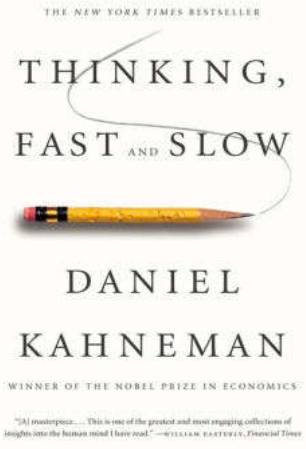


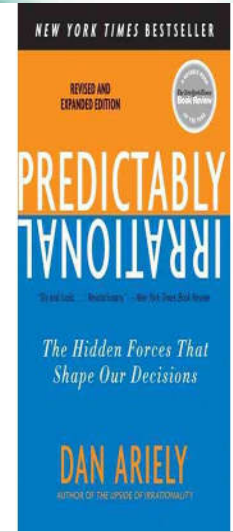
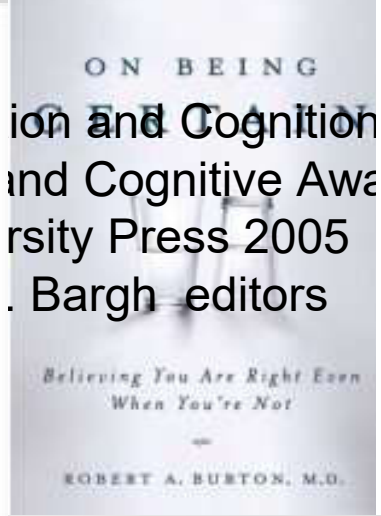
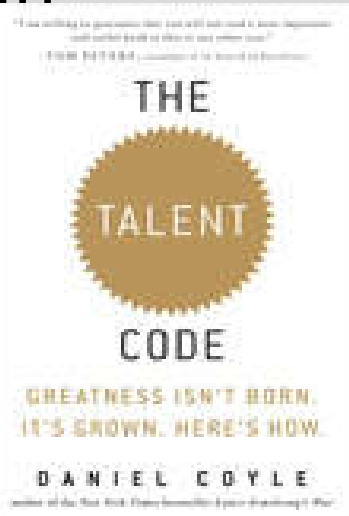
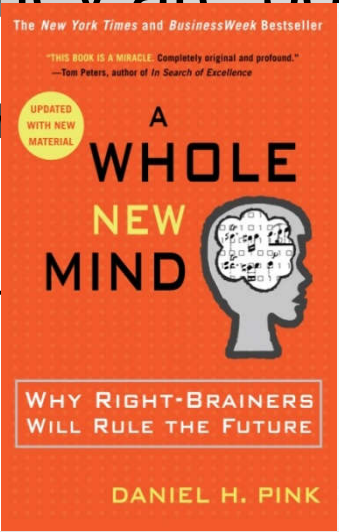
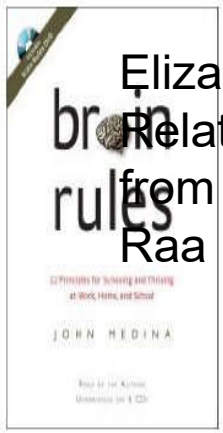
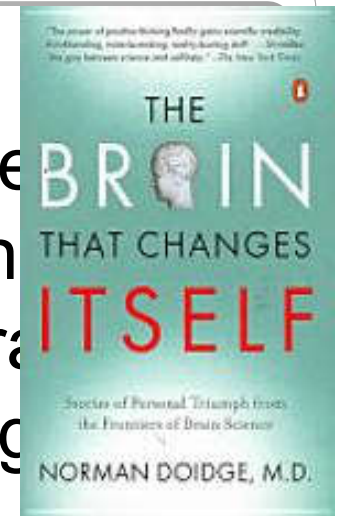
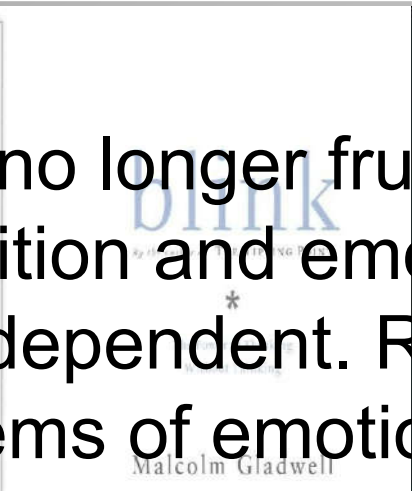
# *The Neuroscience of Mediation, Settlement, and Decision Making*

**THEODORE ROOSEVELT INN OF COURT  
ADR PROGRAM – OCTOBER 29, 2020**

Materials prepared by Daniel Weitz, Esq.



no longer fruitful to debate whether emotion and cognition are independent or interdependent. Research on the neural systems of emotion and cognition suggests that they are both



**The Journey Includes...**

**Do not read the words, identify the color of the words. Try to do it as fast as you can**

- Reading the word is an automated task which takes little mental effort
- Naming the color requires deliberate thought
- The brain needs to turn off or ignore its automatic (system 1) response (ignore the meaning of the word) and consciously think about what color it sees (system 2)

## **Conscious Deliberation – The Stroop Test**

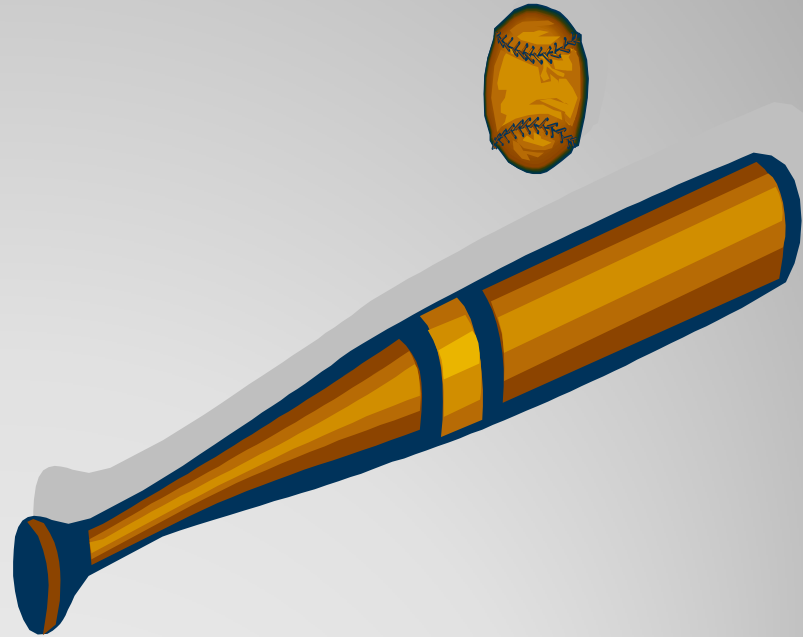
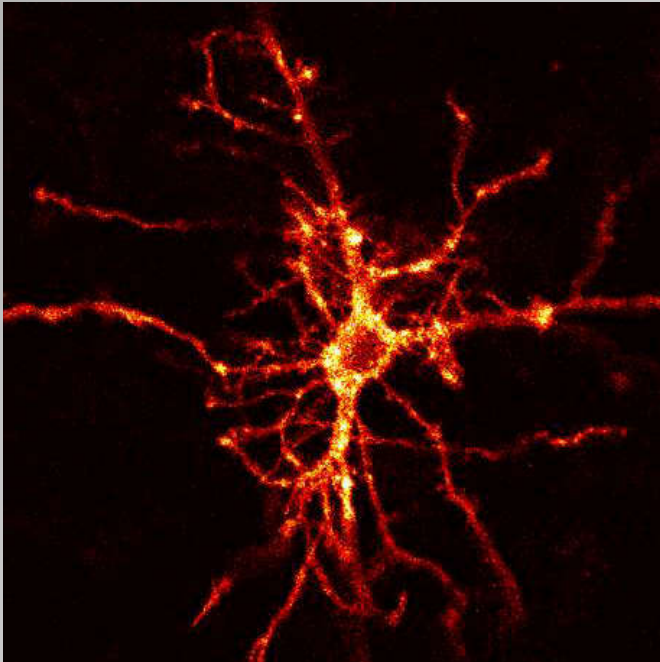
- A bat and a ball cost \$1.10 in total, the bat costs a dollar more than the ball, how much does the ball cost?
- 5 cents - Arriving at the correct answer requires a little bit of conscious deliberation



## Conscious and Unconscious Decision Making

Daniel Kahneman, Thinking Fast and Slow

- We Need to Think *and* Feel



## Conscious and Unconscious Decision Making



## **Fairness (Equity)**

“This is a basic lesson of evolutionary psychology:

A need shaped in the wild continues to be felt subjectively even if it is no longer really necessary for survival and reproduction.”

Yuval Noah Harari, Sapiens p. 344

**Fairness (Equity)**



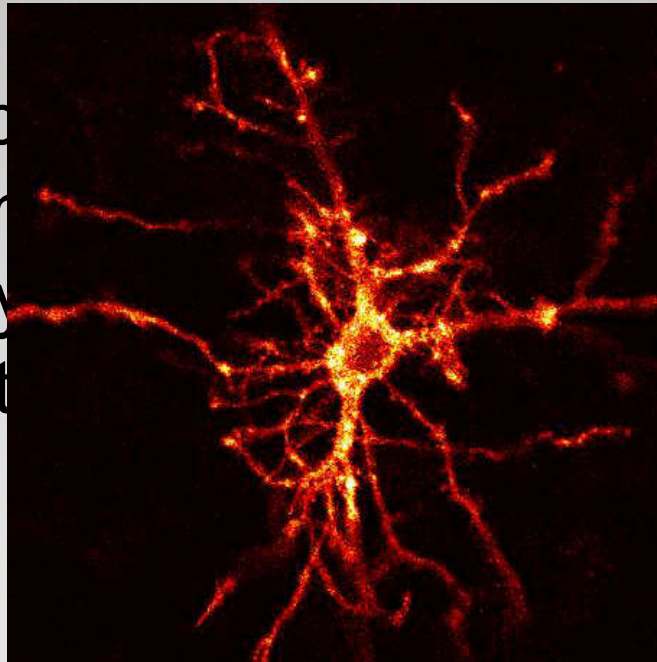


**People Want to be Heard**



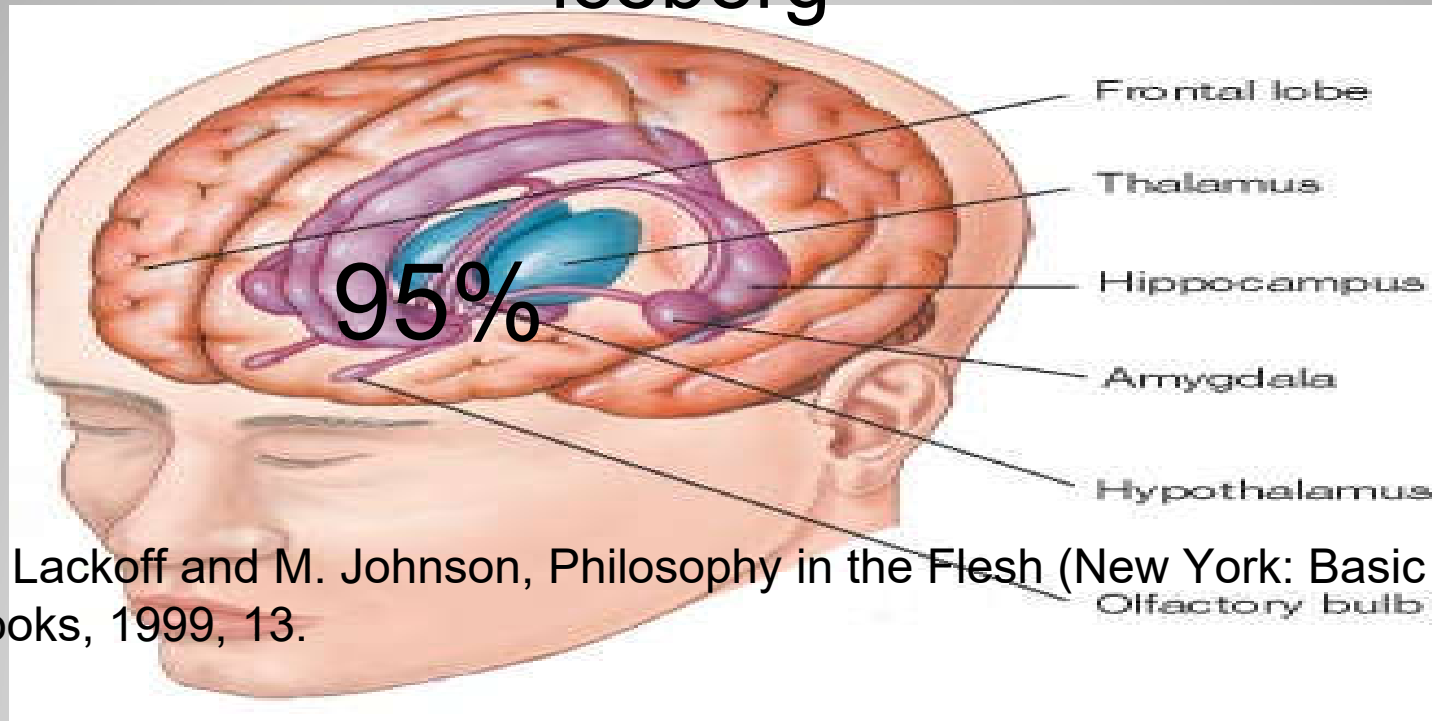
## The common neural currency of the mind

You're probably not aware of dopamine, but it's probably the most important neurotransmitter in the brain. It conveys information from one part of the brain to other parts. Read More at [University](#)



# Dopamine

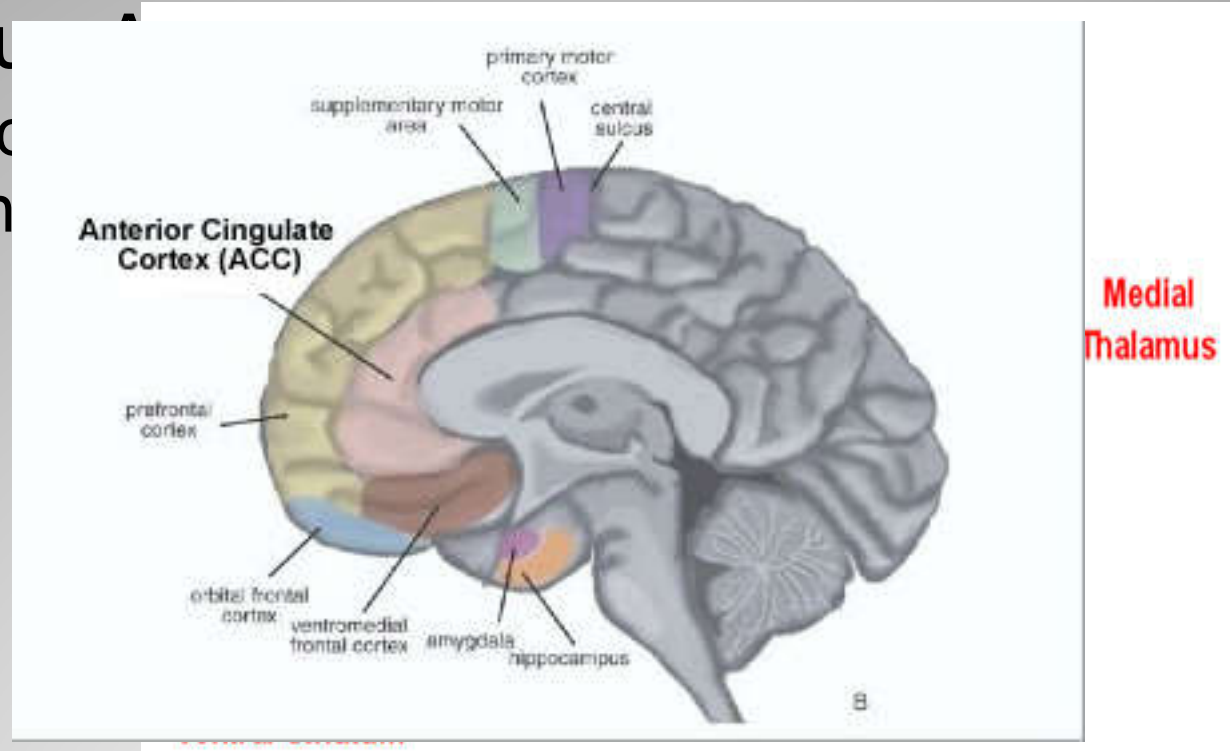
Ancient Subcortical System Involved in the  
“Cognitive thought is the tip of the  
Processing of Emotions  
iceberg”



G. Lackoff and M. Johnson, *Philosophy in the Flesh* (New York: Basic Books, 1999, 13.

**Neuroanatomy**

- Nucleus accumbens
  - Part of the basal ganglia
  - Involved in feelings of pleasure



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

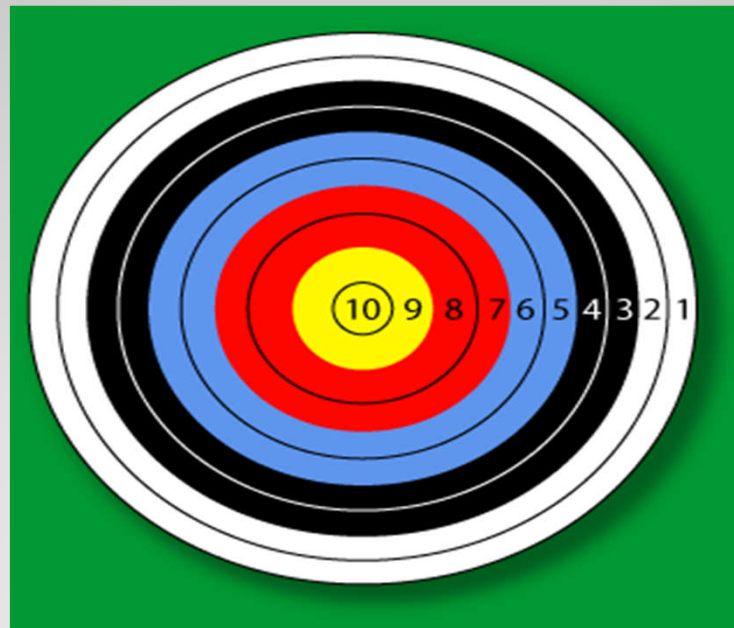
## The Brain

“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

**Mediation Skills – Summarizing  
and Reflecting**

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



**Gathering Information**

**Demands**

**Positions**

**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).

- **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).



- Separate **Positions** from Interests (reframe) and Identify Issues
- Example: **“It is all their fault, I can’t even play with my children, I’m no fun anymore to them.**
- Try to get behind the stated position (demand) to the

## **Summarizing and Reflecting**

- Separate Positions from **Interests** (reframe) and Identify Issues
- Example: **“To play with and have fun with your children”**

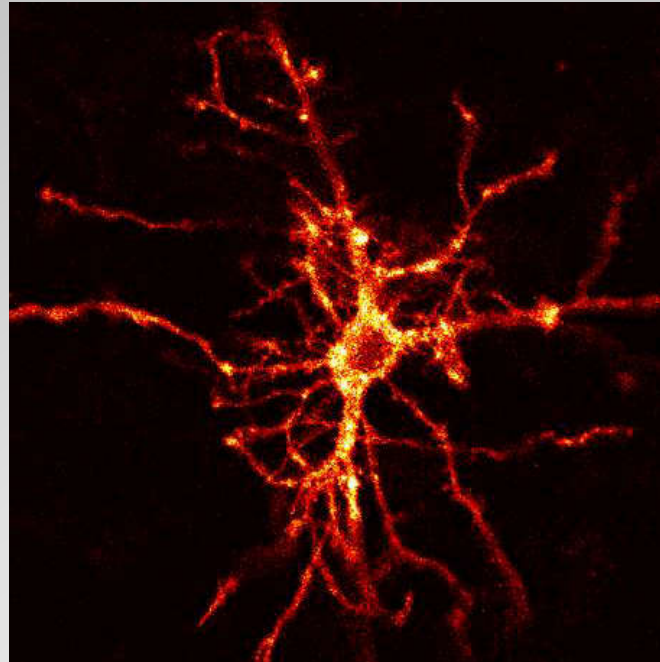
**Summarizing and Reflecting**

- Separate **Positions** from Interests (reframe) and Identify Issues
- Example: **“She had cubital tunnel syndrome from playing guitar. That’s why she needed the surgery”**

**Summarizing and Reflecting**

- Separate Positions from **Interests** (reframe) and Identify Issues
- Example: **“You want to discuss the reasons for the surgery”**

**Summarizing and Reflecting**



# Dopamine



# Generating Movement

## GENERATING MOVEMENT\*

- Summarize/Reframe (interests, feelings etc.)
- Highlight Common Interests
- Build Information Base
- Normalize/Validate Emotions
- Use Silence
- Slow Down
- Stroke
- Brainstorm Options
- Recognize proposals (often buried in adversarial dialogue)
- Focus on the Future (learn from the past)
- Search for Integrative Solutions
- Seek Objective Criteria
- Explore Past Practice (as a source of information)
- Partialize (break down issues into manageable pieces)
- Develop Tradeoffs/Compromise
- Question Assumptions (reality test)
- Explore Costs of Not Settling (quality of life, process)
- Explore BATNA and WATNA
- Caucus
- Role-Reversal

Adapted in part from *Taking Charge/Managing Conflict*, Joseph B. Stulberg, Jossey-Bass Publishers (1987) and *A Guide for Divorce Mediators: Applying Common Sense to the Crisis of Divorce*, Robert Kirkman Collins (1997)





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

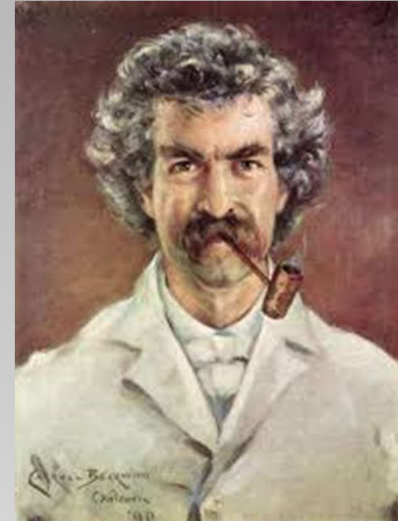
Biased search process or

Individuals who receive unwelcome information may not simply resist challenges to their views. Instead, they may come to support their original opinion even more strongly

## The Backfire Effect

From Brendan Nyhan and Jason Reifler: *When Corrections Fail: The Persistence of Political Misperceptions* *Polit Behavior* (2010) 32:303-330 March 30 2010  
Springer Science+Business Media LLC, 2010

“It ain’t what you don’t know that gets you into trouble, its what you know for sure that ain’t so”



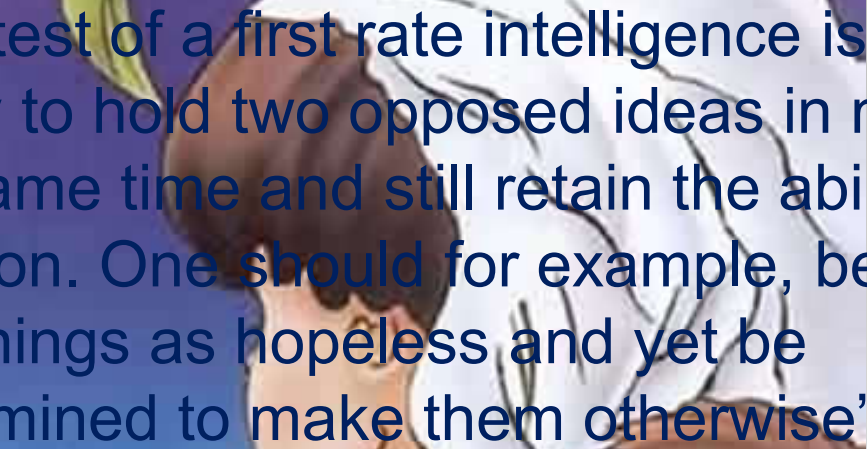
Mark Twain

**From Brendan Nyhan and Jason Reifler: When Corrections Fail: The Persistence of Political Misperceptions**

“Tell me what you know.  
Then tell me what you  
don't know and only then  
can you tell me what you  
think. Always keep those  
three separated.”



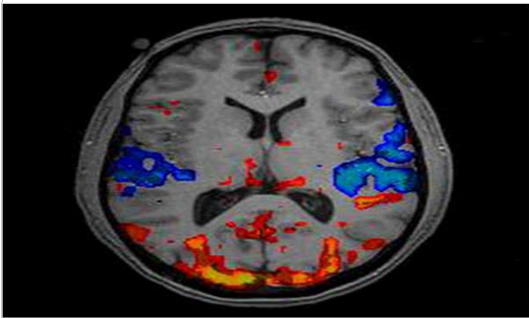
Colin Powell

An illustration of a man with dark hair, wearing a white shirt and a brown jacket, looking down. The background is a mix of purple and blue. The text is overlaid on the image.

“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 should for example, be able to see things as hopeless and yet be determined to make them otherwise”

F. Scott Fitzgerald

## **The Mechanics of Perception**



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