

# *Magic Seven for Success*

1. Make sure you understand each other:  
test assumptions and inferences.
2. Share all information on the topic or person  
at hand with specific examples if  
possible.
3. Share reasoning behind your statements
4. Share what your (entity's) interests are i.e.  
why your position or solution seems  
best from your point of view.
5. Be willing to let others test your point of  
view without getting defensive: Try to  
understand not debate.
6. Be willing to discuss difficult issues even of  
the “my loss is your gain” variety,
7. Jointly design next steps.

*Magic Seven for Success – by Pamela L. Abernethy*

# 10 KEYS TO EFFECTIVE LISTENING

These keys are a positive guideline to better listening. In fact, they're at the heart of developing better listening habits that could last a lifetime.

10 KEYS TO EFFECTIVE LISTENING	THE BAD LISTENER	THE GOOD LISTENER
1. Find areas of interest	Tunes out dry subjects	Opportunitizes; asks "What's in it for me?"
2. Judge content, not delivery	Tunes out if delivery is poor	Judges content, skips over delivery errors
3. Hold your fire	Tends to enter into argument	Doesn't judge until comprehension complete
4. Listen for Ideas	Listens for facts	Listens for central themes
5. Be flexible	Takes intensive notes using only one system	Takes fewer notes. Uses 4 - 5 different systems, depending on speaker
6. Work at listening	Shows no energy output. Attention is faked	Works hard, exhibits active body state
7. Resist distractions	Distracted easily	Fights or avoids distractions, tolerates bad habits, knows how to concentrate
8. Exercise your mind	Resists difficult expository material; seeks light recreational material	Uses heavier material exercise for the mind
9. Keep your mind open	Reacts to emotional words	Interprets color words; does not get hung up on them
10. Capitalize on fact thought is faster than speech	Tends to daydream with slow speakers	Challenges, anticipates, mentally summarizes, weighs the evidence, listens between the lines to the tone of voice.

# The Myth of Objectivity

## Understanding implicit bias

Hon Pamela L. Abernethy (ret.)  
SHOULDER TO SHOULDER  
Portland, OR October 30, 2017

Answer this question for yourself

- ▶ In making decisions, which is more important?
  - The rules: e.g. law, administrative rules, DHS policy and procedure
  - The facts
  - The decision maker

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Answer these questions for yourself

- ▶ Upon what factors, if any, do I base decisions?
- ▶ What process do I use to find facts?
- ▶ When do I make, or start to make, decisions?

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## Goals for today

- ▶ Understand how mental shortcuts can lead to systematic errors in judgment and lead to unconscious bias.
- ▶ Understand key factors that influence your ability to objectively listen, perceive, find facts and make decisions.
- ▶ Understand when intuition works and when it is dangerous.
- ▶ Know tools to improve objective perception and combat implicit bias.

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4



5

## Explicit Bias

- ▶ Public trust and confidence in state services is premised on the principle that the system is designed to be fair and impartial.
- ▶ In the courts, a fair hearing in a fair tribunal is a basic requirement of due process.




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### Explicit Bias

- ▶ What laws, rules or policies apply to you regarding explicit bias?
- ▶ Examples?



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# IMPLICIT BIAS

“We may try to see things as objectively as we please. Nevertheless we can never see them with any eyes except our own.”

»

Benjamin Cardozo  
THE NATURE OF THE JUDICIAL PROCESS 13 (1921)

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8



### Cognitive Science Confirms:

- ▶ The very nature of human thought leads to systematic error
- ▶ Assuming human impartiality is dangerous
- ▶ Perceptions are highly susceptible to error.

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### OVERVIEW OF SOME KEY FACTORS THAT INFLUENCE YOUR DECISIONS


- **Heuristics: Mental short cuts**
- **The law of least effort**
- **The benefit and burden of intuition**
- **Learning Style**
- **Time, isolation**
- **Listening skills**
- **Note taking systems**

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11


Our complex system of unconscious judgments

12



- × System 1: Intuitive, automatic, fast, and effortless - operates automatically and quickly with little, or no effort, and no sense of voluntary control
- System 2: Effort, self-control, and computation - allocates attention that demand it
- × Kahneman, Daniel, *Thinking Fast and Slow*, Farrar, Straus and Giroux, 2011


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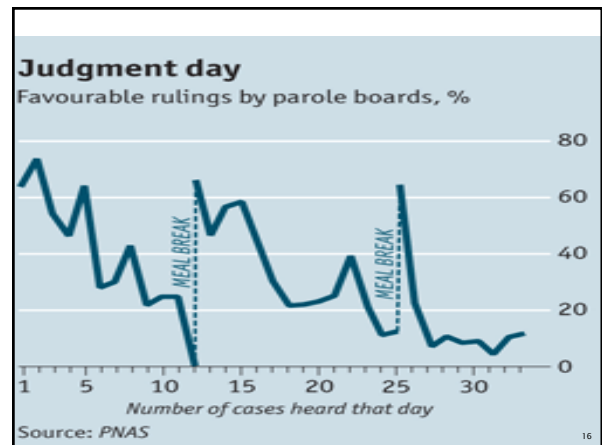
- ▶ System One works quickly and automatically
- ▶ System One likes coherent stories
- ▶ System one is intuitive and impulsive
- ▶ System One has confidence in its intuitions
- ▶ System One is biased and quick to confirm that bias
- ▶ System One does not like ambiguity and doubt
- ▶ System One ignores evidence
- ▶ System One uses facts recently brought to mind

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The tale of Israeli judges



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## GROUP EXERCISE

WHAT KIND OF SEQUENTIAL DECISIONS DO I MAKE IN MY JOB?

WHAT IS THE STATUS QUO OR DEFAULT CHOICE THAT ALLOWS ME TO SIMPLIFY THOSE DECISIONS ?


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System One is easily influenced: What % of African countries are part of the UN?



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### Bat and Ball problem




- ▶ A BAT AND BALL COST \$1.10.
- ▶ THE BAT COSTS ONE DOLLAR MORE THAN THE BALL
- ▶ HOW MUCH DOES THE BALL COST?

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19

### BAT AND BALL PROBLEM




- ▶ Ball + [cost of the Ball + 1.00 more] = 1.10
- ▶ .05 + [ .05 + 1.00] = 1.10.

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### System Two: The law of least effort

- Cognitive ease vs. cognitive strain
- Effort takes energy
- When we can get away without using it up, we will.
- Ten Cents .....



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21

### 10 common cognitive errors

1. Egocentrism
2. Overconfidence
3. Sunk cost effect.
4. Recency effect
5. Confirmation bias
6. Anchoring
7. Framing
8. Illusory correlation
9. Hindsight bias
10. Halo effect

# TOP 10 LIST


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### Egocentrism and Overconfidence

▶ "When he has nothing else to do, he can always contemplate his own greatness. It is a considerable advantage to a man, to have so inexhaustible a subject."  
— [Charles Dickens](#), [Bleak House](#)

▶ "Snow Fall: The Avalanche at Tunnel Creek," by New York Times reporter John Branch,




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### Sunk cost effect

**Escalating commitment to a course of action in which we have made a substantial investment of time, money or other resources.**

- 1996 Mt. Everest tragedy
- J. Krakauer, *Into Thin Air*



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### Recency effect, Anchoring and Confirmation Bias

- ▶ **Recency effect:** Priming the brain with associated ideas.
- ▶ **Anchoring:** Estimate based on irrelevant starting point.
- ▶ **Confirmation bias:** *Coherence is like candy.*



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### Framing and Illusory correlation

- ▶ **Framing:** The position of choices prejudices the outcome.
  - ▶ Mental accounting: Creating your own frames
- ▶ **Illusory correlation:** False association about the relationship between 2 variables.
  - ▶ IAT Tes:



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### Hindsight and Halo Effects

- ▶ **Hindsight bias:** Judging past events as easily predictable.
- ▶ **Halo effect:** Evaluation based on a handful of traits.



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### When intuition works: Experts and pattern recognition

Malcolm Gladwell  
*Blink: The Power of Thinking without Thinking*  
Little Brown and Company, 2005.



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- Unconsciously
- biased perception
- Limited capacity for attention
- Hunger
- Sleep
- Time
- Volume

• Learning style



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### KOLB'S LEARNING STYLES

- ▶ **Perception Axis:** *Concrete experience* (looking at things as they are) to *Abstract Conceptualization* (looking at things as concepts and ideas).
- ▶ **Processing Axis:** *Active Experimentation* (take what they have learned and trying it out to see if it works) to *Reflective Observation* (taking what they have learned about watching and thinking to work things out).

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## LEARNING STYLES

- ▶ **Assimilator:** (Abstract conceptualizer/Reflective observer) prefers to think and watch rather than act.
- ▶ **Converger:** (Abstract conceptualizer/Active experimenter) prefers to thing about things and they try out ideas in practice.
- ▶ **Diverger:** (Concrete experience/reflective observer) prefers to take experiences and think deeply about them; like to start from detail to work up to big picture.
- ▶ **Accomodator:** (Concrete experiencer/Active experimenter) prefers to be hands-on; strong preference for doing rather than thinking.

31

## HOW DO THESE FACTORS APPLY TO YOU?

# ▶ GROUP DISCUSSION



32

## 15 MINUTE BREAK

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33

## COMBATING IMPLICIT BIAS

»»

34

## Doubt Your Objectivity

**“The Fool Doth Think He Is Wise  
But The Wise Man Knows Himself  
To Be A Fool”**


*As You Like It – Act 5, Scene 1*

35

## Know Thyself: IAT TEST

- ▶ The Implicit Assumption Test or IAT measures implicit attitudes that we are unaware of in ourselves.
- ▶ The main idea of the IAT is that people who have more positive attitudes toward a concept (e.g. older people, females) will be able to categorize the items more quickly when that concept and warm traits are categorized with the same key.
- ▶ These associations are sometimes very different than our conscious attitudes and beliefs.

[Implicit.harvard.edu](http://Implicit.harvard.edu)



36



## Combating Bias: Take a break

Executive function can be restored and mental fatigue overcome, in part, by interventions such as viewing scenes of nature, short rest, experiencing positive mood and increasing glucose levels in the body.

Danziger, Levav, and Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, (2010).

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## Combating Bias: Empathy

- ▶ Empathy is a cognitive strategy that can reduce implicit bias and lead to better application of the law within context.
- ▶ [Nicole E. Negowetti, \*Judicial Decision making, Empathy and the Limits of Perception\*. 47 \*Akron Law Review\* 693 \(2014\).](#)

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38

## Combating Bias: Empathy and Ways of Knowing

- ▶ Separate Knowing
- ▶ Connected Knowing

- ▶ M.F. Blenky, B.M. Clinchy, N.R. Goldberger, & J.M. Tarule, *Women's Ways Of Knowing: The Development Of Self, Voice, And Mind* (*Basic Books, Inc., 1986, 1997*)

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**Separate Knowing**, emphasizes knowledge. It entails a separation between the object of study and the knower, and it is oriented toward impersonal, rational rules by which data or an issue is evaluated.

In **Separate Knowing**, truth is sought through impersonal procedures and an objective perspective. Separate knowers adopt methods of making meaning which are impersonal and do so because they understand the critical value of "disinterested reason."

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### **Connected Knowing**

focuses on understanding in the sense of the French word *connaitre*, which implies a personal acquaintance with the thing or person being studied. It "emerges not out of a need to conform to the demands of external authorities but out of a need to understand the opinions of other people." It requires the learner to see the other person in his or her own context.

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### **In Connected Knowing**

"truth emerges through care. Connected knowers "develop procedures for gaining access to other people's knowledge. At the heart of these procedures is the capacity for empathy . . . [They see the other person] not in their own terms but in the other's terms. This way of knowing assumes that "the most trustworthy knowledge comes from personal experience rather than the pronouncements of authorities"

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42


## WAYS OF KNOWING

Separate Knowing		Connected Knowing
Public	1. Language	Private
The discipline's	2. Lens	The other person's
Doubting	3. Stance	Believing
Fully Formed	4. Ideas	Emerging
Uninvolved	5. Relationship to data	Involved

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## Empathy in Action

- ▶ Glaspell, Susan, *Jury of Her Peers (1917)* The Best American Short Stories of the Century at 18 (*Houghton Mifflin Company, 1999*), edited by John Updike.



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## Combating Bias: Listening Skills

- ▶ How can we help ourselves become better listeners?
- ▶ **This questionnaire is designed to help you think about the way you listen. Be honest with yourself. No one else will see your answers.**
- ▶ Take a moment and ask yourself these questions
- ▶ Jot down your answers

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## Are you a good listener?

- ▶ I like to listen to other people talk.
- ▶ I encourage other people to talk.
- ▶ I listen even if I do not like the person who is talking.
- ▶ I listen equally well regardless of whether the person talking is a man or a woman, young or old.
- ▶ I listen equally well to a friend, acquaintance, or stranger.
- ▶ While listening, I put down what I've been doing and concentrate on the person speaking.
- ▶ I maintain direct eye contact with the person speaking.

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- As I listen, I try to think about what the person is saying.
- I try to understand not just the spoken words, but also the feelings of the person who is talking.
- I try to ignore the distractions around me.
- I try to remain observant of nonverbal factors -- the speaker's vocal inflection, facial expression, bodily movement, etc.
- I do not pre-judge a person because of the nonverbal factors that have nothing to do with the intended message.
- I let the speaker finish what he is trying to say. I don't cut him off.

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- I listen throughout the entire message; I avoid tuning out the speaker after the first few seconds to begin preparing mentally my response.
- I repeat or rephrase what the speaker has just said to make sure I understood him accurately.
- I withhold judgment about a person's Ideas until he has finished expressing them.
- I listen regardless of the speaker's choice of words.
- I listen even if I anticipate what he is going to say

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## 10 KEYS TO EFFECTIVE LISTENING

49

## Combating Bias: Listening Skills

- ▶ Listening with an “unrebutting mind”
- ▶ Defer judgment as you take more facts and ideas into consideration, viewing all decisions as tentative.
- ▶ Develop a system for note taking.

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50

## Note taking

- ▶ Find a variety of styles that work for you depending on the context
  - Lists: Headings, subheadings to organize as you hear the material.
  - Mind Maps: Topic in center and branches for issues
  - Write everything as if you have to teach it or share it with someone who was not there.

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## Edward de Bono: Six Thinking Hats

- Managing Blue
- Information White
- Emotions Red
- Discernment Black
- Optimistic Response Yellow
- Creativity Green

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## Combating Bias: Justify the decision

- ▶ Have you first examined your reasoning by yourself?
- ▶ Can you explain your decision clearly to those involved?



53

## Group Decision Making: *Magic 7 for Success*

1. Make sure you understand each other: test assumptions and inferences.
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3. Share reasoning behind your statements
4. Share what your (entity's) interests are i.e. why your position or solution seems best from your point of view.

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54

**Group Decision Making: *Magic 7 for Success***

5. Be willing to let others test your point of view without getting defensive; its about understanding not debate.
6. Be willing to discuss difficult issues even of the “my loss is your gain” variety,
7. Jointly design next steps.

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**Combating the *Appearance* of Bias:  
Public perception of fairness**

- ▶ Communicating impartiality
- ▶ Paying attention to your nonverbal self



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**How do you answer this question now?**

**In making decisions, which is more important?**


- The rules (law, policy, procedure)
- The facts
- The decision maker

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**Selected Resources**

- × A. Benjamin N. Cardozo, THE NATURE OF THE JUDICIAL PROCESS 13, 177 (1921).
- × Kang et. al, *Implicit Bias in the Courtroom*, 59 UCLA L.REV. 1124, 1128 (2012);
- × Chris Guthrie et. al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777,820 (2001)
- × C. Nicole Negowetti, *Judicial Decision making, Empathy, and the Limits of Perception* , 47 AKRON L.REV. 693 (2014)

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*The aspiration to impartiality is just that \* \* \*  
There is no objective stance but only a series of  
perspectives \* \* \*Personal experiences affect the  
facts that judges choose to see.*

Justice Sonia Sotomayor

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