

Seeing is Predicting

When we look at something – an inanimate object, an event unfolding – does that stimulus go into our brain and tell the brain “here I am, recognize me!” Put more simply, is it like a camera where sensory input paints the picture on the ‘film.’ Or is the brain wired differently, to serve as a prediction machine, telling us “here’s what you are seeing” based on a prediction model?

According to Professor Andy Clark, the answer is the latter. This is explained in his new book *THE EXPERIENCE MACHINE – HOW OUR MINDS PREDICT AND SHAPE REALITY* (Pantheon Books 2023). And that understanding of how we ‘see’ is critical in the courtroom in at least two ways.

First, the thesis. Clark explains that

[c]ontrary to the standard belief that our senses are a passive window into the world, what is emerging is a picture of an ever-active brain that is always striving to predict what the world might currently have to offer. Those predictions then structure and shape the whole of human experience, from the way we interpret a person’s facial expression, to our feelings of pain, to our plans for an outing to the cinema.

EXPERIENCE, xii-xiii. He adds that “we are never really simply seeing what’s ‘really there,’ stripped bare of our own anticipations or insulated from our own past experiences. *EXPERIENCE*, xiii. Finally, he makes clear that “[w]hen the brain strongly predicts a certain sight, a sound, or a feeling, that prediction plays a role in shaping what we seem to see, hear or feel.” *EXPERIENCE*, xv.

In some ways this should sound familiar to advocacy educators. When we think about the power of story, we emphasize that listeners take facts and mold them into a narrative, and often that narrative [if we don’t persuasively frame it] is one the listener is accustomed to and thus imposes it as *the* frame for your case.

But is there more we can learn and apply as advocates? In a segment titled “Perceiving What You Feel,” Clark begins with a simple illustration – if you already believe [predict] that a friend is angry with you, you may see their face is reflecting anger even though to others it appears neutral. At a deeper and more profound level, Clark uses this to explain what is sometimes termed “shooter bias.” When a police officer gets inner bodily sensations – heightened fear, increased heart rate, sweaty hands – sensations that may be coupled with “misguided racial stereotypes, the police officer’s predictive thinking will make them ‘see’ a gun in what is actually a neutral object such as a cellphone. Clark’s purpose is not to excuse but to explain – in that instance the officer may be perceiving what their feelings predict. Trying to put a jury “in the moment” in such circumstances, or make a meaningful assessment of *mens rea*, may require an understanding of predictive brain processing.

Another lesson comes from “Mooney” images. Take a look at this abstract image:



Now, look at the below photo and then go back to the abstraction.



It is now easy to see the eyes in the first image. And how does that translate in court? If you are playing a poorly recorded conversation but give jurors a written transcript, the written words predict/inform what they then hear in ambiguous settings. The words will sound clearer, even if they are not.

Is there a more direct application of the prediction machine model to courtroom advocacy? Here is the inquiry I sent to Dr. Clark:

Here is the question - I want to write about the prediction machine model as it pertains to how jurors receive information overall. We teach the importance of story-telling in a jury opening statement as a way to frame the isolated pieces of proof that will be offered at trial; and we further teach that (1) if we don't give the jurors a story they will construct their own and then 'see' the rest of the trial through that framing and (2) if the story we provide is unfamiliar with their experiences the jurors may drop it for their own story.

My question is whether the lessons on story discussed above align with the prediction machine model. To me they do, but I don't have expertise and hope to confirm this.

Dr. Clark shared the following: "Thanks for raising this important issue. The PP account suggests that the initial story will act as a contextual frame that alters the way evidence is then assessed - it might even alter the way pictorial evidence is seen or experienced - In general framing effects are powerful ways of setting the priors that then impact experience."

So our takeaways? What we have intuited/taught from a narrative/power-of-story vantage is also supported by the mind as a predictive machine. Implant the story, the emotions, the sensations – and let them then help the jurors "predict" what we want them to see.