Resolve to Make Better Decisions in 2020!

Over the last several months, I've been working with one of my colleagues to create a Judicial College course for magistrates on *decision-making*. Working on this has really brought home to me that making decisions is pretty much what judicial officials get paid to do! So far, it looks like the course will be close to equally divided between (1) how to make a legally sound decision, and (2) how to control factors that might get in the way of that. This blog post is about the latter.

This is the second time I've created course content related to what is now sometimes called "extra-judicial influences." The first time, more than a decade ago, my colleague Jim Drennan and I began to learn and teach judicial officials about implicit bias. The content of this session gradually broadened to include other *cognitive biases*. (Wikipedia has a long-and-fascinating list of *cognitive biases* here.) That content changed again in 2011 with the publication of Daniel Kahneman's book Thinking Fast and Slow. At this point, most NC judicial officials have participated in some version of this training. By way of review, here's my brief paraphrase of the core concepts in Kahneman's book:

1. Our human brains value accuracy in perception only when accuracy supports our survival. In other words, you'll never get snake-bit by avoiding a patterned leash left in the grass.

2. Our incredibly complicated human brains protect us by perceiving and processing millions of bits of data at lightning speed, mostly outside our awareness.

3. The decisions each of us make as we go through our day are the product of two basic systems: *fast thinking* and *slow thinking*.

4. Fast thinking is, most of all, *fast,* typically outside of our control and awareness, and –perhaps most importantly—extremely efficient. Think of those times when you found yourself in your driveway after leaving work, with little memory of how you got there! I sometimes think of fast thinking as "running on automatic."

5. The connections we make in fast-thinking mode are generally the result of *associations* developed from our life experiences – even the vicarious ones we have when

we watch television or explore social media. These associations may be, and quite often **are,** inconsistent with our beliefs.

6. Slow thinking is deliberative, purposeful rather than automatic, and requires attention and effort.

7. Most of the time, most of us function in fast-thinking mode – and that is necessary for our survival in a fast-paced, extremely stimulating environment. But we can switch to slow-thinking mode when necessary – provided we are aware that it is necessary.

8. The *anti-bias blind-spot* causes us to more easily recognize bias in others than in ourselves, and that's a problem. Lack of awareness can keep us from recognizing the need to switch to slow (i.e., more careful, deliberative) thinking.

I find Kahneman's work particularly important, because it suggests a genuinely helpful answer to the most important question: if it's true that our brains all basically operate like this, how do we solve the problem of biased decision-making? The most useful answer I've heard is summarized in the title of Kahneman's book: learn to (1) recognize the need to shift from fast into slow thinking, and (2) practice the ability to make that shift.

Framed this way, it becomes clear that a sixty-minute class on how the human brain works will not enable judicial officials to minimize the effect of bias on their decisions. That session is just the sales pitch. Actually minimizing the impact of bias requires more than knowledge – it requires skill. Obtained through practice, over a period of time. What follows is a recipe for developing those skills.

Step #1: Pay attention to how your own brain actually works. If, like most of us, you don't do this naturally, you're likely to benefit from external support in the form of relevant information to help you think about it. The knowledge you'll gain is useful.

How to Do It: There are many resources for this – you could begin with Kahneman's 512-page book! But a much quicker, simpler approach is also likely to yield good results: make a commitment to regularly watch/read/listen to a bite-sized nugget, presented in an entertaining format, and then tell someone else what you learned. Your conversation may be as brief as the nugget, but your

brain will benefit from putting what you learned into your own words. Do this once a week, and pay attention to how it affects you. I've listed some promising sources for nuggets at the end of this post.

Step #2: The second step is quick and simple – but not necessarily easy! As you go about your day (usually in fast thinking mode), pause and take a breath. That's all. Just stop. And take a slow breath. Don't rush it. Notice where you are. Look around you. You're done. Do this several times a day.

What's the point of this? There are several potential benefits, but the connection to better decision-making is that you're learning how to deliberately shift into slow thinking. Remember that in slow thinking mode you're focused, rather than distracted, and you're processing information in a slower, more deliberative manner. You're controlling your attention.

Taking a Slow Breath only takes a moment, but if you're like me, your brain will resist it. You'll find yourself rushing to get back to whatever you were doing. That's not surprising. Slow thinking mode takes more mental energy than fast thinking. Fast thinking feels more productive, and pausing seems like an unnecessary interruption. If you find pausing to take a slow breath annoying, take special notice of that. It is exactly that reluctance to shift into slow thinking that gives you less control over your decision-making.

How to Do It: In general, our fast-thinking brains do a poor job of reminding us to pause and breath. For that reason, at least at first, most people need some sort of external reminder. There's an app for that! Actually, a bunch of them -- just do a search for "mindfulness bell" and check out your choices. While the details vary, they all offer a bell that will ring (once) throughout the day, reminding you to stop and take a breath. The best ones allow you to adjust volume and frequency, and to turn it off easily when you need to. Instead of an app, some people use their watch or a different reminder, such as connecting it with sitting down at your desk, for example, or getting into your car. Any cue that works is a good one.

I make these two suggestions now in the hope that you'll include them in your New Year's Resolutions, if you make them, or even if you usually don't! Digest a nugget once a week, and pause and take a breath a few times a day. See what happens!

Resources for Nuggets: I haven't personally vetted most of these, and you may well locate other, better resources on your own. If you do, I hope you'll share them with me so that I can pass them on. But here are a couple to get you started:

Outsmarting Human Minds, a new website established by Harvard University. A six-month supply of weekly nuggets, plus links to others.

Clips from PBS 2016 Special on Implicit Bias. Link to Peanut Butter & Jelly clip, with "More Extras

from this Special" available if you page down.

Simply searching for *implicit bias* on YouTube turns up all sorts of bits and pieces of varying length and quality. Even if you end up watching something that seems incorrect or doesn't make sense, the process of evaluating it is likely to keep the topic on your personal radar—which is the ultimate goal!

Resources for Reminders to Take a Breath: A personal favorite if you have an iPhone is Lotus Bud Mindfulness Bell. A website resource I've also used may be found at https://www.awakeningbell.org/.

If you decide to give it a try, I hope you'll let me know how it works out. Best wishes for a Happy New Year to one and all!