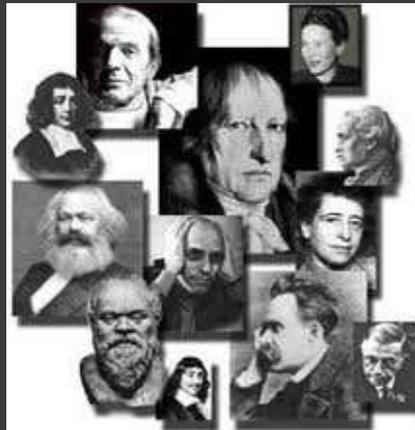


Courtland Geyer  
Circuit Court Judge  
Marion County Circuit Court

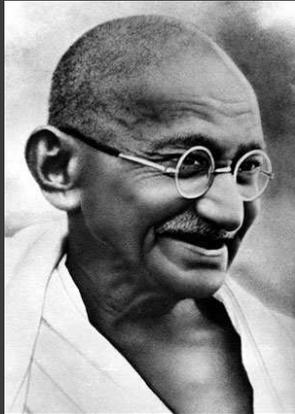
## DECISION MAKING

## Decision Making

Great  
Philosophers  
on Decision  
Making



## Decision Making



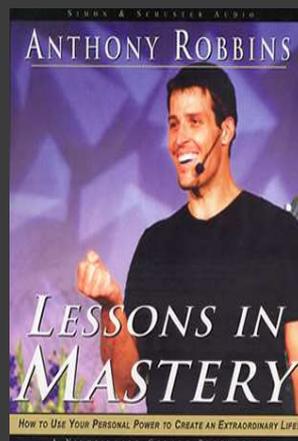
*“A ‘No’ uttered from the deepest conviction is better than a ‘Yes’ merely uttered to please, or worse, to avoid trouble.”*

-- Mahatma Gandhi

## Decision Making

*“It's in your moments of decision that your destiny is shaped.”*

-- Anthony Robbins



## Decision Making



*"Sir, What is the secret of your success?"  
a reporter asked a bank president.*

*"Two words."*

*"And, sir, what are they?"*

*"Good decisions."*

*"And how do you make good decisions?"*

*"One word."*

*"And sir, what is that?"*

*"Experience."*

*"And how do you get Experience?"*

*"Two words."*

*"And, sir, what are they?"*

*"Bad decisions."  
- Unknown author*

## Decision Making

"Tennis taught me so many lessons in life. One of the things it taught me is that every ball that comes to me, I have to make a decision. I have to accept responsibility for the consequences every time I hit a ball."  
— Billie Jean King



## Decision Making



**Scout**  
(as played by Mary Badham)

“We can't always have our druthers.”

-- Harper Lee, *To Kill a Mockingbird*



### Making Decisions

“If you chase two rabbits, both will escape.”- Unknown author

## Decision Making

*“A man’s gotta  
know his  
limitations.”*

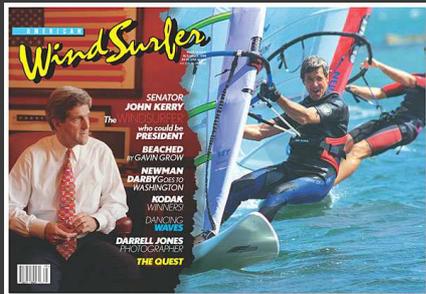
-- Dirty Harry



## DECISION MAKING (Overview)

- I. Different Types of Decision Makers
- II. What is the Decision to be Made?
- III. What Evidence May You Base Your Decision On?
- IV. Relevant Evidence – What it is and Why Courts Exclude Irrelevant Evidence
- V. Unconscious Bias and -Confirmation Bias
- VI. Break
- VII. Hypothetical
- VIII. Dynamics of Group Decision Making

## STEREOTYPES OF DECISION MAKERS



Secretary of State  
John Kerry



President George W. Bush

## STEREOTYPES OF DECISION MAKERS

### Deliberative

#### Positive Traits:

- Open minded
- Decision not made prematurely
- Responds to new information

### Decisive

#### Positive Traits:

- Quick, positive and definite
- Confident
- Intuitive (see "*Blink*" by Malcolm Gladwell)

## STEREOTYPES OF DECISION MAKERS

### Deliberative

Negative Traits:

- Indecisive
- Flip-flopper
- Afraid to make a decision (“paralysis by analysis”)
- Ready...aim...aim...aim...

### Decisive

Negative Traits:

- Too quick to judge (“prejudicial”)
- Stubborn to a fault
- Arrogant
- Ready...FIRE!!!!

## STEREOTYPES OF DECISION MAKERS



**Between the two ends of the spectrum**

- Deliberate
- Excited by the invitation of doubt rather than confused
- Judicious
- Ready...aim...fire

## STEREOTYPES OF DECISION MAKERS

### WHEN SHOULD YOU DECIDE?

If the decision comes at the end of a formal process (due process) – DO NOT attempt to decide the case too soon

## STEREOTYPES OF DECISION MAKERS

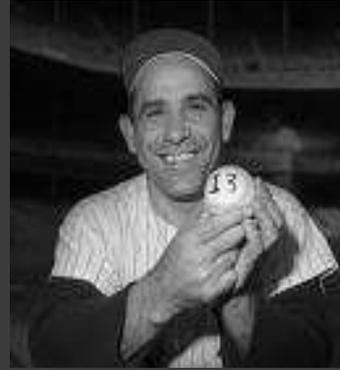
### WHEN SHOULD YOU DECIDE?

UCJI No. 5.01:

*“Do not discuss this case with other jurors until you begin your deliberations at the end of the case. Do not attempt to decide this case until you begin your deliberations”*

## STEREOTYPES OF DECISION MAKERS

WHEN SHOULD YOU DECIDE?



**Yogi Berra**  
Hall of Fame player and coach  
(and famous philosopher)

“It ain’t over ‘til it’s over”

## STEREOTYPES OF DECISION MAKERS

WHEN SHOULD YOU DECIDE?



Example

## WHAT IS THE DECISION TO BE MADE?

(What is the question you must answer?)



## WHAT IS THE BURDEN OF PROOF OR BURDEN OF PERSUASION?

### Examples:



- Reasonable suspicion
- Preponderance of the evidence
- Clear and convincing evidence
- Beyond a reasonable doubt

## WHAT CAN YOU BASE YOUR DECISION ON?



Jack Webb (right) as Sgt. Joe Friday  
"Just the facts, ma'am."

## Facts

Compare to news interviews of neighbors...

## WHAT CAN YOU BASE YOUR DECISION ON?

### Arguments and Opinions

What do you do with the opinions of attorneys and caseworkers?



## WHAT CAN YOU BASE YOUR DECISION ON?

### Arguments and Opinions

Precautionary Instructions  
UCrJI No. 1003

“The opening statements and closing argument of the lawyers are intended to help you understand the evidence, although their statements and arguments are not part of the evidence”

Functions of the Court and Jury  
UCJI No. 5.03

“The attorney’s statements and arguments are not evidence”



## WHAT CAN YOU BASE YOUR DECISION ON?

### Arguments and Opinions

Functions of the Court and Jury –  
UCJI No. 5.03

“It is your sole responsibility to make all the decisions about the facts in this case. You must evaluate the evidence to determine how reliable or how believable that evidence is. When you make your decision about the facts, you must then apply the legal rules to those facts and reach your verdict.”



## WHAT CAN YOU BASE YOUR DECISION ON?

### Arguments and Opinions

Functions of the Court and Jury – UCJI No. 5.03

“Remember, however, that your power to reach a verdict is not arbitrary. When the court tells you what the law is on a particular subject or tells you how to evaluate certain evidence, you must follow these instructions.”

...

“Base your verdict on the evidence and these instructions. The attorneys’ statements and arguments are not evidence.”



## WHAT CAN YOU BASE YOUR DECISION ON?

### Arguments and Opinions

Functions of the Court and Jury – UCJI No. 5.03

“Do not allow bias, sympathy, or prejudice any place in your deliberations; all parties are equal before the law. Do not decide this case on guesswork, conjecture or speculation.”

“Generally, the testimony of any witness whom you believe is sufficient to prove any fact in dispute. You are not simply to count the witnesses, but you are to weigh the evidence.”



## WHAT CAN YOU BASE YOUR DECISION ON?



### Arguments and Opinions

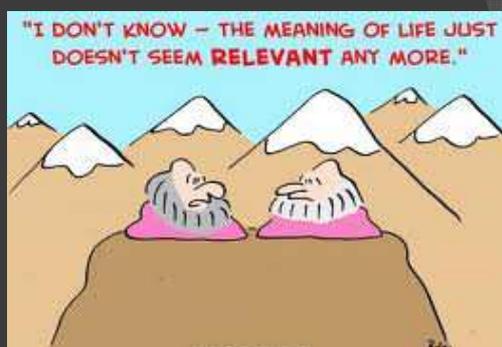
#### Expert Witness – UCJI No. 10.06

“An expert witness may give an opinion on any matter in which that witness has special knowledge, skill, experience, training or education.”

“You should consider the qualifications and credibility of the expert and the reasons given for the opinion. You are not bound by the opinion. Give it the weight, if any, to which you consider it is entitled.”

## RELEVANCE

What are common examples of things you hear in a juvenile case?



# RELEVANCE

## Relevant Evidence

*“Does the item of evidence tend to prove the matter sought to be proved?”*

*Commentary, OREGON EVIDENCE CODE, Rule 401*



**...or...**

# RELEVANCE



**...What has that got to do with the price of tea in China?**

## RELEVANCE



Calling balls and strikes

### Does it matter if:

- ⦿ The batter is a “good guy”?
- ⦿ The pitcher is a “good guy”?
- ⦿ The batter is a “bad guy”?
- ⦿ Your call will determine the outcome?
- ⦿ You disagree with the rules of the game?

## RELEVANCE



Calling balls and strikes

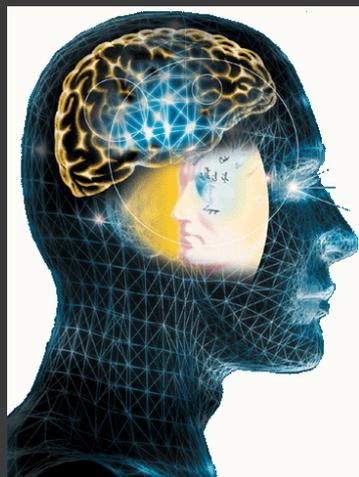
### Does it matter?

- ⦿ The status of the criminal case?
  - Different burdens of proof
  - O.J. Simpson criminal and civil cases (no such thing as “found innocent”)

## Introduction to Bias



## WHY SHOULD WE EXCLUDE IRRELEVANT EVIDENCE?



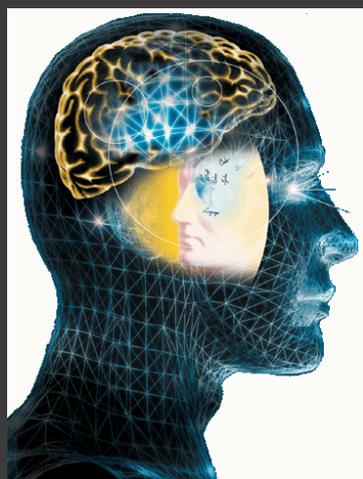
Unconscious  
Bias

(Video)

PUT VIDEO CLIP HERE

<HTTP://WWW.YOUTUBE.COM/WATCH?V=AHG6QCGOAY4>

WHY SHOULD WE EXCLUDE  
IRRELEVANT EVIDENCE?



Confirmation  
Bias

## WHY SHOULD WE EXCLUDE IRRELEVANT EVIDENCE?

### Confirmation Bias

- Perception is interpretive
- Expectation affects perception

## WHY SHOULD WE EXCLUDE IRRELEVANT EVIDENCE?

### Confirmation Bias

#### False Syllogism

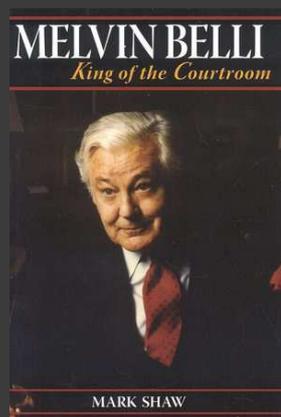
- Most perpetrators of domestic violence are male
- Bob is a male
- Therefore, Bob is an abuser

## CONFIRMATION BIAS



Scientific method will safeguard with use of blind tests (placebos, for example)

## CONFIRMATION BIAS



"If I got myself an impartial witness, I think I'd be wasting my money"

**Mel Belli**  
"The King of Torts"

## Evaluating your own bias (good and bad)

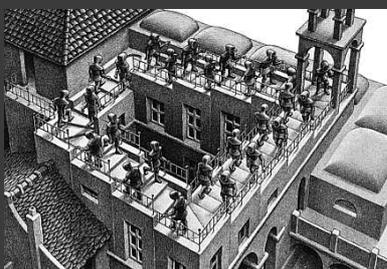
- ❖ Views about the caseworker:
  - flaky,
  - hostile,
  - hard worker.
- ❖ Views about the attorney:
  - competent,
  - knowledgeable,
  - only in it for the money.
- ❖ Views about parent:
  - hopeless,
  - criminal,
  - victim.



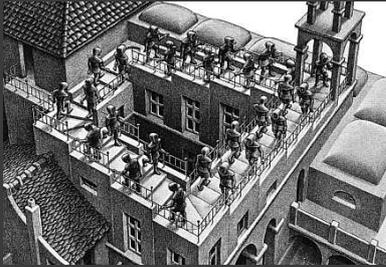
## Perception of Bias

### Why it Matters

- ⦿ People want to win – but *expect* to be heard
- ⦿ Perception as reality
- ⦿ Maintaining credibility



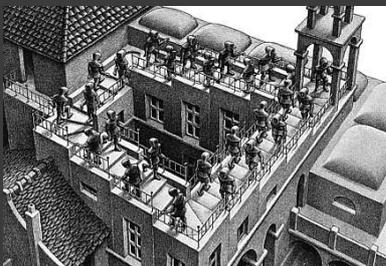
# Perception of Bias



## Common Cues

- ⦿ Facial expressions (be “poker-faced”)
- ⦿ Treated different than others
- ⦿ Body language

# Perception of Bias



## Common Cues

- ⦿ Cut short / they didn't listen to me
- ⦿ Over-reacting to certain pieces of information (remember “poker-face”?)
- ⦿ Speech
  - Tone
  - Language

## Making Decisions – Misc.

### The Role of an Attorney



**American Bar Association:**  
An attorney shall zealously represent the interests of the client within the bounds of the law.

*Anatomy of a Murder*

## Making Decisions – Misc.

### The Role of an Attorney

- Often helpful
- ALWAYS pushing the client's desire



**American Bar Association:**  
An attorney shall zealously represent the interests of the client within the bounds of the law.

*Anatomy of a Murder*

## Making Decisions – Misc.

### The Role of an Attorney

Example:

- Attorney who represents an 11 year-old
- Guardian ad litem of an 11 year-old



**American Bar Association:**

An attorney shall zealously represent the interests of the client within the bounds of the law.

*Anatomy of a Murder*

## Making Decisions – Misc.

### The Role of an Attorney

You never hear:

*“Members of the jury, my client is guilty as Hell”*



**American Bar Association:**

An attorney shall zealously represent the interests of the client within the bounds of the law.

*Anatomy of a Murder*

QUESTIONS?

Putting it all together.



Hypothetical

Mother is arrested based on a "founded" incident of child abuse. The child is placed in care, and jurisdiction is based on physical abuse. At the first review, you find out Mother is pregnant, and engaging in a parenting program through Family Building Blocks. She also recently participated in a psychological evaluation. Evaluate the appropriateness of the following questions in relation to reasonable efforts/parental progress:

- (1) (to Mother) What are you learning at Family Building Blocks?
- (2) Is the DA's office prosecuting this case?
- (3) What services are being offered to Mother to prevent/or care for her unborn children?
- (4) Does Mother have a job?
- (5) Do you have a copy of the psychological evaluation? What were the recommendations?
- (6) Mr. Smith (caseworker) failed to document face to face contacts again. Mother, did the caseworker attempt to have in person contact with you at least every 30 days?

## 10 Minute Break



# PART 2: Decision Making

## Making Decisions: Credibility



“Don’t believe everything you read on the Internet just because there’s a picture with a quote next to it.”

—Abraham Lincoln

We Know Memes

## PART 2: Decision Making

- I. Decision Making Exercise
- II. Dynamics of Group Decision Making

### A PROBLEM IN DECISION-MAKING

By Justice W. Michael Gillette and the Hon. Pamela Abernethy

The purpose of this exercise is to examine and expose the way in which you solve cases, i.e., the way in which you “judge.” But the following scenario has no plaintiffs and defendants, no rules of evidence. Instead, it has two young people and a missing bowl of chocolate mousse dessert. You are to read the problem, spend a few minutes by yourself solving it on your own, and then meet in a small group to seek a group solution to the problem. After each group has had an opportunity to thrash out its own solution, each group will present its resolution of the problem to the group as a whole.

## A PROBLEM IN DECISION-MAKING

By Justice W. Michael Gillette and the Hon. Pamela Abernethy

- You are the parent of two children, a boy (age 12) and a girl (age 9). The following is a brief biographical sketch of each:
- TOM, age 12. Small, lithe, physically very quick. Bright, but with a tendency to slough off his studies – so much so that you have found it necessary to cut off his playing Nintendo games until he has read three books. Although he presently is very put out with you for taking away his video games, Tom has always been a sunny outgoing child, confident and honest with adults and his peers, rarely needing discipline of any kind. Lately, however, he has been showing the first signs of the onset of adolescence – secretiveness, a passion for privacy, a tendency to be sullen and resentful. Keeps a neat and tidy room. He loves chocolate.

## A PROBLEM IN DECISION-MAKING

By Justice W. Michael Gillette and the Hon. Pamela Abernethy

JANE, age 9. A tomboy, very athletic and independent. Bright, like her brother, but solidly interested in books, rather than video games. Mischievous, at times flagrantly disobedient. Presently is “grounded” for going to a friend’s house after school and not letting you know where she was until after 6 p.m. Seems to resent being treated as younger than Tom, but never blames him for that. Lately, Jane has seemed to be growing out of her mischievous phase and, the recent visit to her friend notwithstanding, has seemed far more ready than in the past to obey the rules of the house. Keeps the messiest bedroom that you have ever seen. Has a tendency to overeat sweets; also loves chocolate.

## A PROBLEM IN DECISION-MAKING

By Justice W. Michael Gillette and the Hon. Pamela Abernethy

- You are having guests to dinner. The dessert is to be a specially prepared chocolate mousse, done from “scratch.” Four bowls of the dessert have been left in the refrigerator, with specific notice to both children that they are not to touch the bowls. After dinner, you go to the refrigerator and discover that one of the bowls is missing. You serve the desserts to your spouse and the guests, leaving yourself out.
- The children have had their supper by themselves, in the kitchen. Tom does not seem to have been very hungry; part of his supper remains untouched. Jane eats everything put in front of her.

## A PROBLEM IN DECISION-MAKING

By Justice W. Michael Gillette and the Hon. Pamela Abernethy

After dinner, you confront both children. Each denies taking the mousse; each declines to speculate as to how it disappeared. Tom has never, to your knowledge, lied to you about anything of any importance. On the other hand, he seems generally truculent, still smarting from loss of his X-Box. Jane, who is unhappy with being “grounded,” has lied to you many times – but you usually feel that you can tell when she is doing it. This time, you cannot be sure.

## A PROBLEM IN DECISION-MAKING

By Justice W. Michael Gillette and the Hon. Pamela Abernethy

Both children had access to the refrigerator during the afternoon, Jane for an hour longer (Because she came home from school an hour earlier than Tom did). A check of both children's rooms discloses a paper towel, with smears on it that might be chocolate, in Tom's room. So far as you can tell, there is nothing in Jane's room that is pertinent. The missing dessert bowl, empty but for a very clean spoon, is found in a cabinet in the bathroom that is located between the two children's rooms.

## A PROBLEM IN DECISION-MAKING

By Justice W. Michael Gillette and the Hon. Pamela Abernethy

You consider the theft of the mousse to be too serious to ignore. You feel that you must name the culprit and punish him or her. How do you go about deciding which of your children took the mousse? What assumptions do you make as you start the process of solving the theft? What biases do you have toward each child? What factors seem to you the most important in deciding who took the mousse? Why? What factors seem least important? Why? Once you decide, what punishment will you impose? (In your house, physical punishment is not practiced, and "grounding" is never for more than two weeks.)

## PART 2: Decision Making

### DYNAMICS OF GROUP DECISION MAKING

- Research
- Advantages
- Disadvantages



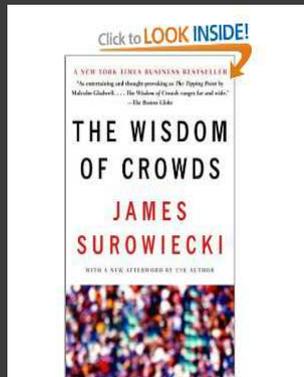
## Importance of Group Decision Making in American Society

### Examples

- Juries
- Congress
- Decision making boards (corporate, local government and...CRB!)



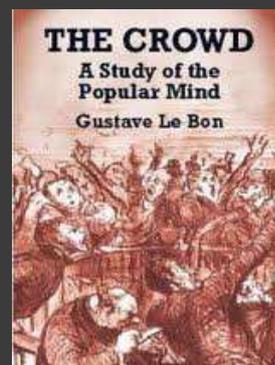
## Historical Regard for Group Decision Making



Historical account of group decision making: potential and pitfalls

*The Wisdom of Crowds*, by James Surowiecki

## Historical Regard for Group Decision Making



**Gustave Le Bon**

*The Crowd: A Study of the Mind* (1895)

## Historical Regard for Group Decision Making



**Gustave Le Bon**

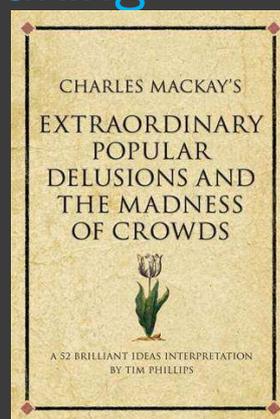
- Crowds “can never accomplish acts demanding a high degree of intelligence”
- Crowds are “always intellectually inferior to the isolated individual”

*The Crowd: A Study of the Mind (1895)*

## Historical Regard for Group Decision Making



**Charles Mackay**



*Extraordinary Popular Delusions and the Madness of Crowds (1841)*

## Historical Regard for Group Decision Making



**Charles Mackay**

“Men, it has been well said, think in herds. It will be seen that they go mad in herds, while they only recover their senses slowly and one by one”

*Extraordinary Popular Delusions and the Madness of Crowds (1841)*

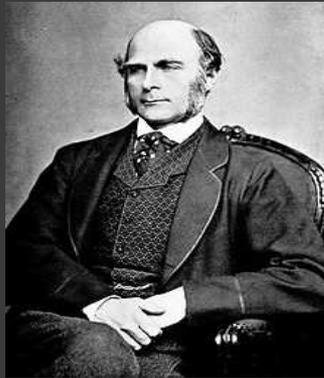
## Historical Regard for Group Decision Making



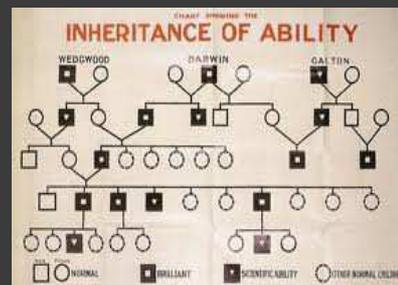
**Henry David Thoreau**

“The mass never comes up to the standard of its best member but on the contrary degrades itself to a level with the lowest”

## Historical Regard for Group Decision Making

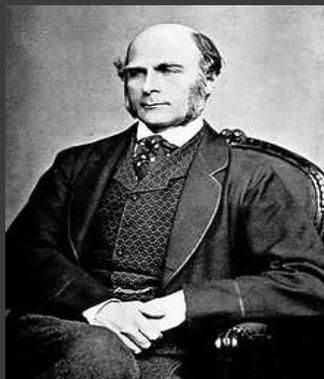


**Francis Galton**



Believed that only a select few could safely make decisions affecting our society

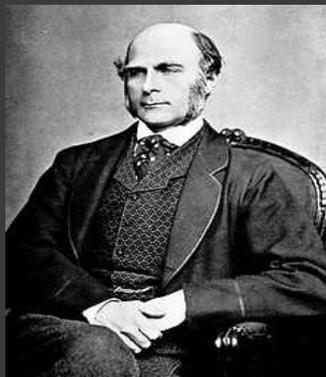
## Historical Regard for Group Decision Making



**Francis Galton**

- 1906 visit to the West England Fat Stock and Poultry Exhibition
- Observed exhibit where 800 people in attendance tried to guess the weight of an ox
- Began impromptu experiment; wrote his findings in the Journal Nature

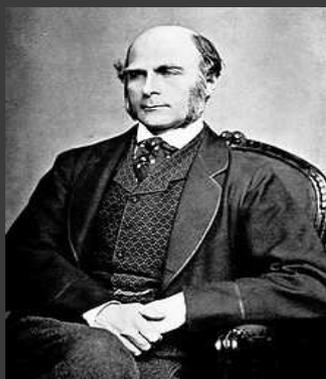
## Historical Regard for Group Decision Making



Francis Galton

- Expected the guesses to be wildly off the mark
- “The average competitor was probably as well fitted for making a just estimate of the dressed weight of the ox as an average voter is of judging the merits of most political issues on which he votes.”

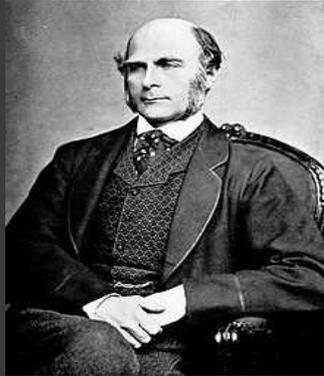
## Historical Regard for Group Decision Making



Francis Galton

Tickets showed the crowd guessed the ox would weigh 1197 pounds (after being slaughtered and dressed)

## Historical Regard for Group Decision Making



**Francis Galton**

The actual weight  
= 1198 pounds

"The result seems more credible to the trustworthiness of a democratic judgment than might have been expected."

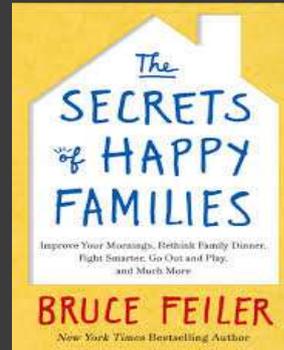
## GROUP DECISION MAKING

Advantages  
of Group  
Decisions



## GROUP DECISION MAKING

### Advantages of Group Decisions



*The Secrets of Happy Families*, by Bruce Feiler

## GROUP DECISION MAKING

### Advantages of Group Decisions

Strategies Taken From:

- ◎ CEO's of Fortune 500 Companies
- ◎ Leaders of U.S. Special Forces
- ◎ Family Counselors
- ...and others

*The Secrets of Happy Families*, by Bruce Feiler

## GROUP DECISION MAKING

### Advantages of Group Decisions

Everybody has the opportunity to bring their experience, knowledge and skills to the situation

## GROUP DECISION MAKING

### Advantages of Group Decisions

Group and team members are more likely to ensure a decision works if they have been part of making that decision

## GROUP DECISION MAKING

Advantages  
of Group  
Decisions

Done right, it  
makes for better  
decisions

## GROUP DECISION MAKING

Dangers in  
Group  
Decisions



## GROUP DECISION MAKING

### Dangers in Group Decisions

#### “RISKY SHIFT”

In the group, they are likely to make riskier decisions, as the shared risk makes the individual risk less.

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

Tendency to go with person who speaks first or speaks loudest

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

Studies show  
people tend to  
follow them even  
if they're wrong

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

Study by Christine  
Harris, University  
California, San Diego,  
concluded that men are  
more likely to engage in  
risky behavior because  
they discount the  
probability and severity  
of negative outcomes

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

More common  
for groups that  
have worked  
together for  
longer periods

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

- ◉ Individuals are fearful of offending colleagues.
- ◉ Many individuals have become complacent within the group setting.

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

People may have made some excellent decisions in the past and are over-confident that they have sound solutions and continue to use them even though circumstances have changed and these past solutions are no longer effective.

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

##### STRATEGIES:

Diversify your group (background, age, gender, ethnicity, etc.)

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

##### *STRATEGIES:*

Vote about a  
matter before  
you discuss it

## GROUP DECISION MAKING

### Dangers in Group Decisions

#### GROUP THINK

##### *STRATEGIES:*

Use of secret  
ballot or writing  
down vote before  
waiting to see how  
others vote

## GROUP DECISION MAKING

### Dangers in Group Decisions

### GROUP THINK

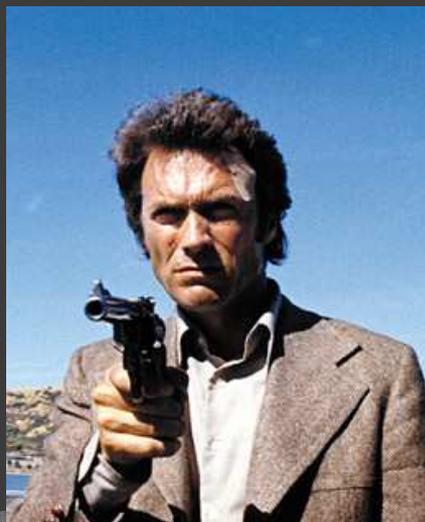
#### STRATEGIES:

BE AWARE of  
*Groupthink*  
phenomenon and  
base decisions on  
facts and rules/law

## Decision Making

*"A man's gotta  
know his  
limitations."*

-- Dirty Harry



## GROUP DECISION MAKING

### Dangers in Group Decisions



Examples of Groupthink in  
*12 Angry Men*

## GROUP DECISION MAKING

### Dangers in Group Decisions

- Strong personalities trying to push the group in their direction
- Illusion of unanimity (in the beginning)
- Extreme pressure to conform

Examples of Groupthink in  
*12 Angry Men*

## GROUP DECISION MAKING

### Dangers in Group Decisions

- Belief in the moral correctness of the decision (punishing a bad person)
- Confirmation bias/stereotyped view of the accused (“slum kid”)

Examples of Groupthink in  
*12 Angry Men*

## GROUP DECISION MAKING

### Dangers in Group Decisions



Henry Fonda's response to Groupthink in  
*12 Angry Men*

## GROUP DECISION MAKING

### Dangers in Group Decisions

- Remained open minded and encouraged others to do so
- By respecting the opinions of the majority and avoided putting them on the defensive, so they could continue to talk about the reasons for their opinions

Henry Fonda's response to  
Groupthink in  
*12 Angry Men*

## GROUP DECISION MAKING

### Dangers in Group Decisions

- Jack Warden even remarked that Fonda had the "soft sell"
- As others began to agree with Fonda, this punctured the illusion of unanimity

Henry Fonda's response to  
Groupthink in  
*12 Angry Men*

## GROUP DECISION MAKING

### Summary



If you employ sound decision making principles, group decisions allow for the collective experience and wisdom of all members to produce a better decision

## GROUP DECISION MAKING

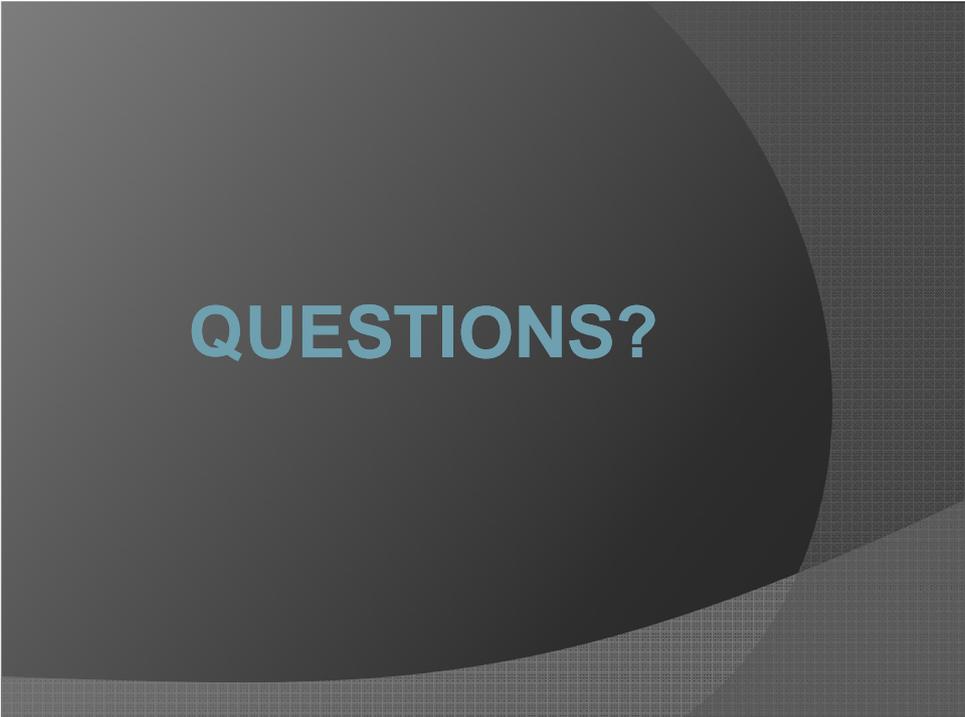
### Summary



## T E A M

Together  
Everyone  
Achieves  
More

-- *Author Unknown*



**QUESTIONS?**



**THANK YOU**  
**(and make good decisions!)**