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Blind to Reality

Skills and Professional Development

Human beings are inherently flawed.

When it comes to basic survival — acquiring food and shelter — we are the most highly evolved, dominant species on Earth. When it comes to forming the social groups that foster safety, health and reproduction, no other animal comes close.

But when it comes to keeping up with our own technology, we are miserable failures. We are pretty good at hunting and gathering, but pretty bad at living in a world of perfect data and pristine recordings.

In our modern digital world information constantly overwhelms us. But we are not designed to absorb, sort and store torrents of data. Instead, we filter and focus, take in the information we recognize, but ignore the rest. Our hominid brains simply cannot cope with all this information.

I have come to accept these human limitations. When I try to listen, I know that I am only hearing part of the message. When I recall a memory, I know that my brain has modified the recollection. And when I pass judgment, I know that I am prejudiced, a slave to my personal history.

But at least I can trust my eyes. If I see something, clear and unobstructed, I know it’s there. Well, not really. I cannot even trust my own eyes.

It turns out that, before I consciously realize I have seen something, my brain has changed the image based on what it predicts I should see. Some psychologists refer to this as “affective realism.” It means that my visual reality is actually a modified image affected by my own subconscious expectations.

Clinical tests show evidence of this visual effect. A simple example is the way rapid images, flashed too quickly for us to identify, have a direct effect on what our brains think we see.

Neurologically, this can all be explained. When light enters our eyes and tingles the photoreceptors on our retinas, the signal travels first to our orbitofrontal cortex. Almost instantly, in as little as eighty milliseconds (0.08 seconds), our brain associates what it sees with a prior experience and then modifies that current image to more closely match those expectations. And our brain does this all before we are even consciously aware of the image.

In other words, when we see an image our brain is really just guessing what it sees. And it modifies the image based on that guess.

All of this happens so quickly, and unconsciously, that we don't realize it is happening at all. Even though our brain is making subjective assumptions about what we see, the process of seeing feels natural, unfiltered and objective.

There are people that do feel the impact of affective realism. When blind adults obtain full or partial vision later in life, they are acutely aware of the way their brains process visual cues. Some formerly blind people refer specifically to the fact that they have to "guess" what they see, even if they have seen the same image before. To them, the usually instantaneous result of affective realism is slower and more deliberate. After years of living in a dark world, their orbitofrontal cortices have a lot of catching up to do.

The realization that our brains are tweaking what we see, before we "see" it, is yet another item on the list of heuristic and psychological limitations that make us human. And as lawyers, we are just as burdened by affective realism as anyone else. There is nothing special about us.

But as lawyers, recognition of affective realism is especially important. In making judgments and offering advice, we rely on information gathered by sight. Criminal lawyers, as well as many civil attorneys, must rely on eyewitness testimony to understand an issue. And all lawyers are equally hindered by the way their own brains make guesses about reality. In other words, the advice we give is limited by the information we have, information that is inherently biased even if we have seen it with our own eyes.

For this reason, the most insightful, thoughtful lawyers never believe everything they see.

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