Federal Judicial Center
In Session: Leading the Judiciary Episode 15
Understanding & Combating Racial Bias

Craig Bowden: Coming up:

Jennifer Eberhardt: You can slow down your own thinking. You can replace your intuition with intelligence. You can ask yourselves the right questions. You can hold yourselves accountable. The power of reflection is real. Just sort of stopping ourselves and analyzing it and thinking through, questioning ourselves and our actions and our decisions.

Craig Bowden: In today's episode we'll discuss racial bias, where it comes from, how it influences our interactions and decisions, and how we can begin to combat it in our organizations and communities. Today's guest explains how our brains are wired to see differences and how we can use that awareness to end the sort of discrimination that's subtle, subjective, and happening all around us. Our guest uses her research and experiences to demonstrate the value of capitalizing on that possibility.

We're talking today with Dr. Jennifer Eberhardt, professor of psychology at Stanford University and MacArthur Genius Award recipient. She's been elected to the National Academy of Sciences and the American Academy of Arts and Sciences, and was named one of Foreign Policy's 100 Leading Global Thinkers. Dr. Eberhardt has consulted with numerous public and private sector

organizations, including those in the criminal justice system to address racial bias. She is also co-founder and co-director of SPARK, a Stanford initiative to bring together researchers and practitioners to address pressing social problems.

Today's interview will focus on her acclaimed book *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do.* Our host for today's episode is Lori Murphy, Assistant Division Director for Executive Education at the Federal Judicial Center. Lori, take it away.

Lori Murphy: Thank you so much, Jennifer, for being here.

Jennifer Eberhardt: Thanks for having me.

Lori Murphy: Jennifer, what do you mean when you say that we're all wired for bias?

Jennifer Eberhardt: Well, I mean that we create categories to make sense of the world, to assert some kind of coherence and control over the stimuli that we're being constantly bombarded with. And so categorization allows our brains to make judgments more quickly and more efficiently. Once we lump those people into categories, we develop beliefs and feelings about those people. So bias refers to the beliefs and feelings that we have about social groups that can affect our decision-making interactions even when we're not aware of it.

Lori Murphy: Is that where stereotypes come from?

Jennifer Eberhardt: Yeah. So stereotypes, that refers to the beliefs we have. And prejudice refers to the feelings that we might have about social groups. Together these beliefs and feelings, that's what we call bias.

Lori Murphy: How does our wiring, this wiring, lead to negative outcomes created by bias?

Jennifer Eberhardt: Once we have those beliefs and feelings about people who are in that category, that can come online when we're making judgments about an individual person. You're now sort of thinking about that person as a member of that group or a member of that category.So all of the associations that we have with that category can get placed onto that person and you start to treat that person as a representation basically of the group. If those beliefs and feelings are negative or bad, that could lead to great harm as you might imagine to that individual person.

Lori Murphy: Sure. So let's talk about racial bias specifically for a moment.Help us understand how fear might play a role in racial bias specifically.

Jennifer Eberhardt: First of all, we could kind of just talk about how bias gets triggered. We're all vulnerable to bias. Again we're all sort of wired to some extent for bias, but we're not acting on bias all the time. Bias gets triggered as a function of our contexts or the situations that we're in.

There are lots of situational triggers of bias, including our emotional states like fear. There's also like when we're tired, when we're overwhelmed, when we're feeling threatened, so all of those kinds of states can actually trigger bias. It makes bias more likely. It makes bias something that can affect our decision-making and our actions.

Lori Murphy: Heightened emotional state is really the important piece there.

Jennifer Eberhardt: Oh, yes, it's critical. When we are in that kind of heightened state, we rely more on our intuition. We rely more on the sort of well-practiced associations that we've developed across a lifetime. Those associations will leap forward and influence how we're thinking, and how we're deciding, and how we're acting basically.

Lori Murphy: So how do you know then that bias is playing a role?

Jennifer Eberhardt: Well, it's hard to know if bias is playing a role for any individual's situation. But we know, again, what the conditions are of bias, and so we know when bias is more or less likely as a general rule. The other thing we can do as scientists is place people into studies, right? You kind of put them in the exact same situation and you change one variable. You change one person's race so that they're either

black or white, and then you look at how people respond differently as a function of that one little change.

Lori Murphy: Jennifer, how does bias play out in the criminal justice system?

Jennifer Eberhardt: In laboratory studies for example, we've shown that simply exposing people to black faces on a computer screen can lead them to see blurry images of guns more quickly. That's because there's an association there between blackness and crime.We've also found that bias can influence who captures the attention of police officers, again, in laboratory studies this time with police officers. So we prompt them to think of violent crime by having them think of shooting, and capturing, and arresting and so forth. We found that when we do this, this leads them to focus their eyes on black faces and away from white faces.So in a sense it's a way of looking at kind of racial profiling, right, when you're looking for criminal activity. Who is it that you're focusing on? We find that they're more likely to focus on black people or black faces in this situation.

We've also found that the more people are reminded of racial disparities in the criminal justice system, So, for example, the more black they think the prison population is, the more supportive they are of aggressive police enforcement tactics like stop and frisk and so forth. So what we're finding

is that racial disparities in the criminal justice system can lead people to think that there's something wrong with black people rather than something wrong with the system. So the disparities in the system can strengthen the association between blackness and crime.

Police officers fall prey to this, too. When they feel that black people are committing more crime than other groups, that can justify who they stop, who they serve, who they handcuff, who they arrest and so forth. So from their perspective they're stopping more black people because those are the people who are committing crime. But then I say to them that acknowledging that there's a disparity in who's committing crime shouldn't make you less concerned about bias. It should make you more concerned about bias because those disparities are, again, they're strengthening the association between race and crime.

As police officers, those disparities can lead them to make decisions and to take actions that rely on that association between blackness and crime rather than the individual suspect's behavior. So it can lead them basically to racially profile. It can lead them to rely on those disparities rather than to rely on the individual person's behavior.

Then also bias can play out in the courtroom. I think when we're talking about the workplace, you know, a lot of listeners

hear the workplace is the courtroom to some extent. We've actually had studies that we've done where we've looked at how bias can play a role in death sentencing decisions.

For example, in one study we use a large data set of death eligible defendants. We found that black defendants with more stereotypically black facial features were more than twice as likely to receive a death sentence than those with less stereotypically black features. This was the case even though we control for aggravators, mitigators. We control for the severity of the crime.We even control for the defendant's attractiveness. We found that no matter what we controlled for, you know, black defendants were punished in proportion to the blackness of their physical features, so the more black, the more death worthy.

Lori Murphy: Wow.

Jennifer Eberhardt: We had a hypothesis that race would matter there, but like it doubled the chances of receiving a death sentence. Looking more black did. That was striking for us actually.

Lori Murphy: Let's take this into the offices within the judiciary or any other organization. What about the interactions among leaders and staff? For example, how does bias play out in those types of environments?

Jennifer Eberhardt: In the workplace it's the same kind of things that we've been talking about. If people are having to make quick or split-second decisions, if you don't have objective standards for evaluating others or relying on subjective standards, like whether someone fits in to the workplace, whether they're a team player, that's a recipe for having your decisions infected by bias.

When there's a lack of accountability, when you're not tracking outcomes as a function of race or gender or other categories, that's an example of where you can have disparities that are being produced to some extent by bias that are going unchecked. For example, you don't really understand the extent of a problem until you start to measure it. So just having a way to track disparity is a start.

The second thing you want to do though is to try to understand what's producing the disparity. So bias could be one of many things producing the disparities. Once you start tracking, you want to be able to look at all of the potential producers of the disparity and then try to use various levers to make a move to like adjust that outcome in a direction that you want so to decrease the disparities that you see. But that can get tricky, right? Because, again, there are lots of different factors that actually influence that disparity.

Lori Murphy: As individuals, how can we check ourselves to see if we're acting on bias or perpetuating bias?

Jennifer Eberhardt: Let me give you an example here. So here in California, I've been working with a number of my colleagues at Stanford, along with members of a police department here.In this case, it's the Oakland Police Department. We were interested in helping that police department to reduce the number of stops they made of people who were not committing any serious crimes. We did this by simply adding a question to the form that officers complete as they're making a stop. And that question was: Is this stop intelligence led? Yes or no?

Now what they mean by intelligence led is did I have prior information to tie this specific person to a particular crime. So what we were doing here is getting officers to use evidence of criminal wrongdoing in place of intuition. Because bias happens when we're using our intuition, when we're not stopping and slowing down and sort of thinking. We're just kind of using our intuition about what's happening. So we wanted to interfere with that. And so at the moment the officer was deciding whether to pull someone over or not.

We did that with that question that reoriented them. You know, is this stop intelligence led? Yes or no. We found that just adding that question led to fewer stops. And if we look at

African-American stops alone, we found that those stops fell by over 43 percent with the addition of this simple question to the form.

So how did that intervention work? It slowed them down because we know that bias happens when people are making these quick split-second decisions. We reoriented them to think about criminal wrongdoing rather than intuition. We made them accountable so we started tracking the number of stops that they made that were intel led versus not, right? So we introduced this new metric. Then the police department actually incentivized those kinds of stops. So they prioritize this intel led stops over other kind of stops, like pre-textual stops or equipment violations and so forth because oftentimes these were traffic stops.

Here I've mentioned a number of different conditions of bias that we intervened on to lead to a different outcome, to fewer stops of African-Americans in particular who were not involved in any serious criminal wrongdoing. But you could take those same principles as an individual and use them as well, right? You can slow down your own thinking. You can replace your intuition with intelligence. You can ask yourselves the right questions. You can hold yourselves accountable. So all of the things that I just talked about as an organization, in

this case as a police department they were doing, we can do ourselves as individuals.

Lori Murphy: It sounds like as leaders we can incentivize the kinds of behaviors that would lead to less bias than more bias.

Jennifer Eberhardt: That's exactly right because as leaders you're setting the tone, right? As leaders you're creating the conditions under which other people are working. We know once again that bias is triggered by our situational context. So to the extent that leaders are determining what that context is, they have extraordinary power.

Lori Murphy: One of the really interesting things I found in your book, among many interesting things, is that bias can be contagious.

Jennifer Eberhardt: Yes.

Lori Murphy: So talk a little bit about bias contagion and how that impacts us?

Jennifer Eberhardt: Watching someone exhibit bias toward another person can lead you to be biased toward that person too. This can happen in really subtle ways. For example, researchers have examined popular television shows. They look at the subtle nonverbal behavior of the actors on the show. This is like smiling, and frowning, or leaning towards someone versus from

someone grimacing, so all of these little things that you may not even be aware of.

They found that black actors are responded to in more negative ways than white actors.They also found that this spills over to viewers, right? So as you're watching these shows, this is leading you to pick up on the racial bias of the actors and it leads you to become more biased yourself. We're watching how people are treated and it influences how we see them and how we treat them ourselves.

Lori Murphy: That leads me to take this to a more personal level. What's the impact, Jennifer, on those who are routinely the targets of racial bias?

Jennifer Eberhardt: I mean the impact is great and, again, it can be felt in almost every area of life and at almost any stage of life. For example, researchers have found that preschool teachers are already looking for signs of trouble from black students more so than white students, black boys in particular. So it starts really early. I've conducted research with colleagues here at Stanford and we found that teachers respond to minor infractions of black students more harshly than the identical infractions exhibited by white students.

How teachers respond can influence the academic performance of those children. It can influence their trust in the school. It can influence their identity as learners. So, yeah, there's

great impact, an impact that affects not just their identity but how they're going to do in life. Because if you're not successful at school, that can have a huge influence on your life outcomes. I think for black people in particular, there's research showing that if you're pushed out of school, you know, for high school dropouts, 70 percent of them end up in the criminal justice system at some point in their lifetime. So we're talking about huge impacts here.

Mark Sherman: Hi. I'm Mark Sherman, host of the FJC podcast *Off Paper*. There's a lot of important discussion going on about racial bias right now. You've just been listening to a discussion with one of the preeminent experts in the field. I wanted to tell you about an opportunity to hear it discussed from both the personal and professional perspectives of three retired black chief pretrial services and probation officers. Their candid discussion of their experiences on and off the job and suggestions for addressing these continuing disparities is as interesting as it is instructive and I think you'll get a lot out of it. Look for *Off Paper Episode 17, Listening to Black Officers*.

Lori Murphy: You talk in your book about the personal impact of racial bias on yourself and your family as the mother of black children. I wonder if you would be willing to share

with our audience when you've been the recipient and also when you've had your own bias triggered.

Jennifer Eberhardt: One story I like to tell actually is a story about my son who was just five years old at the time. We were on an airplane together and my son was just really excited about being on this airplane. He was like looking all around. He was so excited. He sees this man and he says, hey, that guy looks like daddy. So I looked at the man and he doesn't look anything at all like my husband, nothing at all like my husband. That led me to start looking around on the plane and I noticed that this man was the only black man on the plane. I thought, okay, I'm going to have to have a little talk with my son about how not all black people look alike.

So I'm getting ready to have this talk with my son. I'm trying to adjust the language so I can get the lecture to be appropriate for a five-year-old. But before I could say anything to my son, he looks up at me and he says I hope he doesn't rob the plane. And I said, what, what did you say? And he says it again. He says, well, I hope that man doesn't rob the plane. And I said you know daddy wouldn't rob a plane. He says yeah, yeah, I know.Then I said, well, why would you say that? He looked at me with this really sad face and he said I don't know why I said that, I don't know why I was thinking that. So we're living with such severe racial stratification

that even a five-year-old can tell us what's supposed to happen next, right? Even with no malice, even with no hatred in his heart, this association between blackness and crime made its way into the mind of my five-year-old.

Lori Murphy: The son of a bias researcher.

Jennifer Eberhardt: Yes. Yes, that's right. That's right. It's so funny because people will say to me, wow. They're like, well, how did he, how did that association make its way into the mind of your child? Children are looking at us. They're looking at how we're responding to other people to pick up on who's bad or who's good, who's dangerous, who's safe in all of these.

I have another son who when he was in first grade he was asking me if I thought people viewed black people in a different way from white people. And I said, well, why would you say that? He says I don't know, I just think there's something going on. That there's something, he said, extra special there when it comes to viewing black people. I asked him to give me an example.So he thought about it and he says, well, remember when we were in a grocery store the other day and there was a black man who came into the grocery store? Now this is in a mostly white neighborhood. And he says I noticed when that man came in that people kind of stayed away from him a little bit.

It was almost like he had a giant force field around him, he was telling me.

When that man got in line, his line was the shortest line for a long time. And I said, well, why is that? He says I don't think people want to stand near him. That is what he said. And I said, well, what do you think this all means? And he said I don't know. So he thought about it and he thought about it, and then he looked up at me and he says I think it's fear. And I thought, wow. You know, a first grader. Not from watching movies. Not from watching cartoons. But a first grader from just watching us, just watching how we move through the world could tell me that black people, black men in particular, were to be feared.

Lori Murphy: There's so many things that are striking about those stories you share, Jennifer. Thank you for sharing them. You were doing what you suggest to us to do which is when there's an intuition, when there's a feeling, to explore that feeling. Why are you feeling that way? What's behind that? So that is I think one of our takeaways as individuals, as leaders is to ask the questions.

Jennifer Eberhardt: Yes.

Lori Murphy: To not make those assumptions, or when we're making an assumption, to actually try to dig a little bit deeper.

Jennifer Eberhardt: Right. I mean the power of reflection is real. Just sort of stopping ourselves, and analyzing it and thinking through, questioning ourselves and our actions and our decisions. It's another way of slowing down, too. We were talking about slowing down. And it's just kind of rethinking in a way that we're sort of interrogating ourselves. That definitely is a powerful tool to use against bias.

In an organizational context or in a work context, I think one of the big tools you can use again is looking at your outcomes, right? Looking at what outcomes your institution is producing. Looking at the racial disparity, since we're talking about race, that is getting produced. Not just accepting those disparities as the kind of the natural order of things but questioning. Why is it that we have these disparities? And to look at it from different angles, and to look to see are there no aspects of the system that I'm in. In the workplace, in the institution that I belong to, are there things that we're doing? Are there factors in our system that might be encouraging those disparities or helping to magnify those disparities in some way?

Then go through sort of all of your different procedures and all of your different policies and so forth to think about how policies and practices might play a role in producing disparities and is there another way. Are there other policies you can use? So just like people, policies can be put in place

in ways where they're supposed to be race neutral. You're thinking as a person I'm race neutral, but you can act in a way that produces a result that is producing racial disparities basically. So is there some other policy you could use? Are there unintended consequences to the practice that you are utilizing and so forth?

I think those kinds of questions are really important to start asking. It's not about a system being racist or a person being racist. It's about looking at the outcomes that you may not want to live with or the outcomes that can harm other people, that have a negative impact on other people's lives, and does it have to be that way? Is there something we can do differently to produce a different outcome?

Lori Murphy: What you're describing in order to really look at these policies and procedures and whatnot, we have to have some conversations. We have to have an acknowledgement in the workplace that there may be disparity. And conversations about race, honest conversations about race are tough.

Jennifer Eberhardt: Yes.

Lori Murphy: How do you recommend that we go about that in a work setting where a lot of people don't feel comfortable talking about this issue?

Jennifer Eberhardt: You're exactly right. A lot of people don't feel comfortable because they're not used to having the

conversation. So that's one issue, right? I think oftentimes we're raised to think about having a colorblind approach to all of this, right?So if you don't see color, you can't be biased. That's the idea. Some of us were raised in that way where it's like you're not supposed to notice color. You're not supposed to comment on color. You're just supposed to pretend that it's not there.

But the research shows that when we're pushing ourselves not to see color, we also don't see the discrimination, the harm that comes from color. One way that we can address this is to actually talk about it, to sort of talk about what we're seeing, to talk about bias, to talk about discrimination, to talk about racial diversity. Like all of these things that oftentimes we're uncomfortable with.

I think science can help us there, because science can give us the language to have these discussions in more productive ways. We can, through the science, point to findings about how bias could be operating and so forth. We can point to evidence-based strategies for intervening on this. So it's not like you're having a conversation and it's just uncovering all this negative stuff and there's nothing anybody can do about it. But science teaches us that there is a lot that we can do, right? So science allows us to use a language that kind of helps us to

move from sort of intentional acts to impact. I think that's where we want to go.

So it's the move away from whether you're a bad person and whether you intended to do such and such or not and all of that. It's not something about your moral character, but it's we're having this discussion because there's an impact that's being felt, that there is a disparity that's being created, that there's an inequality that is being created in this environment.

A lot of times in the workplace people try to have or bring in a consultant to have training on bias and so forth. That's one step. That's one way to think about starting a conversation on bias, but it's not the only step. I think oftentimes people don't know what else to do after that, and so it ends up being the only step. But that is not sufficient in terms of actually addressing bias in the workplace. In some ways it can set you back.

There's also research showing that when you have this good thing that you've done in the workplace, this is called moral credentialing where you feel like, okay, I can check that box; I've done that good thing. This oftentimes can lead you to be less likely to do other things that are needed, that are more challenging, that are more difficult to do later on.

Lori Murphy: Interesting.

Jennifer Eberhardt: So you don't want the bias training actually to end up fostering more bias --

Lori Murphy: Sure.

Jennifer Eberhardt: -- because you haven't taken these other steps that you need to take to really move the needle. Again, there are lots of other steps that you can take. We talked about looking at your policies, looking at your practices. We talked about increasing accountability through starting to track some of these issues through metrics. Also, what are ways in which you need to address your culture? So there's a lot of research looking at the power of culture to shape our ideas and to either encourage bias or mitigate it. So looking at your culture, what are the cultural norms in the workplace?

Disparity itself in the workplace can actually encourage bias because it gives us ideas about who belongs where. So if you see racial disparities and gender disparities in the C-suite, say in your workplace, then that gives you an idea about who deserves to be on top. Again, it’s leading us sometimes to question or to think about the people rather than the system when we're like looking at disparities that can deepen the disparity, but it can also encourage bias. So those are some of the things we might want to think about.

Lori Murphy: Great. Well, Jennifer, you've given us a lot of really good things to consider and to do. I'm wondering if there's anything else you'd like to share with our audience?

Jennifer Eberhardt: We could talk a little bit about the role of technology in all of this. I think a lot of people want to sort of think about AI as the answer to much of this. Artificial intelligence, that's like all over the place. People are thinking about AI solutions to everything, including bias. Because if you just remove the person, the idea is that the bias will be removed from the decision-making or whatever.

The thing that worries me about all of this is that it's like we're less responsible because now the machine is doing it. I feel like we should really push against that impulse because we need to think more about these issues, not less. It's not that I'm against technology. We're actually using, harnessing the power of technology. What we're doing is analyzing body worn camera footage. Having those cameras, introducing those cameras actually leads to a decrease in use of force.It also leads to a decrease in citizen complaints.

I think there's a huge power there with technology, but again it's not the only answer. It's not the only way. Sometimes, that technology could be used to set us back. We have all of these things in different levels that we can

leverage to really make a difference and really move the needle on this.

Lori Murphy: It sounds like what we really need is to be aware that we're all susceptible to bias. There are a number of different things we can do to counter that, but it's not a one and done kind of solution. We need to be really intentional over time and look at a lot of different ways that we can even out the disparities. Is that fair to say?

Jennifer Eberhardt: Yes, that's fair to say. Yes.

Lori Murphy: Great. Well, Jennifer, this has just been a fabulous conversation. It was delightful to talk to you. I learned a lot by reading your book and even more from the conversation. We're just really thankful for you sharing your time with us today.

Jennifer Eberhardt: Oh, thank you so much. I appreciate it. Thanks.

Craig Bowden: Thanks, Lori, and thanks to those who are listening. A reminder that Jennifer Eberhardt's book is *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do*.

If you enjoyed this episode I invite you to listen to the August 19th edition of *Court Web* where Professor Eberhardt along with Judge Bernice Donald, retired

Judge Jeremy Fogel, and host Brenda Baldwin-White discussed how bias can impact our daily lives.

If you'd like to hear more episodes visit the Executive Education page on fjc.dcn and click or tap on podcast.

Produced by Shelly Easter, directed by Craig Bowden, edited by Ursula Mauer, and our program coordinator is Anna Glouchkova.

Special thanks to Michael Siegel and Chris Murray. Thanks for listening. Be well.

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