

PRACTICE ADVISORY | 4/24/2025 | D'Adre Cunningham
Family Defense Session 1: Bias & Character Evidence in Bench Trials

"I fear the judge who is too sure of himself, who reaches his decision quickly, jumping immediately to conclusions without deliberation or repentance."

-Piero Calamandrei, Eulogy of Judges 21 (John
Clarke Adams & C. Abbott Phillips, Jr. trans., 1942).

Introduction. This practice advisory provides a curated overview of character evidence related to bias and stereotypes and an overview of empirical research about cognition bias and their impacts on judicial decision making. This advisory is for criminal and family defenders representing clients in bench trials and evidentiary hearings in Washington courts. This research brings to the fore important principles that can assist judicial decision makers to constrain the impact of their own biases. Understanding how bias operates is equally as important as understanding when one is vulnerable to its operation. From there, defenders may make suggestions to assist decision makers in protecting their decision making from being infected with bias. The admission of certain types of character evidence **in bench trials** can trigger biases, prejudices, and intuitive thinking by the judicial fact finder. These triggers inject biases undermining fair consideration of observable information, inject biases undermining fair treatment of witness credibility,¹ and allows broad admission of propensity evidence in the form of a witness' prior acts or wrongs.²

It's Simply Not Justice. Fair administration of justice and just outcomes requires removal of pernicious biases. "Ignorance isn't bliss; a system rooted in faulty assumptions and unproven hunches risks terrible mistakes and cannot represent the best interests of justice."³ Although historically judges allowed prosecutors to use explicit references and race-based character evidence as proof of an accused person's guilt,⁴ both the U.S. Supreme Court and Washington Supreme Court have held that explicit racial bias injected into a trial violates rights to an impartial trial by jury and to a fair trial under both federal and state constitutions respectively, and the injection of racial prejudice, race-based stereotypes, and race-based character evidence as argument or in deliberations trials is strictly prohibited.⁵ These bans are designed to protect the integrity of the legal system, the fairness of the proceedings, and the accuracy of the fact-finding process.⁶

What is bias? When a person acts or makes decisions based on bias that is conscious or explicit, the rational mind is aware of the bias and actively uses the bias to make decisions.⁷ When explicit bias manifests itself it is often recognized as bigotry. When a person acts or makes decisions based on bias that is unconscious or implicit bias, the rational mind is unaware of the bias.⁸ Implicit bias, like explicit bias, affects the perceptions of the observer; that is to say, bias alters what one hears and what one sees in addition to how one interprets

what those observations mean.⁹ In Washington just as nationally, Black¹⁰ and Indigenous¹¹ families have historically been over-reported into and as a result harmed by Washington's family regulation (so-called child protection) system.¹² There is also varied and voluminous scholarship describing what explicit judgment and implicit racial bias are and how both operate within individuals' cognition.¹³ This advisory mostly includes scholarship and research on how bias operates in judicial decision making¹⁴ as well as specifically how judges are vulnerable to biased decision making in the fact-finding process.¹⁵

Understanding Bias: Stereotypes v. Prejudices. “Stereotypes represent a phenomenon called an ‘illusory correlation’ when they reflect a correlation between two things which, in reality, (1) are not correlated; (2) are correlated to a lesser extent than reported; or (3) are correlated in the opposite direction from that which is reported.”¹⁶ “Prejudice, in contrast, is defined as one's set of personal beliefs which may or may not be congruent with the stereotypes one has learned.”¹⁷ “Recognizing the distinction between stereotypes and prejudice is useful because doing so reveals the possibility of disassociating one's automatic stereotype-congruent responses from one's controlled personal beliefs.”¹⁸ There are situations where stereotypes are more heavily relied upon, such as when an individual is under stress or pressed for time or when fact patterns in the court case appear to mimic stereotypical associations.¹⁹

Bias & Negative Character Evidence. Evidence law regulates information disclosure to the trier of fact in a given proceeding.²⁰ The rules governing the admission or exclusion of character evidence are varied, with the primary rule ER 404 banning its use as propensity evidence, reflecting “the ‘action-not-person principle’ --that, at trial, people should be judged based on what they did and not based on who they are.”²¹ “The rules of evidence encourage trial courts to consider proffered character evidence with a heavy dose of skepticism.”²² Under the narrow view of its purposes, evidence law steers the trier of fact to “an accurate verdict” or just determination of the case, and prejudice is only unfair when it makes an accurate verdict less likely.²³ Under the broad view of its purposes, evidence law “treats certain forms of prejudice as more unfair than others, outweighing “considerations favoring admission, [which...] perpetuate or compound broader societal injustices.”²⁴ Courts have used both views to create decisional law protecting the trial hearing from being infected with certain pernicious forms of prejudice.²⁵ However, the pernicious effects of character/propensity/other acts evidence in particular are extremely difficult to constrain because admitting this type of evidence activates or triggers the trier of fact's prior beliefs (biases) and invites judgement based solely on character not conduct.²⁶

Racial Bias & Character Evidence. Racial bias in Washington's legal system has been studied in a variety of contexts particularly with regards to over-representation of non-white people and under-representation of White people at various stages of involvement.²⁷ Historically, “trial courts sanctioned prosecutors' explicit attempts to introduce race-based

character evidence as proof” of an accused person’s guilt and to include or exclude who could make complaints about wrongdoing²⁸ who could testify and be deemed worthy enough to be believed.²⁹ Historically, American courts have not been insulated from the racial and ethnic biases³⁰ harbored by people in general society. Rather, historically, “the bodies deemed least worthy of protection [...] belong to the people deemed least worthy of belief.”³¹ For example, people in prison or so-called jailhouse informants are viewed with suspicion due to perceived benefits for giving testimony³² and others in jail or prison are presumptively disbelieved as their conviction is used as a proxy for judging them to be morally corrupt, and therefore dishonest.”³³ These historic uses of character evidence are based primarily on “popular wisdom holds that character is strongly determinative of future conduct” or, put differently, a belief “that if you know a person’s character, then you can most likely predict how that person will act in a future instance.”³⁴ However, “[d]efining character as simply someone’s propensity to act in a certain way does not distinguish between what is commonly perceived as character and other propensity-based qualities that courts have recognized are not character, such as habits, mental illnesses, and genetic attributes, skills and abilities, or other traits of personality.”³⁵ Character evidence is most often connected to morality (a set of duties one person owes to another).³⁶

Defenders must strongly consider advocating against the infection of similar and other biases into judicial decision-making as well to increase fairness, improve outcome accuracy, and protect legal system integrity.³⁷ Since much of the jurisprudence, which promotes or sustains judicial fact-finding procedures as comporting with fundamental fairness,³⁸ is based upon the premise “that judges can be just as accurate in their fact-finding ability as juries” advocates should consider addressing and undermining this premise.³⁹

Who has bias? Anyone can have bias, and most people do.⁴⁰ It is a function of cognition.⁴¹ In the legal system, everyone could have bias, such as lay or expert witnesses,⁴² lawyers,⁴³ jurors,⁴⁴ and judges.⁴⁵ Judges are human too.⁴⁶ Judges are not different when it comes to bias.⁴⁷ Judges are prone to cognitive biases, like egocentric bias, and to rely on assumptions, which makes them disadvantaged to weigh comparative merits of competing expertise and research.⁴⁸ When it comes to negative bias, such as negative racial bias, cognitive beliefs about disfavored racial groups are experienced as “stereotypes” and feelings or attitudes about disfavored racial groups are experienced as “prejudice.”⁴⁹ Racial stereotypes and prejudice as well as other negative biases may operate in judicial decision making as they may do in jury deliberations.

The Mechanics of Bias. Implicit biases “have real-world consequences.”⁵⁰ Philosophers have long distinguished between intuition and deduction, and psychologists researching cognition maintain this distinction.⁵¹ Intuitive processes (also called System 1 processes) are spontaneous, automatic, effortless, fast, heuristic-based, vulnerable to emotional influences, and which require “relatively undemanding of computational capacity.”⁵² Deliberative processes (also called System 2 processes) require effort, motivation, concentration, slow, effortful, rule-governed, and “associated with controlled processing.”⁵³

Empirical data about dual processing (intuitive and deliberative processing) demonstrates that **ordinary adults** possess dual processing systems, in which intuition tends to dominate but that can be overcome by deliberation.⁵⁴

Bias & Judicial Decisionmaking. Even for judges, intuitive judgments are flawed more often than deliberative judgments.⁵⁵ Intuition is dangerous specifically because it is relied upon when it is inappropriate to do so.⁵⁶ Judges “commonly encounter stimuli on the job that induce intuitive reactions, though they occasionally demonstrate an ability to override those intuitive responses.”⁵⁷ Just as well-educated college students, who were observed by researchers to use intuitive thinking process, and who were completely incorrect with their answers were far more likely than people who were observed to use deliberative thinking process and who were completely correct with their answers to believe that the problems or questions posed to them *were easy to solve*,⁵⁸ judges gave comparable answers and scored similar to well-educated college students.⁵⁹

The susceptibility of legal professionals, like defenders and judges, to biased intuitive thinking with regards to legal standards is well-documented. Despite their belief to the contrary, the capacity to use intuitive thinking successfully (i.e. to achieve accurate decisions) requires years of effortful study.⁶⁰ Research suggests that the accuracy of legal decisions may improve with an increase in deliberative processes by judges.⁶¹ Intuitive thinking “is also *the likely pathway by which undesirable influences*, like the race,⁶² gender, or attractiveness of parties, affect the legal system.”⁶³ Researchers examining judicial bias empirically recommend that judges use deliberative processes when they can receive feedback on whether their decisions are accurate or effective and/or when they are more apt to “face cues likely to induce misleading reliance on heuristics.”⁶⁴ Interestingly, in Washington with regards to evidentiary rulings in bench trials, judges as factfinders are given special deference to receive and “disregard” highly prejudicial and otherwise inadmissible information.⁶⁵ Given that the empirical data suggests that judicial deference is unwarranted, defenders should consider cautioning judges from reviewing such material.⁶⁶

Noticing & Disrupting Bias in Judicial Decisionmaking. Researchers have identified several heuristics and biases that affect judicial decision-making⁶⁷ including the **availability heuristic**,⁶⁸ the **representativeness heuristic**⁶⁹ or **statistical inferences**,⁷⁰ **framing effects** (in which different decisions are made depending on how information is presented);⁷¹ and **premature closure** (in which alternatives are not pursued).⁷² There are also additional examples of heuristics and biases that have been identified to “trigger” or activate intuitive thinking include: **anchoring**⁷³ and **hindsight bias**⁷⁴ in judges as well.⁷⁵ Of these triggers, judges are particularly vulnerable to hindsight bias because they are most often evaluating events after the fact.⁷⁶ Researcher also found that judges may be able to resist that bias if required to apply “highly intricate” or complex rules to resolve an issue.⁷⁷ Evaluating the empirical data around hindsight bias, researchers re-considered why outcomes around hindsight bias might have been different.⁷⁸ Researchers opined that when judges were given

a wide breadth of discretion without specific or complex rules to follow or when they were asked to make predictive determinations as opposed to making a retrospective assessment of evidence, intuitive processes may be more likely to be activated.⁷⁹

Availability bias is a dynamic that can lead to serious errors in judgment when judges try to gap fill information. A wrong assumption about the frequency of events is simply because of the number of incidents the judge can recall from memory.⁸⁰ Judges, like jurors, will rely on pernicious forms of bias or stereotypes to fill in those gaps as well, the quicker or easier the information is to recall the more confident the judge or juror will feel in the correctness of their decision even when the decision is objectively incorrect.⁸¹ For example, judges, like jurors, are apt to fill in gaps in the record using biases, and, as a result, make erroneous assumptions.⁸² This dynamic is particularly harmful in specialized legal areas because judges “are expected to know these things, often based on their experience in other cases when they were in practice or from experience in being a judge. However, in other areas, judges, through lack of experience or reading unrepresentative or unreliable materials, may make erroneous assumptions about matters such as: psychological illnesses like post-traumatic stress disorder and their resolution [or] the behavior of victims of child sexual assault or sexual harassment[.]”⁸³ This gap filling occurs cognitively because human “judgments are often based on memory” in that if “we do not have the necessary evidence to make a decision, we use information acquired in the past that we think will help.”⁸⁴

Another important heuristic informing judicial decision making is **egocentric bias**.⁸⁵ “Egocentric biases could lead judges to believe that they are better decision makers than is really the case.”⁸⁶ An empirical study of whether judges are susceptible to egocentric bias, the researchers found they exhibited egocentric bias and “the pattern of results differs significantly from what one would expect if judges were unbiased.”⁸⁷ In that study, judges “exhibited a strong egocentric bias concerning the likelihood that they would be overturned on appeal.”⁸⁸ The primary concern about egocentric bias is how overconfident judges can be in their decisionmaking.⁸⁹ “Confidence in a decision arises from the ease with which an answer comes to mind, coupled with a sense that the information relied upon to answer the question is coherent.”⁹⁰ However, “ease and coherence do not guarantee that a belief held with confidence is true.”⁹¹ Furthermore, “excessive confidence based on experience creates problems because the decision-maker is disinclined to check the validity of his or her conclusions.”⁹² Another concern with egocentric bias is that it might prevent judges from maintaining awareness of their limitations, and this in turn might work a detriment to the litigants appearing in their courtrooms.⁹³ For example, the influence of egocentric bias makes it difficult for a litigant forced by court procedure to relitigate prior rulings in the same matter before the same judge (even if at a different/higher burden of proof) to be successful or for a litigant to obtain order of relief from judgment.⁹⁴

For more resources on this topic: See also WDA IPP Practice Advisory entitled “Defending So-Called Bad Parents” at WDA’s website for Training: <https://defensenet.org/training/> or at

Ideas for Defenders. Defenders should consider being strategic and advocating for conditions that support deliberative judicial decision making.⁹⁵ Practices that may mitigate intuition include: (1) **time for deliberation** or non-simultaneous decisionmaking;⁹⁶ (2) **opinion writing**;⁹⁷ (3) **bench cards or checklists** for decisions using broadly discretionary and ill-defined legal standards;⁹⁸ (4) **reallocation of decision-making or divided decision-making**;⁹⁹ and, perhaps the **use of empirical advocacy**, when needed.¹⁰⁰ However, it must be noted how particularly difficult mitigating cognitive illusions that judges rely upon, like egocentric bias, can prove to be.¹⁰¹

Advocates should consider requesting **time for deliberation** either by separating the evidentiary motions from the trial by several weeks (at the pretrial conference or omnibus hearing) or by requesting time to for motions *in limine* a few days before trial for “more important evidentiary motions [...] in which the judge has had some time to study the papers and deliberate.”¹⁰² At a minimum, advocates should request that the court should not simultaneously decide evidentiary motions but encourage judges to take recesses to not only deliberate but research the issues before ruling. *Id.* In a bench trial setting, this practice should be easier to employ because social and economic reasons for lengthening trial and for limiting breaks in trial due to the impact on the jury panel simply do not exist. Advocates should consider requesting that judges **write out judicial evidentiary rulings in written opinions** more often.¹⁰³ Similarly, advocates might consider drafting judicial “limiting instructions” to remind the judge of its prior (deliberated) evidentiary rulings during deliberation of the ultimate issues.

Advocates might also consider use of so-called **scripts and checklists (or bench cards)**, which “can free judges from reliance on their memories and encourage them to proceed methodically, thereby ensuring that they touch all of the deliberative bases. A judge who must review a script or checklist at each step in the decision-making process is less likely to rely on intuition when doing so is inadvisable.”¹⁰⁴ Juvenile court bench cards may provide a resource for certain juvenile dependency court decisions, such as safety threat assessments for removal decisions. In contrast, “**multifactor or balancing tests** have become common” and may be favorable to ill-defined, broad discretionary legal standards.¹⁰⁵ However, they are imperfect.¹⁰⁶ Advocates must be cautious and specific about routing out irrelevant factors or tests with overbroad or ill-defined concepts within the multifactor tests.¹⁰⁷ “Multifactor tests can help ensure that judges consider all relevant factors and can remind them of their responsibility to base decisions on more than mere intuition.”¹⁰⁸ This strategy may require advocate to propose definitions of terms and to propose and articulate multifactor analysis informed by appellate jurisprudence regardless of whether there is ruling precedence on point.

Advocates should consider proposing procedural steps in their cases to limit judges' exposure to stimuli that are likely to trigger intuitive thinking by reallocating decision making, or so-called “**divided decision making**.”¹⁰⁹ “More generally, this divided decision-making strategy is likely to shield the ultimate adjudicator from various stimuli that are likely to induce intuitive, heuristic-based decision making.”¹¹⁰ Using **empirical advocacy** to combat intuitive thinking may also be helpful in some instances particularly when confronting deeply entrenched stereotypes or tropes. Consulting experts may also support this advocacy. For example, judicial officers, who only encounter low-income families struggling with parental substance use disorder, might benefit from hearing about epidemiological data on parental substance use disorder among higher socio-economic groups (such as the rate of substance use disorder is similar among middle class parents as low income parents) to mitigate values assigned to safety concerns and to increase values assigned to observable protective factors in the parent’s home.

¹ER 609 governs admitting evidence of a witness’s prior conviction as impeachment evidence. See *State v. Garcia*, 179 Wn.2d 828, 847, 318 P.3d 266, 276 (2014). The court must balance the prejudicial impact of the prior conviction against its probative value, using the factors set out in *State v. Alexis*, 95 Wn.2d 15, 621 P.2d 1269 (1980). See *State v. Gomez*, 75 Wn. App. 648, 651, 880 P.2d 65, 67 (1994). ER 608 (a) restricts character evidence being used to impeach a witness credibility. *State v. Land*, 121 Wn.2d 494, 503, 851 P.2d 678, 683 (1993). A party may elicit on cross-examination through testimony instances of that witness’s conduct if permitted by the court and probative of truthfulness or untruthfulness. See *State v. Demery*, 144 Wn.2d 753, 768, 30 P.3d 1278, 1286 (2001).

The reputation for truthfulness testimony may be elicited through testimony from the “community” broadly defined as where the witness resides, owns a business, or some other relevant community. *State v. Land*, 121 Wn.2d 494, 498-99, 851 P.2d 678, 681 (1993).

² The rules for admitting character evidence of other acts not relevant to the elements of the charge but that is also not propensity evidence under ER 404(b). See *State v. Anderson*, 42 Wn. App. 659, 665, 713 P.2d 145, 149 (1986). Rule 404(a) is a general rule of exclusion [... and] is of fundamental importance in American law, implementing the philosophy that a defendant should not be convicted because he is an unsavory person, nor because of past misdeeds, but only because of his guilt of the particular crime charged.” See e.g., *State v. Walston*, 766 S.E.2d 312, 315 (N.C. 2014) (citing 1 Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 4:21 at 677 (4th ed.2013) (internal quotations and citations omitted)).

³ See Benjamin Levin, *Values and Assumptions in Criminal Adjudication*, 129 Harv. L. Rev. F. 379, 379 (2016).

⁴ See e.g., Mikah K. Thompson, *Bias on Trial: Toward an Open Discussion of Racial Stereotypes in the Courtroom*, 2018 Mich. St. L. Rev. 1243, 1254–55 (2018) (“These explicit attempts to introduce race included arguments based on racial stereotypes.”).

⁵ See e.g., *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 209, 137 S. Ct. 855, 869, 197 L. Ed. 2d 107 (2017) (“where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-

impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.”); *Henderson v. Thompson*, 200 Wn.2d 417, 434, 518 P.3d 1011, 1023 (2022)(“The right to trial by jury includes the right to an unbiased and unprejudiced jury, and a trial by a jury, one or more whose members is biased or prejudiced, is not a constitutional trial.”); *State v. Monday*, 171 Wn. 2d 667, 676, 257 P.3d 551, 556 (2011) (prosecutor violated the accused’s right to an impartial jury under article I, section 22 by injecting racial prejudice into the trial asking juror’s to disbelieve witnesses because of their race).⁶*Pena-Rodriguez v. Colorado*, 580 U.S. 206, 209, 137 S. Ct. 855, 869, 197 L. Ed. 2d 107 (2017); *Henderson v. Thompson*, 200 Wn.2d 417, 434, 518 P.3d 1011, 1023 (2022); *State v. Monday*, 171 Wn. 2d 667, 676, 257 P.3d 551, 556 (2011).

⁷ See David M. Amodio and Kyle G. Ratner, *A memory systems model of implicit social cognition*, 20 Curr. Dir. Psych. Sci. 3, 143-148 (2011).

⁸ See e.g., Christine Jolls and Cass R. Sunstein, *Symposium on Behavioral Realism*. 94 Calif. L. Rev. 969, 975 (2006) (“Implicit bias is largely automatic; the characteristic in question (skin color, age, sexual orientation) operates so quickly, in the relevant tests, that people have no time to deliberate. It is for this reason that people are often surprised to find that they show implicit bias.”).

⁹ See Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489, 1503-04 & n.68 (2005) (“[S]chemas influence not only interpretation (that is, ‘social perception’), but also what we actually see and remember seeing (‘visual perception’).”); see also Jennifer L. Eberhardt et al., *Believing Is Seeing: The Effects of Racial Labels and Implicit Beliefs on Face Perception*, 29 Personality & Soc. Psychol. Bull. 360 (2003).

¹⁰See U.S. GENERAL ACCOUNTING OFFICE, *Appendix II in African American Children in Foster Care: Report to the Chairman Committee on Ways and Means, House of Representatives 75* (2007), <https://www.gao.gov/products/gao-07-816> (last visited 5/9/023)(reporting that African American children in foster care were overrepresented more than three times in Washington state as compared to white children in foster care).

¹¹See also *Matter of Dependency of Z.J.G.*, 196 Wn.2d 152, 165, 471 P.3d 853, 860 (2020) (“This history of centuries of policies of removal and assimilation predates ICWA; the removal of children from their families and tribal communities and placement in foster care or adoption is but one of the many atrocious governmental policies intended to destabilize Native communities and ultimately end them.”).

¹² See Marna Miller, *Racial Disproportionality in Washington State’s Child Welfare System*. WASH. ST. INST. FOR PUBLIC POLICY 29 (2008), https://www.wsipp.wa.gov/ReportFile/1018/Wsipp_Racial-Disproportionality-in-Washington-States-Child-Welfare-System_Full-Report.pdf (last visited 4/4/2025).

¹³ Melanie Killen, Heidi Mc Glothilin, and Alexandra Henning, *Chapter 8 Explicit Judgments and Implicit Bias: A Developmental Perspective* in *Intergroup Attitudes and Relations in Childhood Through Adulthood*, Sheri R. Levy, Melanie Killen, eds., Oxford University Press: USA, 126-145 (2008).

¹⁴ See e.g., James A Macleod, *Evidence Law’s Blind Spots*, 109 Iowa L. Rev. 189, 220-21 (2023); Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 187, 192 (2018); Benjamin Levin, *Values and Assumptions in Criminal Adjudication*, 129 Harv. L. Rev. F. 379, 379 (2016); Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How*

Judges Decide Cases, 93, Cornell L. Rev. 1, 31 (2007); Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 794-95 (2001).

¹⁵ See *id.*

¹⁶ Kwei Ying Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 Minn. L. Rev. 367, 398 n. 93 (1996); see also Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 Stan. L. Rev. 1161, 1195 (1995).

¹⁷ Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 Cal. L. Rev. 733, 742 (1995).

¹⁸ Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 Cal. L. Rev. 733, 742 (1995).

¹⁹ See Mikah K. Thompson, *Bias on Trial: Toward and Open Discussion of Racial Stereotypes in the Courtroom*, 2018 Mich. St. L. Rev. 1243, 1249, fns. 38 & 39 (2018). See also Melinda Jones, *Preventing the Application of Stereotypic Biases in the Courtroom*, 20 J. App. Soc. Psych. 1767, 1768 (1997); Lu-In Wang, *Race as Proxy: Situational Racism and Self-Fulfilling Stereotypes*, 53 DePaul L. Rev. 1013, 1071-72 (2004).

²⁰ See James A. Macleod, *Evidence Law's Blind Spots*, 109 Iowa L. Rev. 189, 191 (2023) ("Evidence law is about information disclosure.").

²¹ Hillel J. Bavli, *Character Evidence as a Conduit for Implicit Bias*, 56 U.C. Davis L. Rev. 1019, 1032 (2023).

²² Mikah K. Thompson, *Bias on Trial: Toward and Open Discussion of Racial Stereotypes in the Courtroom*, 2018 Mich. St. L. Rev. 1243, 1254 (2018).

²³ See *id.* (note 51, Macleod, at 230).

²⁴ See *id.* (note 51, Macleod, at 230).

²⁵ See e.g. *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 209 (2017); *Henderson v. Thompson*, 200 Wn.2d 417, 434 (2022); *State v. Monday*, 171 Wn. 2d 667, 676 (2011); *Matter of Dependency of A.N.G.*, 12 Wn. App. 2d 789, 796 (2020).

²⁶ Hillel J. Bavli, *Character Evidence as a Conduit for Implicit Bias*, 56 U.C. Davis L. Rev. 1019, 1070-71 (2023).

²⁷ See e.g., *Race and the Criminal Justice System, Task Force 2.0*; "Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court" (2021). Fred T. Korematsu Center for Law and Equality,

https://digitalcommons.law.seattleu.edu/korematsu_center/116 (last visited 4/22/2025); Research Working Group, *Task Force on Race and the Criminal Justice System, Preliminary Report on Race and Washington's Criminal Justice System*, 87 Wash. L. Rev. 1 (2012), <https://digitalcommons.law.uw.edu/wlr/vol87/iss1/2> (last visited 4/22/2025).

²⁸ Black witnesses were not deemed competent to give testimony against whites in court and only against other Blacks with corroboration. See Elizabeth Langston Isaacs, *The Mythology of the Three Liars and the Criminalization of Survival*, 42 YALE L. & POL'Y REV. 427, 468-474 (2024). Black men were rarely believed when accused of sexual assault against white women, while Black women were prohibited from litigating and giving evidence about sexual violence at the hands of white abusers. See *id.* at 476; Sheri Lynn Johnson, *The Color of Truth: Race and the Assessment of Credibility*, 1 MICH. J. RACE & L. 261 (1996).

²⁹ While the credibility of all female witnesses has historically been linked to perceived chastity and sexual virtue, women of color have experienced an even steeper credibility discount based on myths about their hypersexuality and moral depravity. Julia Simon-Kerr, *Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment*, 117 YALE L. J. 1854 (2008); Marilyn Yarbrough & Crystal Bennett, *Cassandra and the “Sistahs”: The Peculiar Treatment of African American Women in the Myth of Women As Liars*, 3 J. GENDER RACE & JUST. 625 (2000).

³⁰ See Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 CAL. L. REV. 733, 739 (1995) (“Ethnic attitudes are a part of the social heritage of the developing child. They are transmitted across generations as a component of the accumulated knowledge of society. No person can grow up in a society without learning the prevailing attitudes concerning the major ethnic groups.”).

³¹ Elizabeth Langston Isaacs, *The Mythology of the Three Liars and the Criminalization of Survival*, 42 YALE L. & POL’Y REV. 427, 476 (2024).

³² Elizabeth Langston Isaacs, *The Mythology of the Three Liars and the Criminalization of Survival*, 42 YALE L. & POL’Y REV. 427, 476 (2024) (“[T]he legal system has long cast a doubtful eye on the credibility of someone whose liberty hinges on their testimony.”).

³³ Julia Simon-Kerr, *Credibility by Proxy*, 85 GEO. WASH. L. REV. 152, 152 (2017).

³⁴ Barrett J. Anderson, *Recognizing Character: A New Perspective on Character Evidence*, 121 YALE L. J. 1912, 1915-1916 (2012).

³⁵ Barrett J. Anderson, *Recognizing Character: A New Perspective on Character Evidence*, 121 YALE L. J. 1912, 1915-1916 & fns. 9-13 (2012).

³⁶ See Barrett J. Anderson, *Recognizing Character: A New Perspective on Character Evidence*, 121 YALE L. J. 1912, 1921 & fn. 33 (2012); see also Michael J. Perry, *What Is “Morality” Anyway?*, 45 VILL. L. REV. 69, 74 (2000).

³⁷ See Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, CORNELL L. REV. 1, 31 (2007). There is also research evaluating the judicial accuracy of judicial decision making in juvenile courts more broadly, especially in criminal adjudications. These recommendations to strengthen juvenile court decision making to improve accuracy of the fact finding (of guilt) focuses not only on the difference between children and adults or their access to due process rights, but also on the ethical standards of juvenile defenders and the adjudicatory standards used by juvenile court judges. The recommendation specific to defenders is to abandon and replace the use of the best interest legal representation standard for the expressed or stated interest legal representation standard. See Steven A. Drizin and Greg Luloff, *Are Juvenile Courts A Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 315 & n. 462 (2007). The recommendation specific to juvenile court judges is to abandon and replace the use of judges as fact finders in the criminal adjudication phase for the use of juries for fact finding or adjudication phase. See Steven A. Drizin and Greg Luloff, *Are Juvenile Courts A Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 319 (2007) (“Without the check of a jury, judges are left to their unbridled discretion which poses a threat to both the child's individual liberties and the public welfare.”).

³⁸ See *State v. Miles*, 77 Wn.2d 593, 601, 464 P.2d 723, 728 (1970); *State v. Jenkins*, 53 Wn. App. 228, 231, 766 P.2d 499, 501 (1989).

³⁹See Steven A. Drizin and Greg Luloff, *Are Juvenile Courts A Breeding Ground For Wrongful Convictions?*, 34 N. Ky. L. Rev. 257, 319 (2007).

⁴⁰See e.g., Paul Slovic et al., *Facts Versus Fears: Understanding Perceived Risk, in Judgment Under Uncertainty: Heuristics and Biases* 463, 475-78 (Daniel Kahneman et al. eds., 1982).

⁴¹See Jeffrey J. Rachlinski, *Heuristics and Biases in the Courts: Ignorance or Adaptation?*, 79 Or. L. Rev. 61, 61 (2000) (“The brain has a limited ability to process information but must manage a complex array of stimuli. In response to its natural constraints the brain uses shortcuts that allow it to perform well under most circumstances. Reliance on these shortcuts, however, leaves people susceptible to all manner of illusions: visual, mnemonic, and judgmental.”).

⁴²See e.g., Paul Slovic et al., *Facts Versus Fears: Understanding Perceived Risk, in Judgment Under Uncertainty: Heuristics and Biases* 463, 475-78 (Daniel Kahneman et al. eds., 1982).

⁴³See e.g., Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 782-83 (2001) (“Research on human judgment and choice indirectly supports this suspicion. Empirical studies demonstrate that cognitive illusions plague assessments that many professionals, including doctors, real estate appraisers, engineers, accountants, options traders, military leaders, and psychologists, make. Even lawyers fall prey to cognitive illusions.”).

⁴⁴See e.g., Mikah K. Thompson, *Bias on Trial: Toward an Open Discussion of Racial Stereotypes in the Courtroom*, 2018 Mich. St. L. Rev. 1243, 1246 (2018) (“Jurors, like other people, sometimes harbor racial and ethnic biases.”).

⁴⁵See e.g., Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 813 (2001).

⁴⁶See Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 813 (2001) (citing Jerome Frank, *Are Judges Human?*, 80 U. Pa. L. Rev. 17, 233 (1931)).

⁴⁷See Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 Cornell L. Rev. 1, 1 (2007).

⁴⁸See Benjamin Levin, *Values and Assumptions in Criminal Adjudication*, 129 Harv. L. Rev. F. 379, 379 (2016) (“If these courts are to rule fairly and preside effectively over the functions of the criminal justice system, Crespo argues, they need to operate against some baseline of accuracy. Their decisions must be rooted in facts -- facts that have a foundation in lived experience and the community that the lawyers and judges of the court purport to represent.”); Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 187, 192 (2018).

⁴⁹Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489, 1493-94 (2005) (“most of us have implicit biases in the form of negative beliefs (stereotypes) and attitudes (prejudice) against racial minorities.”); Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489, 1500-01 (2005) (“Social psychologists call cognitive beliefs about social groups ‘stereotypes’ and negative affective feelings about such groups ‘prejudice.’”).

⁵⁰Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489, 1493-94 (2005).

⁵¹Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 6-7 (2007).

⁵²Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 7 (2007).

⁵³Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 7-8 (2007).

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- ⁵⁴ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 10-13 (2007).
- ⁵⁵ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 5 (2007).
- ⁵⁶ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 5 (2007).
- ⁵⁷ See Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 19 & n. 98 (2007).
- ⁵⁸ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 13 (2007)(emphasis added).
- ⁵⁹ Cf. Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 13-15 (2007).
- ⁶⁰ See Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 32 (2007); Philip E. Ross, *The Expert Mind*, Sci. Am. (295: 2) 64, 67 (August 2006).
- ⁶¹ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 31 (2007).
- ⁶² See also Christine Jolls and Cass R. Sunstein, *Symposium on Behavioral Realism*. 94 Calif. L. Rev. 969, 975 (2006) (“Implicit bias is largely automatic; the characteristic in question (skin color, age, sexual orientation) operates so quickly, in the relevant tests, that people have no time to deliberate. It is for this reason that people are often surprised to find that they show implicit bias.”).
- ⁶³ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 31 (2007) (emphasis added).
- ⁶⁴ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 33. (2007).
- ⁶⁵ See *State v. Miles*, 77 Wn.2d 593, 601, 464 P.2d 723, 728 (1970); *State v. Jenkins*, 53 Wn. App. 228, 231, 766 P.2d 499, 501 (1989).
- ⁶⁶ See Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 15 (2007). Judges as factfinders may also be limited in other ways recognized by federal jurisprudence. Cf. e.g., *Dimick v. Schiedt*, 293 U.S. 474, 485–86, 55 S.Ct. 296, 300–01, 79 L.Ed. 603 (1935) (jury trial is “generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases”); *Sioux City & Pacific Railroad Co. v. Stout*, 84 U.S. (17 Wall.) 657, 664, 21 L.Ed 745 (1874) (“It is assumed that twelve men know more of the common affairs of life than does one man.”); *Jackson Water Works, Inc. v. Pub. Utilities Comm’n of State of Cal.*, 793 F.2d 1090, 1099 (9th Cir. 1986)(“ The importance of the special skills that civil juries bring to the fact-finding process has long been recognized.”).*In re United States Financial Securities Litigation*, 609 F.2d 411, 431 (9th Cir.1979), cert. denied, 446 U.S. 929, 100 S.Ct. 1866, 64 L.Ed.2d 281 (1980); see generally C. Wright, *Federal Courts* 606 (4th ed. 1983)(“[N]o one has yet demonstrated how one judge can be a superior fact-finder to the knowledge and experience citizen-jurors bring to bear on a case.”).
- ⁶⁷ Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 192 (2018).

⁶⁸ “In simple terms, the availability heuristic is the process of judging frequency by the ease with which instances come to mind. It suggests that people tend to think a risk is more serious if it can be readily called to mind.” Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 192 (2018).

⁶⁹ “The representativeness heuristic involves a process whereby if one thing resembles something else in a category, we judge the possibility that the first item is a member of that category as high. There is a human tendency to treat a sample as more representative of a population than is justified by probability theory.” Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 192 (2018).

⁷⁰ Statistical inferences, also called “representativeness” heuristic by psychologists, describes how “when people rely on the representativeness heuristic, they tend to undervalue statistical information, which can lead to notable decision errors.” Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 22 & n. 115 (2007). Namely, people tend to underestimate the frequency with which the underlying category occurs. Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 22-24(2007) (providing examples of test results from college students, judges and doctors).

⁷¹ See Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 794-95 (2001).

⁷² See Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 192 (2018). Premature closure is a cognitive bias or heuristic where a decision-making process ends prematurely, often leading to an incorrect diagnosis or solution as the inquiry or investigation stops before all relevant information has been gathered or alternative explanations have been considered. See Amos Tversky and Daniel Kahneman, *Judgment under Uncertainty: Heuristics and Biases*. Science 185 (4157):1124–1131 (1974).

⁷³ Anchoring describes the influence the first numeric value associated with a judicial determination of numeric value has over the judge’s ultimate assessment of the “appropriate” numeric value or the influence a concurrent motion or request has over the judge’s ultimate assessment of the “appropriate” numeric value. Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 19-20 (2007).

⁷⁴ Hindsight bias describes “the well-documented tendency to overestimate the predictability of past events.” Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 24 (2007); Jeffrey J. Rachlinski, *Heuristics and Biases in the Courts: Ignorance or Adaptation?*, 79 Or. L. Rev. 61, 61 (2000) (“People overestimate the predictability of past events: a phenomenon known as the hindsight bias.”). This bias arises “from an intuitive sense that the outcome that actually happened must have been inevitable. People allow their knowledge to influence their sense of what would have been predictable.” Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 24 (2007).

⁷⁵ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 19-27 (2007).

⁷⁶ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 24-25 (2007).

⁷⁷ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 28 (2007).

⁷⁸ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 28 (2007).

⁷⁹ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 28-9 (2007).

⁸⁰ See Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 194 (2018) (“Erroneous assumptions may be made about a group whose behavior is under consideration, for example, the behavior of the victims of domestic violence or childhood sexual abuse.”).

⁸¹ See Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 193 (2018); Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 28-29 (2007).

⁸² See Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 193-94 (2018); James A Macleod, *Evidence Law’s Blind Spots*, 109 Iowa L. Rev. 189, 220-21 (2023) (“[A] racial disparity emerged in what one might call the ‘medium-information’ regime, in which jurors learn the existence, but not the nature, of the defendant’s prior conviction. The racial disparity was absent in the ‘high-info regime’ in which the prosecutor informs jurors of the existence and nature of the defendant’s prior conviction, and in the ‘low-info regime,’ in which jurors learn neither the existence nor the nature of the defendant’s prior conviction.”).

⁸³ Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 193-94 (2018).

⁸⁴ See Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 194 (2018).

⁸⁵ “People tend to make judgments about themselves and their abilities that are ‘egocentric’ or ‘self-serving.’” Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 811 (2001). Egocentric biases can have unfortunate influence on the litigation process. Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 812 (2001). Empirical data suggests that lawyers, and perhaps litigants, “might overestimate their own abilities, the quality of their advocacy, and the relative merits of their cases.” Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 812-13 (2001).

⁸⁶ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 813 (2001).

⁸⁷ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 814 (2001).

⁸⁸ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 814 (2001).

⁸⁹ Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 192-93 (2018) (“Confidence is a highly misleading guide to accuracy in decision-making.”).

⁹⁰ Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 193 (2018).

⁹¹ Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 193 (2018).

⁹² Peter Applegarth, *Deciding Novel and Routine Cases Without Evidence*, 11 J. Tort L. 173, 193 (2018)(citing Emma Cunliffe, *Judging, Fast and Slow: Using Decision-Making Theory to Explore Judicial Fact Determination*, 18 Int. J. Evidence & Proof 139, 160 (2014) (internal quotations omitted)).

⁹³ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 815 (2001).

⁹⁴ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 815 (2001).

⁹⁵ There is also research evaluating the judicial accuracy of judicial decision making in juvenile courts more broadly, especially in criminal adjudications. These recommendations to strengthen juvenile court decision making to improve accuracy of the fact finding (of guilt) focuses not only on the difference between children and adults or their access to due process rights, but also on the ethical standards of juvenile defenders and the adjudicatory standards used by juvenile court judges. The recommendation specific to defenders is to abandon and replace the use of the best interest legal representation standard for the expressed or stated interest legal representation standard. See Steven A. Drizin and Greg Luloff, *Are Juvenile Courts A Breeding Ground for Wrongful Convictions?*, 34 N. Ky. L. Rev. 257, 315 & n. 462 (2007). The recommendation specific to juvenile court judges is to abandon and replace the use of judges as fact finders in the criminal adjudication phase for the use of juries for fact finding or adjudication phase. See Steven A. Drizin and Greg Luloff, *Are Juvenile Courts A Breeding Ground for Wrongful Convictions?*, 34 N. Ky. L. Rev. 257, 319 (2007) (“Without the check of a jury, judges are left to their unbridled discretion which poses a threat to both the child's individual liberties and the public welfare.”); Jeffrey J. Rachlinski, *Heuristics and Biases in the Courts: Ignorance or Adaptation?*, 79 Or. L. Rev. 61, 61 (2000) (“Judges surely have some incentives to make good law and avoid illusions of judgment, but they lack the incentives that other institutions face.”).

⁹⁶ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 36 (2007).

⁹⁷ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 36-37 (2007).

⁹⁸ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 40 (2007).

⁹⁹ Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 42 (2007).

¹⁰⁰ Tracey L. Meares and Bernard E. Harcourt, *Foreword: Transparent Adjudication and Social Science Research in Constitutional Criminal Procedure*, 90 J. CRIM. L. & CRIMINOLOGY 733, 735 (2000) (“Judicial decisions that address the relevant social science and empirical data are more transparent in that they expressly articulate the grounds for factual assertions and, as a result, more clearly reflect the interpretive choices involved in [] decision making.”); Benjamin Levin, *Values and Assumptions in Criminal Adjudications*, 129 Harv. L. Rev. 379, 387 (2016)(“Rather than use the research to *draw* law and policy inferences, use the research to *expose* the assumptions about human behavior that ... underlie the law and policy proposals. [...] But if what systemic facts can do is highlight

normative preferences and demonstrate judicial assumptions, then how would they allow courts to do all the tasks that the New Administrativists have identified? And how would they necessarily make substantive outcomes better, rather than merely more transparent?”).

¹⁰¹Chris Guthrie, Jeffrey Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 815 (2001)(“In the course of making decisions in the courtroom, judges certainly face more complex fact patterns, have more motivation to make good decisions, have more time to make decisions, and receive assistance from litigants, lawyers, and clerks. But unless these factors alter the fundamental ways judges think, they will not eliminate the effects of cognitive illusions.”).

¹⁰² Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 36 (2007).

¹⁰³ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 36-37 (2007).

¹⁰⁴ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 40 (2007).

¹⁰⁵ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 40 (2007).

¹⁰⁶ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 40 (2007).

¹⁰⁷ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 40-41 (2007).

¹⁰⁸ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 41 (2007).

¹⁰⁹ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 42 (2007).

¹¹⁰ Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93, Cornell L. Rev. 1, 42 (2007).