

Understanding the nature of memory in investigation

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Ian McEwan wrote a perfect novella in 2012. Except he didn't. He just thought he had. Having hunted high and low, he was recently forced to admit that this beautiful, career defining work of fiction was just that: a false memory.

When investigators review witness evidence going back many years, they often forget how fallible human memory is. In the digital age, we have adopted descriptions of our minds which reflect the devices to which we have become so wedded. We say things like 'I don't have bandwidth for that' or 'I have wiped that from my hard drive'. But our minds work nothing like computers. Our mental fallibility is multiplied when money, reputation, career and personal friendships are at stake in an investigation or a court room.

Yet investigators often spend inordinate amounts of time interviewing witnesses, refreshing their memories with historic documents and reviewing statements. Our courts also rely heavily on evidence from witnesses. Only recently have lawyers questioned the validity of witness testimony.

In the 2013 Gestmin case, Leggatt J commented that the legal system has not 'sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony'. The British Psychological Society in its guidance for lawyers makes the telling point that our memories are not a record of events but a record of our experience of events. Leggatt J's commented that human memory is 'fluid and malleable' and in his view, the accuracy of a memory should not be judged by the apparent strength of recollection, or by the confidence with which it is recalled. Participation in an investigation or preparation for a trial may itself distort the memory of a witness. It can cause witnesses unwittingly to mislead when giving evidence.

To ensure clear, objective and reliable evidence is presented in an investigation, an investigator needs to:

- understand more about human memory;
- rely on documents rather than recollection where feasible;
- be mindful of the limitations of human recollection. In particular, where documents or other hard proof is absent, accept that it may not be possible or safe to make a choice between two competing accounts; and
- ensure that the witness testimony gathered is truthful and that fiction is confined to the works of writers like Ian McEwan.

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