

Jeffrey Rachlinski: Man, Myth, Legend

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I. THE MAN

Jeffrey John Rachlinski was born June 22, 1966, in Buffalo, New York.¹ He graduated from Frontier Central High School in Hamburg, New York, in 1983, where he participated in such activities as band, Chess Club, French Club, Math Club, Mock Trial Group, and Quiz Club.² In 1988, Jeff earned his B.A. and M.A. in Psychology from Johns Hopkins University. Thereafter, he earned his J.D. and Ph.D. in Psychology from Stanford University in 1993 and 1994, respectively. He has served as a visiting professor at Yale, Harvard, the University of Chicago, the University of Pennsylvania, and the University of Virginia law schools. I first met Jeff—along with his lovely wife, Melissa, and their sons, Christopher, Benjamin, and Alexander (who actually was not born until my second semester 1L year)—in the mid-2000s when I was a student at Cornell Law School. Jeff had been a professor there since 1994.³ While his curriculum vitae and publications do not convey it, the greatest lessons I learned from Jeff over the years have been about faith, family, and love—balancing, and even prioritizing, them vis-à-vis professional accolades.

II. THE MYTH

When I arrived at Cornell Law School in the summer of 2005, I knew that I wanted to be a law professor. I had already been in contact with Professor Sheri Johnson about my aspirations. Fortune would have it that Professor Valerie Hans, who left her position as Professor of Sociology and Criminal Justice at the University of Delaware, would join the Cornell Law faculty in

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¹ Jeffrey J. Rachlinski, *Curriculum Vitae*, CORNELL L. SCH. (Sept. 15, 2020) <https://perma.cc/4S4Y-4SV2>. Note that the “ch” in his last name is pronounced like a “k.”

² FRONTIER CENT. HIGH SCH., Y.B. 113, 130, 133, 137 (1984); FRONTIER CENT. SENIOR HIGH SCH., Y.B. 94, 105 (1982).

³ Rachlinski, *supra* note 1.

February 2006. Out of college, I had applied to the University of Delaware's Social Psychology Ph.D. program, hoping to work with her. I was not admitted, and I would find out years later from the program chair that my admission was declined only because Valarie's primary appointment was not in the psychology department. Connecting with her at Cornell brought things full circle. And then there was Jeff, the only J.D/Ph.D. psychologist on the Cornell Law faculty. I do not remember when we first met, but I recall going to his office to express interest in becoming a legal academic. His response was simple: I should focus on my first-year classes and publish something with one of the faculty before I graduate.

By late in my 2L year, Jeff had refined his thinking about what I needed to do to become a law professor. Instead of publishing something with "a" faculty member, he indicated that he and I should publish something together. And, over the next few years, we would discuss, contemplate, and write two articles (one being a colloquy with Professor Richard Epstein)⁴ and a chapter in a book edited by Professor Manning Marable and Kristen Clarke.⁵ While our 2005 conversation was a mere introduction, our work together created a context for a robust mentor-mentee relationship. Over the years, Jeff has been one of my biggest advocates. When I went on the legal academic market in 2010, Jeff picked up the phone and called hiring committee chairs at scores of law schools to put me on their radars. I was taken aback at the Association of American Law Schools Conference when more than just a few deans noted that they had rarely received as glowing a recommendation about a candidate as Jeff had provided for me. When I accepted a job offer, Jeff was not shy to tell me that there was a good chance that White students would challenge me in the classroom—that race would influence how they evaluate me. And in my first several years of teaching civil procedure, with lackluster student evaluations, Jeff was a source of support and a guide to navigating my way to more effective teaching and substantially better evaluations. While I do not doubt that there are some

⁴ Gregory S. Parks & Jeffrey J. Rachlinski, *Implicit Bias, Election '08, and the Myth of a Post-racial America*, 37 FLA. ST. U. L. REV. 659 (2010); Gregory S. Parks, Jeffrey J. Rachlinski & Richard A. Epstein, *Implicit Race Bias and the 2008 Presidential Election: Much Ado About Nothing?*, 157 U. PA. L. REV. PENNUMBRA 210 (2008).

⁵ Gregory S. Parks & Jeffrey J. Rachlinski, *Obama's Candidacy and the Collateral Consequences of the "Politics of Fear"*, in BARACK OBAMA AND AFRICAN AMERICAN EMPOWERMENT 225 (Manning Marable & Kristen Clarke eds., 2009).

White law professors who actively mentor non-White—especially Black—law students, I imagine that they are few and far between, particularly those who remain committed and effective as mentors well past the time that said students graduate from law school. As such, in some ways, Jeff is a myth.

Mentoring relationships are characterized by two distinct functions: career and psychosocial.⁶ Career functions are areas of the mentoring process that prepare the mentee for improvement and help them move forward in the workplace.⁷ On the other hand, psychosocial mentoring aids the mentee’s “sense of competence, clarity of identity, and effectiveness.”⁸ Successful mentoring relationships are characterized by reciprocity, mutual respect, clear expectations, personal connection, and shared values.⁹ Mentors should have professional experience and understand the system that a mentee hopes to enter while also being accessible and capable of recognizing their mentee’s goals and opening doors to them for a career.¹⁰ Instead of acting as a supervisor, mentors should guide their mentee and focus on developing a sincere and meaningful relationship.¹¹ Meanwhile, the mentee must simultaneously be open to feedback and respectful of the mentor’s advice.¹²

Effective mentors must be able to handle an intense emotional relationship in order for the mentorship to be fully effective and lasting.¹³ Furthermore, this will allow for the exchange of mutual trust between the mentor and mentee, which is necessary for an effective mentoring relationship.¹⁴ It is ideal if a mentor is at a place in their career where they have the ability to share valuable advice with others.¹⁵ Mentoring is voluntary, so engaging in it

⁶ Tammy D. Allen & Mark L. Poteet, *Enhancing Our Knowledge of Mentoring with a Person-Centric Approach*, 4 *INDUS. & ORGANIZATIONAL PSYCH.* 126, 126 (2011).

⁷ *See id.*

⁸ *Id.*

⁹ Sharon E. Straus, Mallory O. Johnson, Christine Marquez & Mitchell D. Feldman, *Characteristics of Successful and Failed Mentoring Relationships: A Qualitative Study Across Two Academic Health Centers*, 88 *ACAD. MED.* 82, 86 (2013).

¹⁰ *Id.* at 84–85.

¹¹ *See id.* at 85.

¹² *Id.* at 84–85.

¹³ Rose Opengart & Laura Bierema, *Emotionally Intelligent Mentoring: Reconceptualizing Effective Mentoring Relationships*, 14 *HUM. RES. DEV. REV.* 234, 243 (2015).

¹⁴ *Id.*

¹⁵ *See* Tammy D. Allen, *Mentoring Others: A Dispositional and Motivational Approach*, 62 *J. VOCATIONAL BEHAV.* 134, 148 (2003).

means that the mentor is going above and beyond what is expected in their career or position.¹⁶ Motivations for mentoring rest in being other-oriented or doing it for personal reasons.¹⁷ Mentoring can also be examined through different lenses.¹⁸ First, one can study mentorship through the apprenticeship model, which emphasizes learning and growth by interacting with and observing the mentor.¹⁹ The competency model, on the other hand, relies on growth resulting from feedback from the mentor.²⁰ Lastly, the reflective model centers around the mentor guiding the mentee's professional development.²¹ These models can exist separately or be combined.²²

Within the context of cross-racial mentoring relationships, there are also unique dynamics. Mentors must be proactive in creating a foundation of understanding and mutual respect in order to build trust.²³ To do this, the mentor and mentee must develop cultural awareness and sensitivity to those issues.²⁴ As such, mentors must recognize their own privilege,²⁵ have a growth mindset in the relationship,²⁶ empathize with their mentee where possible (and listen to understand when they cannot),²⁷ guide the mentee to their own fullest potential, and diversify their own viewpoints and knowledge to become more informed on issues that may not affect them.²⁸ Too often, minorities feel socialized to make majority-group members comfortable with them.²⁹ Mentors may play a

¹⁶ *Id.* at 136.

¹⁷ *Id.* at 137.

¹⁸ Andrea M. Kent, Andre M. Green & Phillip Feldman, *The Road Less Traveled—Crossing Gender and Racial Lines in Comprehensive Mentoring*, 72 INT'L J. EDUC. RES. 116, 117 (2015).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Sydney Freeman Jr. & Frances Kochan, *Exploring Mentoring Across Gender, Race, and Generation in Higher Education: An Ethnographic Study*, 8 INT'L J. MENTORING & COACHING EDUC. 2, 4 (2019).

²⁴ Kent et al., *supra* note 18, at 118.

²⁵ See Cristina A. Stanley & Yvonna S. Lincoln, *Cross-Race Faculty Mentoring*, 37 CHANGE 44, 48–49.

²⁶ See *id.* at 48.

²⁷ See *id.* at 46–47 (discussing the importance of a mentor who “listens keenly,” who “reflects,” and who “is not dismissive”).

²⁸ See *id.* at 50.

²⁹ See Freeman & Kochan, *supra* note 23, at 7.

role in amplifying that by discouraging their mentees from writing about issues of race.³⁰ Accordingly, mentors must help their mentees feel comfortable addressing such issues.³¹

Jeff has caused me to think deeply about mentoring and to find ways to pay it forward. Each year, I select a small group of students from my Civil Procedure class to mentor. If a mentee applies for a job, I call that firm, judge, or agency to make the case for why my mentee should be hired. For the few mentees who have wanted to work in legal academia,³² we strategize on how to get them there. For those who have some particular professional interest—e.g., judge advocate at the U.S. Navy JAG Corps³³—and want to publish a piece in that area, I try to accommodate the request.³⁴ Even for my undergraduate mentees, for those who plan to attend Cornell Law School and may want to consider life as an academic, there is an opportunity to coauthor.³⁵

III. THE LEGEND

What most legal academics know about Jeff, and the reason for his inclusion in this issue of the *University of Chicago Law Review*, is his work at the intersection of law and social science. Within this area, he has advocated for an approach to law that pushes beyond intuition and ideology, rooted—rather—in empirically driven, evidence-based methods.³⁶ Much of Jeff's work rests on the proposition that

people rely on two distinct cognitive systems of judgment: one that is rapid, intuitive, and unconscious [System 1]; another that is slow, deductive, and deliberative [System 2]. The intuitive system can often dictate choice, while the deductive

³⁰ Ruth Enid Zambrana, Rashawn Ray, Michelle M. Espino, Corinne Castro, Beth Douthirt Cohen & Jennifer Eliason, *“Don’t Leave Us Behind”: The Importance of Mentoring for Underrepresented Minority Faculty*, 52 AM. EDUC. RES. J. 40, 55–56 (2015).

³¹ Freeman & Kochan, *supra* note 23, at 8.

³² See, e.g., *Amanda Whorton Professional Biography*, CORNELL L. SCH., <https://perma.cc/L3VN-GYYJ>.

³³ See Jasmine R. Burgess, Esq., LINKEDIN, <https://www.linkedin.com/in/jasmine-r-burgess-esq-35b19353>.

³⁴ Gregory S. Parks & Jasmine Burgess, *Hazing in the United States Military: A Psychology and Law Perspective*, 29 S. CAL. INTERDISC. L.J. 1 (2019).

³⁵ Gregory S. Parks & Julia Doyle, *The Rage of a Privileged Class*, 89 FORDHAM L. REV. 2541 (2021).

³⁶ See generally Jeffrey J. Rachlinski, *Evidence-Based Law*, 96 CORNELL L. REV. 901 (2011).

system lags behind, struggling to produce reasons for a choice that comports with the accessible parts of memory.³⁷

Sometimes this takes the form of cognitive biases—“systematic deviations from rational judgment, whereby inferences about other people and situations may be illogically drawn.”³⁸ It may also take the form of heuristics—mental shortcuts to manage complexity and uncertainty.³⁹

An area that Jeff has given considerable attention to is that of judicial decision-making, finding that even judges are influenced by System 1 thinking. His work has demonstrated that judges are influenced by a range of biases and heuristics. One is anchoring—the tendency to over-rely on the initial value given to make their final estimates.⁴⁰ Another is egocentric bias—the tendency to make judgments about oneself in ways that are self-serving.⁴¹ Yet another is framing—the tendency to choose between options based on whether they are presented with positive or negative connotations.⁴² In addition, there is the inverse fallacy—the tendency to ignore the importance of background statistics when making categorical judgments.⁴³ And the representativeness heuristic—the tendency to estimate the likelihood of an event by comparing it to an existing prototype that already exists in one’s mind—presents another fallacy.⁴⁴ One cognitive bias that Jeff has explored considerably with respect to judicial decision-making is the influence of hindsight bias—the tendency to overestimate how well one can predict the past, i.e., the “knew it all

³⁷ Parks & Rachlinski, *supra* note 4, at 689.

³⁸ Gregory S. Parks, *Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations*, 51 U.C. DAVIS L. REV. 1039, 1054 (2018).

³⁹ See Jeffrey J. Rachlinski, *Selling Heuristics*, 64 ALA. L. REV. 389, 392–93 (2012).

⁴⁰ See Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *Inside the Judicial Mind*, 86 CORNELL L. REV. 777, 787–94 (2001) [hereinafter *Judicial Mind*]; Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1, 19–21 (2007) [hereinafter *Blinking on the Bench*]; Jeffrey J. Rachlinski, Chris Guthrie & Andrew J. Wistrich, *Inside the Bankruptcy Judge’s Mind*, 86 B.U. L. REV. 1227, 1233–37 (2006).

⁴¹ See *Judicial Mind*, *supra* note 40, at 811–16.

⁴² See *id.* at 794–99; Rachlinski et al., *supra* note 40, at 1237–41. See generally Jeffrey J. Rachlinski & Andrew J. Wistrich, *Gains, Losses, and Judges: Framing and the Judiciary*, 94 NOTRE DAME L. REV. 521 (2018).

⁴³ See *Judicial Mind*, *supra* note 40, at 805–11.

⁴⁴ See *id.*

along” phenomenon.⁴⁵ Judicial specialization—e.g., being a bankruptcy judge—does not provide a substantial bulwark against System 1 decision-making.⁴⁶

Given these findings, it is no surprise that Jeff’s work has also identified a range of other factors that serve to influence judicial decision-making in irrational ways. Judges’ personal characteristics impact their decision-making. Specifically, when cases raise issues that are salient to judges’ personal characteristics, they are unable or unwilling to put those characteristics aside.⁴⁷ Judges also overreact to mechanisms of accountability (examples being appellate review, retention, and promotion).⁴⁸ Judges sometimes rely on factors outside the record (including inadmissible evidence, their emotional reactions, and prejudices).⁴⁹

In addition, emotions impact judges’ sentences and rulings across civil and criminal cases and a wide range of tasks and procedural contexts. Strikingly, judges’ decision-making was more favorable to sympathetic clients.⁵⁰ Jeff has also found that, while the effect is modest, judicial political party affiliation influences judicial decision-making.⁵¹ Even more, political influence is small enough that trial judges are not typically aware of how it influences their decision-making.⁵² Moreover, he has discovered that judges are better at ignoring inadmissible evidence than jurors since they have more experience and understand the rules better than jurors.⁵³ However, they are unable to ignore inadmissible information in some contexts.⁵⁴

⁴⁵ See *id.* at 799–805; *Blinking on the Bench*, *supra* note 40, at 24–27. See generally Jeffrey J. Rachlinski, Chris Guthrie & Andrew J. Wistrich, *Probable Cause, Probability, and Hindsight*, 8 J. EMPIRICAL LEGAL STUD. 72 (2011); Jeffrey J. Rachlinski, *A Positive Psychological Theory of Judging in Hindsight*, 65 U. CHI. L. REV. 571 (1998).

⁴⁶ See generally Jeffrey J. Rachlinski, Chris Guthrie & Andrew J. Wistrich, *Heuristics and Biases in Bankruptcy Judges*, 63 J. INST’L & THEORETICAL ECON. 167 (2007).

⁴⁷ See Jeffrey J. Rachlinski & Andrew J. Wistrich, *Judging the Judiciary by the Numbers: Empirical Research on Judges*, 13 ANN. REV. L. & SOC. SCI. 203, 205–10 (2017).

⁴⁸ See *id.* at 210–14.

⁴⁹ See *id.* at 205.

⁵⁰ See Andrew J. Wistrich, Jeffrey J. Rachlinski & Chris Guthrie, *Heart Versus Head: Do Judges Follow the Law or Follow Their Feelings?*, 93 TEX. L. REV. 855, 898–900 (2015).

⁵¹ See Jeffrey J. Rachlinski, Andrew J. Wistrich & Chris Guthrie, *Judicial Politics and Decisionmaking: A New Approach*, 70 VAND. L. REV. 2051, 2097–98 (2017) (“[T]he effect of political ideology we observed was uneven and generally quite modest, thereby suggesting that the influence of political ideology on trial court judges is small.”).

⁵² See *id.*

⁵³ See Andrew J. Wistrich, Chris Guthrie & Jeffrey J. Rachlinski, *Can Judges Ignore Inadmissible Information?: The Difficulty of Deliberately Disregarding*, 153 U. PA. L. REV. 1251, 1255–56 (2005).

⁵⁴ *Id.* at 1307 (“[J]udges seemed unable to ignore a prior conviction.”).

Jeff's work has also found that the way evidence is presented and the circumstances in which it is examined can shift judges' attention, altering their decisions. For some crimes, judges give shorter sentences when they are made aware of the cost of incarceration.⁵⁵ Judges are also more prone to favor expert witnesses when the lawyer presents another expert witness who agrees with the first, even if the second has weaker credentials.⁵⁶ Further, the way that prosecutors present testimony can alter how the judges assess the case.⁵⁷ Moreover, police misconduct, and their confession to it, influences judicial decision-making. Specifically, the more severe the misconduct, the less likely judges are to convict criminal defendants, at least for less serious crimes.⁵⁸ Jeff's work has also noted that the heightened pleading standard under *Iqbal–Twombly*⁵⁹ may impact judicial decision-making. While notice pleading slows judgment and reduces the influences of tricks and gamesmanship that lawyers can play, in contrast, heightened pleading and plausibility assessments feed the overconfidence and vulnerabilities that judges have when making intuitive misjudgments.⁶⁰

As a coda, I have had the privilege of working with Jeff in an area that speaks to my passions—race. He had already been thinking about the role of implicit bias in judicial decision-making. His work in that area found that trial court judges in criminal proceedings hold implicit racial biases, and they may be overconfident in their ability to control their own biases.⁶¹ While Black judges seem to harbor fewer implicit biases than their White counterparts, White judges may engage in cognitive-correction practices in order to avoid the appearance of bias.⁶² In two of our

⁵⁵ See Jeffrey J. Rachlinski, Andrew Wistrich & Chris Guthrie, *Altering Attention in Adjudication*, 60 UCLA L. Rev. 1586, 1596 (2013) (“[C]ost information had no impact on sentences in the drug possession scenario even though [it] strongly influenced sentencing in the rape scenario.”).

⁵⁶ *Id.* at 1599–1601.

⁵⁷ *Id.* at 1607–09.

⁵⁸ See *id.* at 1614.

⁵⁹ See generally *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

⁶⁰ See generally Jeffrey J. Rachlinski, *Processing Pleadings and the Psychology of Prejudgments*, 60 DEPAUL L. REV. 413 (2011).

⁶¹ See Jeffrey J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich & Chris Guthrie, *Does Unconscious Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1225 (2009).

⁶² See *id.* at 1222–24; see also Bernice Donald, Jeffrey Rachlinski & Andrew Wistrich, *Getting Explicit About Implicit Bias*, 104 JUDICATURE 75, 75 (2020) (exploring further the

projects, we analogized voting in the 2008 U.S. presidential election to a hiring decision that U.S. voters were making. As such, just as legal scholars have increasingly contended that implicit bias could offer insights into modern employment discrimination law, study of this bias can also offer insights for voter decision-making.⁶³

implications of judicial implicit bias and why judges need to educate themselves on the issue).

⁶³ See generally Parks & Rachlinski, *supra* note 4; Parks et al., *supra* note 4.