- DO NOT SAY OR SIGN ANYTHING WITHOUT CONSULTING A LAWYER FIRST
- MAKING AN ADMISSION DOES NOT HELP YOUR CASE without an attorney

ARRAIGNMENT

- The process by which the court reads the charges against you, a not guilty plea is entered, and bail is set
- If you are given an appearance ticket, you must appear on the court date for arraignment
 - If you are charged with a crime you must first report to police liaison for fingerprinting
- If you are under arrest and in custody, the police precinct will bring you to D11, the arraignment courtroom
 - Open 365 days a year

BEFORE YOU SEE A JUDGE

Probation Interview

- Helps the Judge decide whether to release you or set bail
- Years lived in Suffolk County
- Family ties
- School / work – ties to the community
- Prior criminal history
- Assess mental and physical health
- Verification through contacts
- If on probation or parole- will call your officer

Attorney Eligibility Interview

- A determination is made, primarily by your reported income to decide whether you should be assigned an attorney
- EVERYONE charged with a crime gets an attorney
 - If you are not eligible for an attorney, the purpose is for arraignment only and you are expected to bring an attorney on your next court date

DIFFERENCES IN LAWYERS

ALL HAVE PASSED THE BAR EXAM

PRIVATE ATTORNEY

- You have paid them to appear on your behalf
- Shows you have made a financial investment in your case

18b GRANT ATTORNEY

- Assigned for arraignment only because you have been found to be able to hire your own
- You must bring an attorney on the next court date

18b ASSIGNED COUNSEL

- It is determined you are unable to afford your own attorney
- Legal Aid likely has a conflict on your case
- Paid by the County at a reduced rate

LEGAL AID ATTORNEY

- A non-profit firm whose attorneys represent indigent clients
- Paid through a grant given by the State and County on a yearly basis
- Handle a bulk of the cases in the courthouse
- YES- THEY ARE REAL LAWYERS

BAIL OPTIONS AT ARRAIGNMENT

WILL YOU RETURN TO COURT?

ROR

- Released on your Own Recognizance
- Court believes you are likely to return to court
- Given an out of custody return date to an assigned courtroom

SUPERVISED RELEASE

- Placed on pre-plea community supervision
- Conditions can be placed on the release- drug or alcohol, OP compliance
- Weekly reporting
- Given an out of custody return date to an assigned courtroom
- If you violate- bail can be re-set
- They will generate a report for the judge for each court appearance

BAIL

- A monetary amount placed on you to release you from custody and ensure your return
- Usually includes a bond alternative
 - Bail bondman generally seeks 10-20% of the bond amount in cash and the rest in collateral or a promissory note and posts the bail amount
 - Must comply with the bail bondman rules for checking in or they can seek the bond to be revoked
- If it is unlikely that you will post bail- you are given an in-custody court date for the next week
- If it is likely you will post, you may be given a longer out of custody date
 - if you post, but do not appear on your next date, the bail amount is forfeited

BAIL CHANGES AND OPTIONS

- **NEW: Mandatory release for**
 - non-criminal violations & infractions
 - ***MOST*** misdemeanors and non-violent crimes – but now bail expanded for certain misdemeanors involving Domestic Violence
- **MANY EXCEPTIONS**
 - Remand (NO bail) imposable for certain “qualifying” offenses – Qualifying offenses has been expanded
 - Bail imposable for all other “qualifying” offenses or REMAND (no bail at all), *or where appropriate*
 - Imposition of non-monetary conditions possible

QUALIFYING OFFENSES

- **ALL Violent “A” Felonies – ie. Murder**
- **All A-I Drug Felonies**
- **Operating as a Major Drug Trafficker**
- **Violent Felonies**
 - **23 Class “B” Felonies**
 - **15 Class “C” Felonies**
 - **22 Class “D” Felonies**
 - **6 Class “E” Felonies**
 - **Except: Burglary 2nd degree (unless alleges to have entered the living area of a dwelling) and Robbery 2nd degree (Kalief Browder)**
 - **Any crime alleged to cause the death of another**
 - **Any offense if person is currently on probation or parole**

ALSO QUALIFYING

- **All SEX OFFENSES – MISDEMEANORS AND FELONIES**
- **Criminal Contempt/DV misdemeanors**
- **Witness Tampering offenses**
- **Incest**
- **Conspiracy 2nd degree**
- **Money Laundering in support of terrorism**
- **Facilitating a performance w/ child w/ controlled substance or alcohol**
- **Use of a child in a sexual performance**
- **Luring a child**
- **ADDITIONAL OFFENSES ADDED**

BAIL FACTORS FOR QUALIFYING OFFENSES

- Court must consider defendant's "activities and history"
- "criminal conviction record" – NOT arrests
- Record of "flight to avoid criminal prosecution" (warrant history)
- Defendant's individual financial circumstances, including "hardships"
- If bail is ordered, the court must set 3 types (was 2)- ALWAYS been 9 options!
- AND one of the forms MUST be unsecured or partially secured surety bond – this allows low income persons an opportunity to post

BAIL FACTORS

- **Court can impose conditions on offense to ENSURE**
 - **Return to court AND COMPLIANCE WITH COURT CONDITIONS:**
 - Surrender passport
 - Refrain from associating w/ co-defendants, people involved w/ crime, victims, witnesses
 - Referred to counseling, treatment, partner violence intervention, mental health services
 - Maintain employment, housing, school and/or educational programming
 - Obey Order of Protection

IF FLIGHT RISK IS DETERMINED

- On non-qualifying offenses (ALL OTHER CASES), **New changes – no more “least restrictive means”, instead “the court must consider the kind and degree of control or restriction necessary” to ensure a return to court ”**
 - Must maintain contact with pre-trial services
 - Reasonable travel restrictions
 - No firearms, destructive devices
 - Pre-trial supervision (only if lesser condition inadequate)
 - If no other sufficient, electronic monitoring
 - Only for felonies, misdemeanor DV/sex offenses
 - Any misdemeanor if convicted of violent felony in last 5 years
 - Defendant does NOT pay for any non-monetary condition imposed
 - Can require treatment related to the ALLEGED crime

DISCOVERY REFORMS

- **Discovery refers to ALL the evidence the state or government plans to use against a defendant at trial, and ANY exculpatory evidence that tends to refute the defendant's guilt or provide a defense**
- **Defense counsel has an obligation to also provide reciprocal discovery to the DA's office**
- **The DA and Defense counsel must each file a "Certificate of Compliance" with discovery obligations**
- **Certain time limits apply to each party**

DISCOVERY REFORMS CONTINUED

- **Both DA and defense counsel can seek protective orders**
- **Pre-indictment felonies- defense entitled to client's statements 48 hours before grand jury (this is new!)**
- **Continuing duty on both the DA and Defense to disclose information and material**
- **DA CAN redact – names and contact info for CI's and undercover police; SS #'s, DA work product**

21 TYPES OF MATERIALS TO THE DEFENSE

Everything you would want to know if you were being charged with a crime?

- **Statement of defendant/co-defendants**
- **Grand jury testimony**
- **Name/contact info of people with relevant info (address not required) (can still seek protective order)**
- **Names of law enforcement w/relevant evidence/info**
- **Prior statements by persons w/ relevant evidence/info**
- **Expert opinion evidence/reports**
- **Tapes, electronic recordings, photos, recordings**
- **VTL testing records, computer crime info, any electronically seized info**
- **Materials related to physical & medical exams**
- **All evidence/info that can negate the defendant's guilt, mitigate, support a defense, impeach a prosecution witness, provide basis for suppression**
- **Info regarding a witness benefit for testifying/providing info**
- **Any retrieved tangible items**
- **Search warrant documents and info**
- **Convictions of the defendant and any prosecution witnesses (also pending criminal actions)**
- **Offense, seizure and arrest info**

REMINDER

WE ARE ALL INNOCENT UNTIL
PROVEN GUILTY

POST CONVICTION REMEDIES

- APPEAL process
- CLEANING UP YOUR RAP SHEET
- CERTIFICATE OF RELIEF FROM DISABILITIES
- CERTIFICATE OF GOOD CONDUCT
- October 2017 – new sealing statute allows those with up to 2 convictions (one can be a non-violent felony) to seal the conviction following a 10-year period without criminal contact
 - Unsealed if convicted of a new charge after relief is granted
- OES- Offender Employment Services through the Department of Labor

HELPFUL HINTS

- The court process is SLOW- many cases take numerous court appearances to resolve
- Dress Appropriately – also the people that come with you
- Speak respectfully to the judge, answer “yes” or “no”
- DO NOT try to plead your case or try to explain to the Judge (everything is on the record)
- If you have tried to retain an attorney, and cannot, you must ask the court to consider providing you with assigned counsel
- No talking or phones on in the courtroom
- Do not argue with the court officers or court staff- you will be called last!
- Be on time- second call is not at 2pm
- If you are not coming or running late- call your lawyer or their office- tell a live person, don't leave a message that will not be received
 - Want to avoid a warrant
 - If you are inpatient, hospitalized, etc.- have the facility fax a letter to your lawyer BEFORE court date if possible
- If a warrant is issued- vacate it ASAP, don't wait for a ride from the sheriffs in cuffs- it will be held against you in any future case
 - Must come to the courthouse before 11am, go to the clerk's window and fill out a warrant vacate slip

LASTLY

- IF YOU WANT TO CHANGE WHAT IS HAPPENING IN THE COURTS-
 - YOU CAN VOTE
 - EDUCATE YOURSELF ON WHO'S RUNNING
 - PROFILES OF THE JUDGES AND DISTRICT ATTORNEY ARE READILY AVAILABLE
- PAY IT FORWARD- SHARE THIS INFORMATION WITH EVERYONE YOU KNOW
- INTERESTED IN HAVING US PRESENT AT YOUR SCHOOL OR ORGANIZATION, CONTACT:
 - ELIZABETH A. JUSTESEN, ESQ.
631-630-3323
ejustesen@sclas.org
WEBSITE: sclas.org; look under Community Outreach tab for other FREE legal presentations

Cultural Humility

CHARLES FOX

THE LEGAL AID SOCIETY OF SUFFOLK COUNTY, INC.

MAY 1, 2023



- **Culture-** Culture is an umbrella term which encompasses the social behavior, institutions, and norms found in human societies, as well as the knowledge, beliefs, arts, laws, customs, capabilities, and habits of the individuals in these groups.
- **Humility-** the quality of being humble.

THE CULTURAL ICEBERG

SURFACE CULTURE

Food
Flags Festivals
Fashion Holidays Music
Performances Dances Games
Arts & Crafts Literature Language

DEEP CULTURE

Communications Styles and Rules:

Facial Expressions Gestures Eye Contact
Personal Space Touching Body Language
Conversational Patterns in Different Social Situations
Handling and Displaying of Emotion
Tone of Voice

Notions of:

Courtesy and Manners
Friendship Leadership
Cleanliness Modesty
Beauty

Concepts of:

Self Time Past and Future
Fairness and Justice
Roles related to Age, Sex,
Class, Family, etc.

Attitudes toward:

Elders Adolescents Dependents
Rule Expectations Work Authority
Cooperation vs. Competition
Relationships with Animals Age
Sin Death

Approaches to:

Religion Courtship Marriage
Raising Children Decision-Making
Problem Solving

“The portions we see of human beings is very small, their forms and faces, voices and words (but) beyond these, like an immense dark continent, lies all that has made them.” Freya Star

Cultural Competency

- Cultural competence is the ability to interact effectively with people of various racial, ethnic, socioeconomic, religious and social groups.
- “. . . focusing solely on cultural competency can lead to undesired consequences. . . the term implies that one has learned everything they need to learn about a certain culture or group of people, when in fact learning is a never-ending process.”
- Competency is defined as possessing the ability to do something successfully or efficiently.
- When it comes to culture, there is so much to learn and experience, that it is impossible to truly reach this point. The process is lifelong.
- Instead, ““Consider the value of listening and learning versus making assumptions. An assumption, in short, is ‘a thought or statement taken for granted’ while prejudice, in short, ‘is a preconceived judgement or opinion’. Be the difference that makes a difference—always listen and learn first.”

What is Cultural Humility?

- Cultural humility is a practice of self-reflection on how one's own background and the background of others, impact teaching, learning, research, creative activity, engagement, leadership, etc.
- “Cultural humility involves an ongoing process of self-exploration and self-critique combined with a willingness to learn from others. It means entering a relationship with another person with the intention of honoring their beliefs, customs, and values. It means acknowledging differences and accepting that person for who they are.” (University of Oregon)
- Cultural Humility doesn't have an agenda nor does it seek to denigrate.

Professional Obligation as Attorneys

- NY Rule of Professional Conduct 1.1, Competence: a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- Moreover, the comments of New York Rule of Professional Conduct 1.3, Diligence, explains that a lawyer must also act with commitment and dedication to the interests of the client and in advocacy upon the client's behalf.



Cultural Humility in the Legal Profession

- There are between 350 to 430 languages spoken in the United States.
- 14% of our population was born outside US.
- As of the 2020 census, every state is more varied racially and ethnically than decades past.
- Cultural competence and humility are part of the professional obligations of every attorney to be competent and deliver effective counsel. This is your professional responsibility as an attorney to provide competent representation.
- Attorneys must understand their own identity & how to communicate effectively with clients around their circumstances and about their lives. Without being able to do so, your representation will fail to fulfill your ethical obligations as an attorney.

Questions to Consider

**Think about why you're doing this work*

- Ask client to tell you about themselves prior to discussing the case.
- Have you had prior contact with the criminal legal system?
- Check your assumptions about who your client is and what they need. (assumptions, microaggressions)
- Stay flexible: if you don't know something, it's ok to ask respectfully. We cannot and should not purport to be experts on all things.
- Remember that clients are the experts when it comes to their circumstances and lived experiences. In fact, the client may have a better understanding of the system than an inexperienced attorney.

Advocacy

- Cultural humility creates space for people to tell their own stories.
- It amplifies voices rather than attempts to BE someone's voice.
- Recognition that colleagues of different cultures may have different ways of communicating, behaving, interpreting and problem solving.
- Cultural beliefs and behaviors may impact a client's legal beliefs and interactions with legal professionals.
- It is important to develop an ability and willingness to adapt the way one works to empathize with the client's cultural background in order to provide the highest quality legal assistance.



The Principles of Cultural Humility

1. Commit ourselves to an ongoing process of compassionate self-awareness and inquiry, supported by a community of trusted and cognitively-diverse colleagues.
2. Be open and teachable.
3. Always bear in mind the social structures that have helped shape reality as our clients experience it. (Dr. Mara Gottlieb)

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- Gottlieb, M. (2020). The case for a cultural humility framework in social work practice. Journal of Ethnic & Cultural Diversity in Social Work
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Thank you!

cfox@sclas.org

Slide 1

What are we listening for and what do we do with it when we hear it



Listening for Understanding

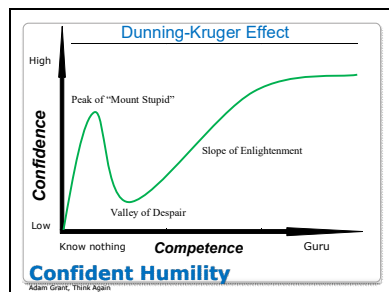
Slide 2

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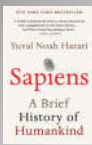


Your lecture on Dunning-Kruger, available on SlideShare, School of Psychology, University of Cambridge, Cambridge, UK
Dr. Adam Grant, Department of Psychology, University of Pennsylvania, Philadelphia, PA
Adam Grant, Department of Psychology, University of Pennsylvania, Philadelphia, PA
Elizabeth F. Loeber, Psychology, University of Toronto, Toronto, Canada
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Slide 3



Slide 4



We Do Not Know

"It accepts that the things that we think we know could be proven wrong as we gain more knowledge"

Initial Thoughts

Slide 5

Quality trumps Quantity

How we package and deliver our messages can have a profound impact on their effectiveness

"Stick to your strong arguments, because your arguments don't add up in the mind of the receiver, they average out"

Not-diagnostic (irrelevant information)

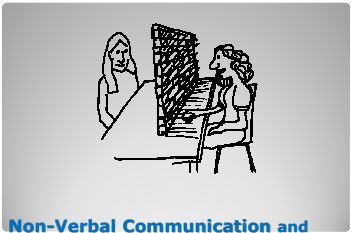
Adding vs. Averaging

Nirgo Sivanathan

Argument Dilution Effect

Nirgo Sivanathan

Slide 6



Non-Verbal Communication and Barriers to Effective Listening

Slide 7

	Pick Time	Scored	Comment
Player 1			
Player 2			
Player 3			
Player 4			
Player 5			
Actual %	38%	55%	7%

The Brain - Communication Mehrabian, A.
(1981) Silent messages: Implicit communication of emotions and attitudes. Belmont, CA:
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Slide 8

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Listening for Understanding

Slide 9

"Plane crashes are much more likely to be the result of an accumulation of minor difficulties and seemingly trivial malfunctions"

Malcolm Gladwell, Outliers p. 183

A Word on Skills

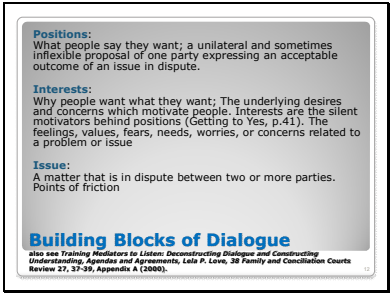
Slide 10



Slide 11



Slide 12



Slide 13

- Separate **Positions** from Interests (reflect) and Identify Issues
- Example: **"She can't stop me from seeing my kids, I demand Custody!"**
- Try to get behind the stated position (demand) to the

Summarizing, Reflecting and Framing

Slide 14

- Separate Positions from **Interests** (reflect) and Identify **Issues**

Interests:

"You want to see your children"

"and to have a say in decision making"

Issue:

Parenting Arrangement

Summarizing, Reflecting and Framing

Slide 15

- Separate **Positions** from Interests (reflect) and Identify Issues

"He must return the flashdrives he took! Those drives contain our customer lists and when he stole the drives he violated our non-compete clause!"

Summarizing, Reflecting and Framing

Slide 16

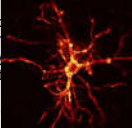
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Summarizing, Reflecting and Framing

Slide 17

The common neural currency of the mind

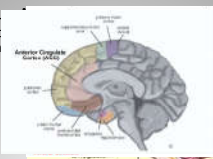
You're probably aware of dopamine. It probably conveys information to other parts of the brain. Read More about dopamine at the University of Michigan.



The Power of Reflecting - Dopamine


Slide 18

- Nucleus accumbens: Part of the brain involved in feelings of pleasure and reward
- Anterior Cingulate Cortex (ACC): Involved in the detection of errors/motivation



The Dopamine Reward System

Slide 19



Humans are goal directed information processors who tend to evaluate information with a directional bias toward reinforcing their pre-existing views

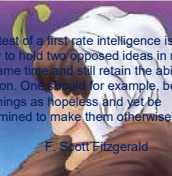
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The Backfire Effect

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Slide 20



"The test of a first-rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function. One must, for example, be able to see things as hopeless and yet be determined to make them otherwise"

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20

Slide 21

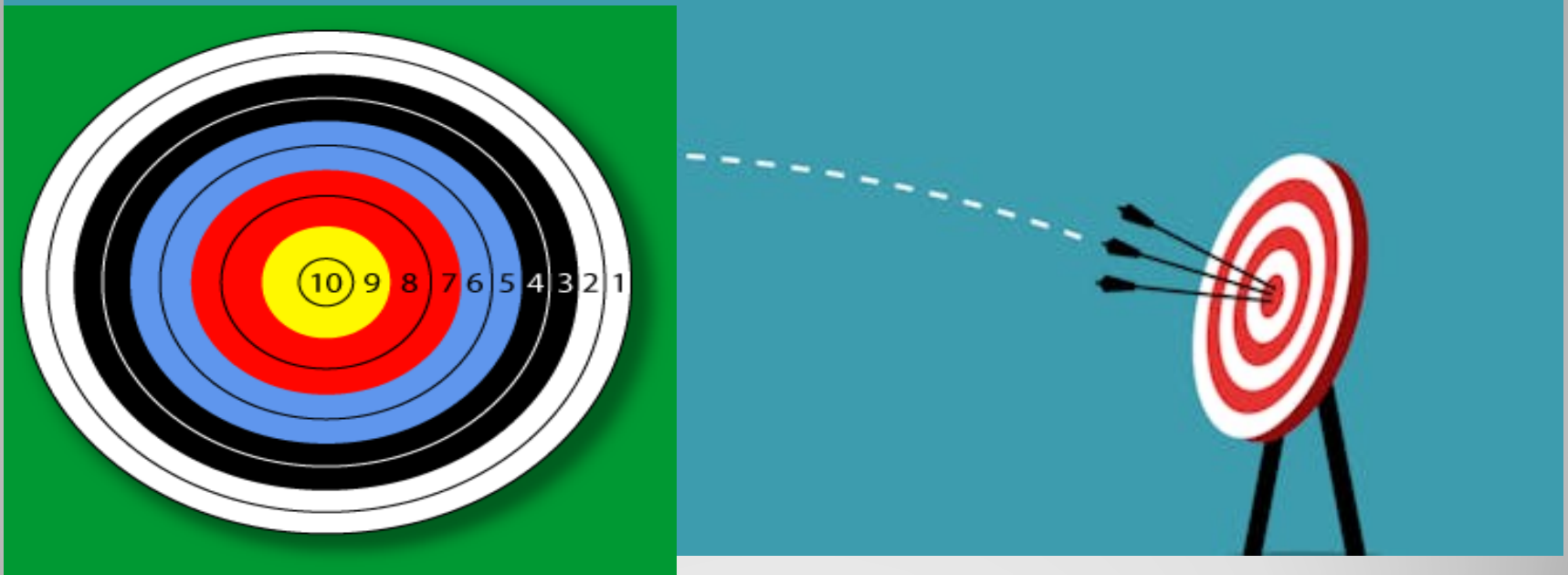
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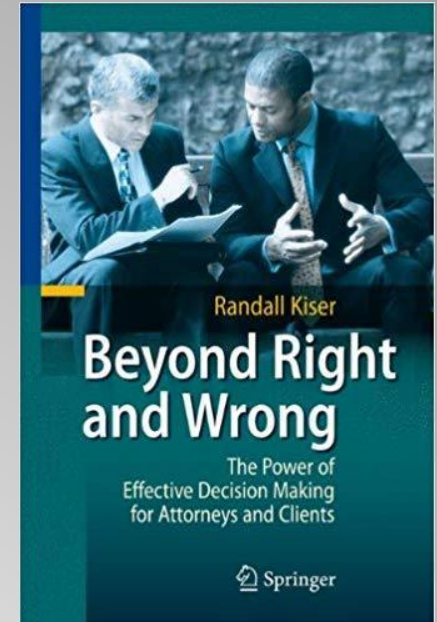
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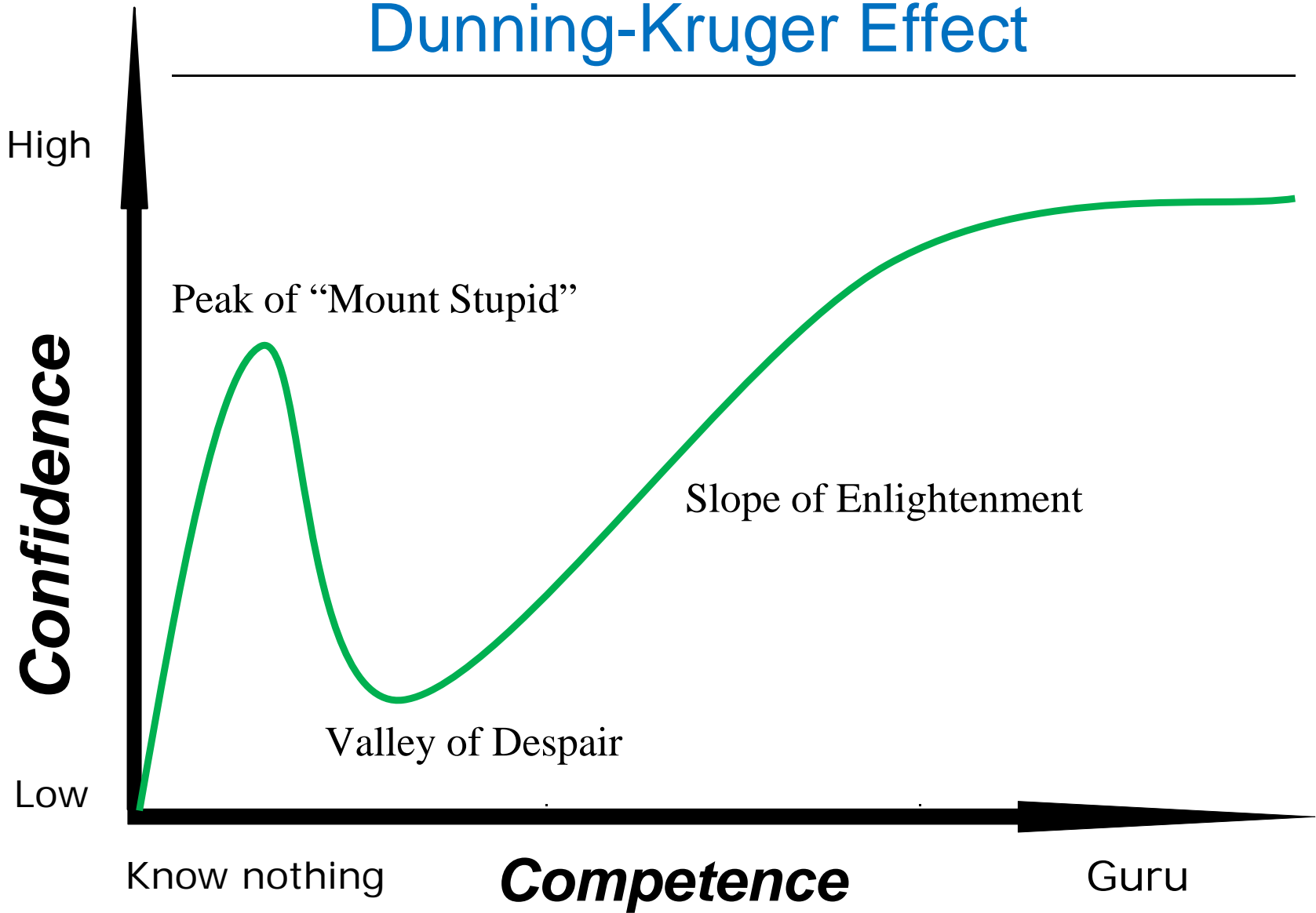
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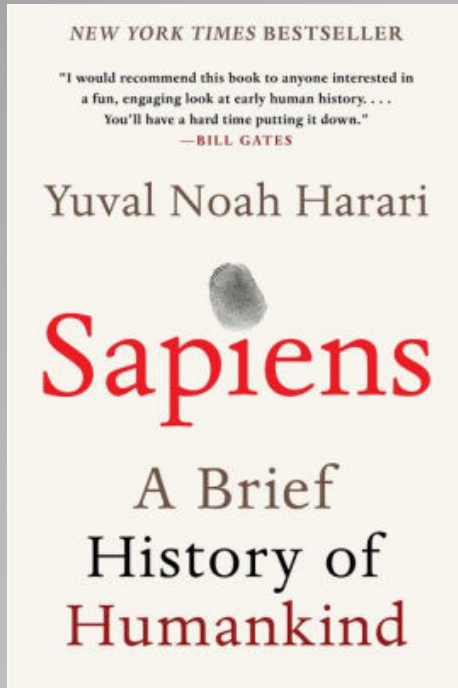


Jane Goodman-Delahunty, Australian Graduate School of Policing and School of Psychology, Charles Sturt University, Manly, New South Wales, Australia;
Pa'r Anders Granhag, Department of Psychology, University of Gothenburg, Gothenburg, Sweden;
Maria Hartwig, Department of Psychology, John Jay College of Criminal Justice, New York;
Elizabeth F. Loftus, Psychology & Social Behavior, Criminology, Law & Society, Cognitive Sciences, and School of Law, University of California at Irvine.

Dunning-Kruger Effect



Confident Humility



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Adding vs. Averaging Niro Sivanathan

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Non-Verbal Communication and Barriers to Effective Listening

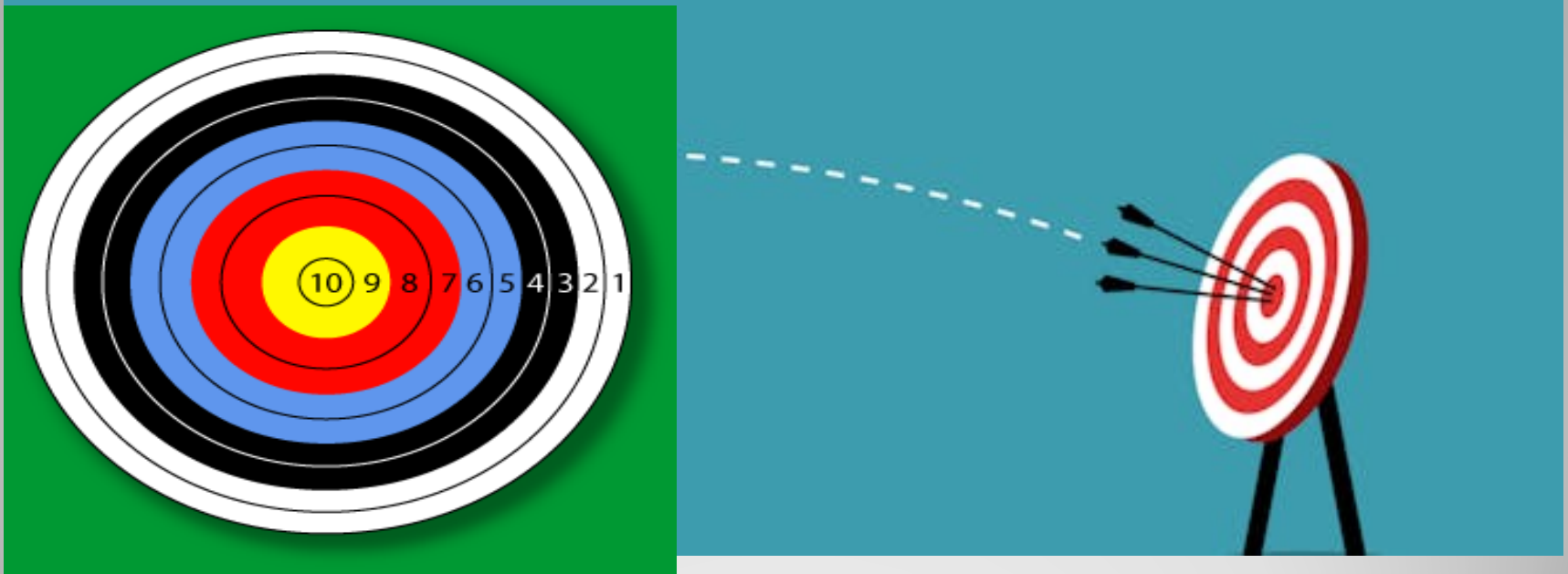
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(1981) **Silent messages: Implicit communication of emotions and attitudes.** Belmont, CA: Wadsworth (currently distributed by Albert Mehrabian, email: am@kaaj.com)

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A Word on Skills

Demands

Positions

Proposals

Feelings

Interests

Principles

Values

Issues

Deconstructing Dialogue

also see *Training Mediators to Listen: Deconstructing Dialogue and Constructing Understanding, Agendas and Agreements*, Lela P. Love, 38 *Family and Conciliation Courts Review* 27, 37-39, Appendix A (2000).

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Deconstructing Dialogue

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Positions:

What people say they want; a unilateral and sometimes inflexible proposal of one party expressing an acceptable outcome of an issue in dispute.

Interests:


Why people want what they want; The underlying desires and concerns which motivate people. Interests are the silent motivators behind positions (Getting to Yes, p.41). The feelings, values, fears, needs, worries, or concerns related to a problem or issue

Issue:

A matter that is in dispute between two or more parties.
Points of friction

Building Blocks of Dialogue

also see *Training Mediators to Listen: Deconstructing Dialogue and Constructing Understanding, Agendas and Agreements*, Lela P. Love, 38 *Family and Conciliation Courts Review* 27, 37-39, Appendix A (2000).

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Summarizing, Reflecting and Framing

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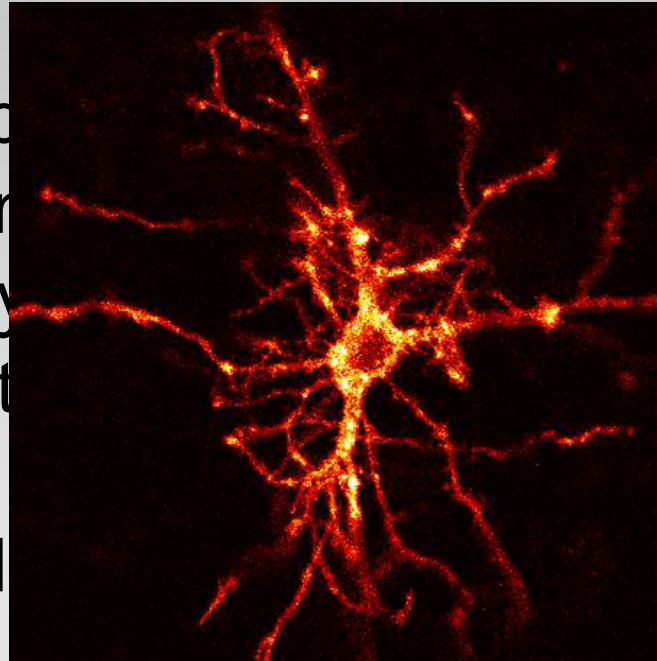
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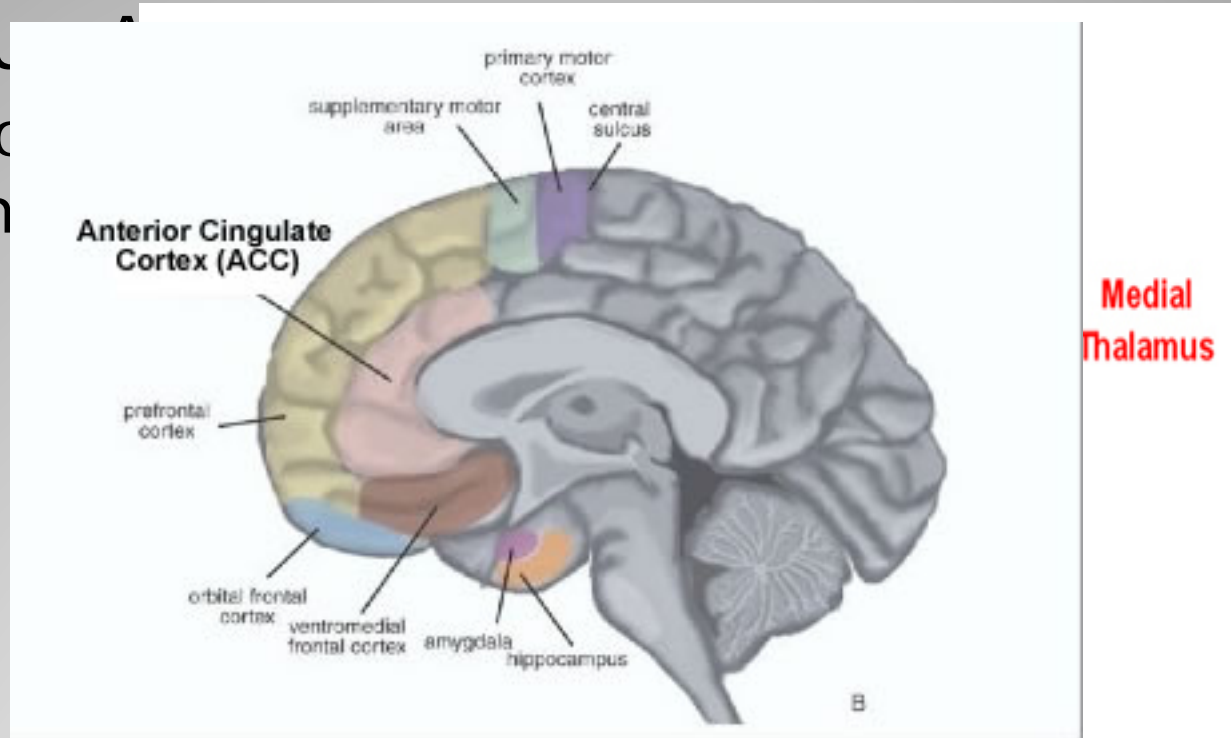
Summarizing, Reflecting and Framing

The common neural currency of the mind

You're probably not aware of
dopamine, but it's the
probably the most important
information it conveys
to other parts of the brain.
Read More



- Nucleus accumbens
 - Part of the limbic system
 - Involved in feelings of pleasure



- Anterior Cingulate Cortex (ACC)
 - Involved in the detection of errors/motivation



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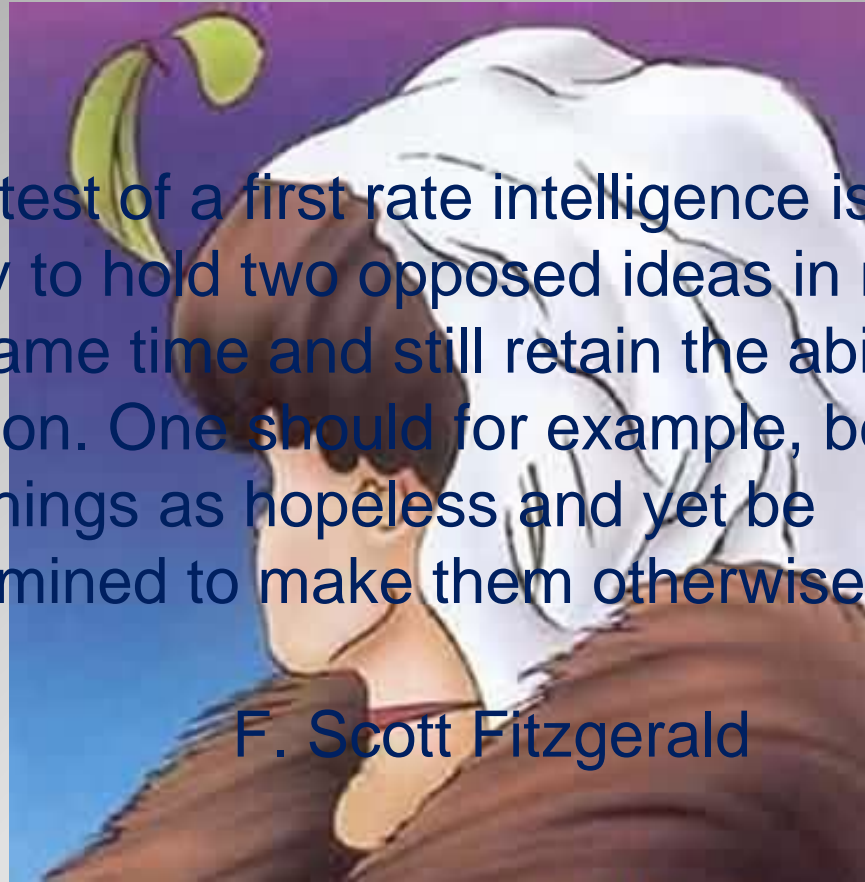
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The Backfire Effect

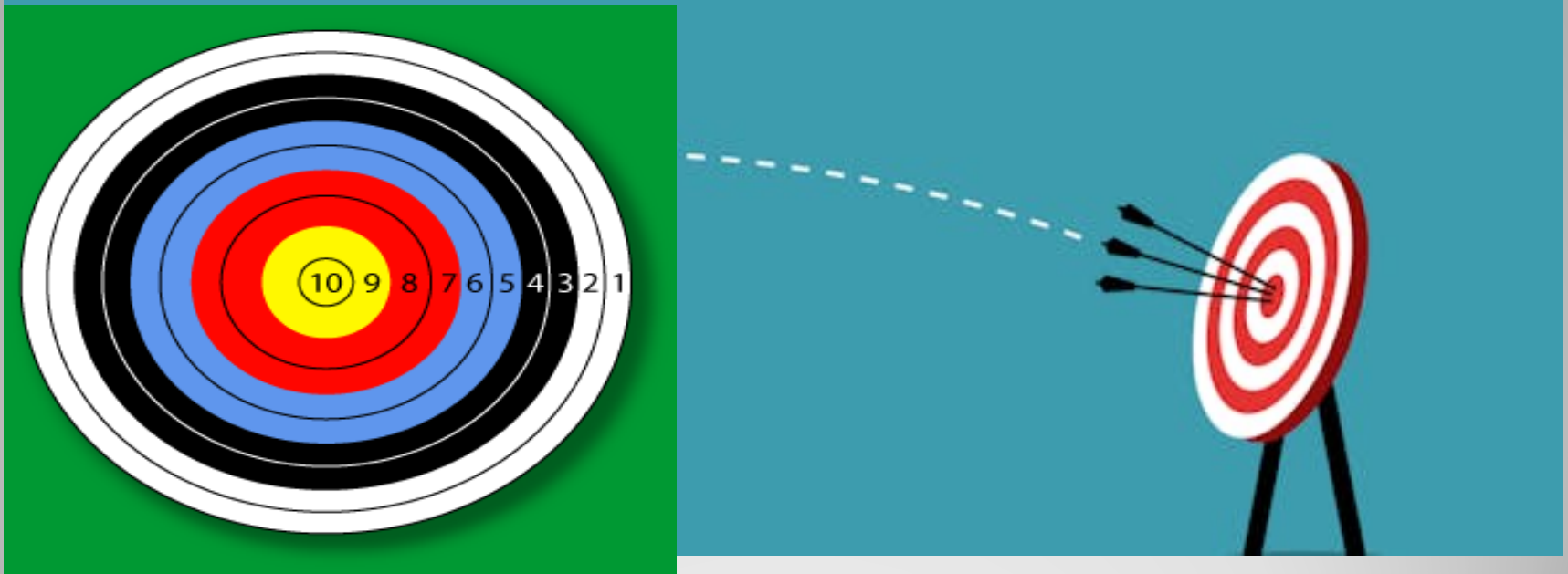
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Listening for Understanding