
Ten Things the Law and Others Should Know about Human Memory

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When I became an expert witness about 8 years ago, two things struck me profoundly. The first was how the law, at various levels, was riddled with ill-informed opinion about memory, opinions that were misleading and, more often than not, plain wrong. The second was that virtually anyone was prepared to give a court a supposedly “expert” opinion on memory (usually individuals with a medical background, but not always; there were others too). Later, as I progressed in my expert witness baptism by fire (try being cross-examined for 3 hours by appeal court judges!), I was struck by how remarkably resistant the law, and especially (appeal court) judges, are to expert opinion—and not just memory expert opinion, virtually any expert opinion. Finally, I encountered something I had never expected to encounter: colleagues who, acting for the other side, would utterly oppose one’s own scientific, rational, carefully thought out, and obviously utterly correct expert opinion. My surprise was with hindsight a reflection of my own naivety when entering this area. I had unrealistic ideals—a chance, I thought, after decades of researching autobiographical memory, to make a contribution to society based on our (new) understanding of autobiographical memory and memory more generally; actually, I still think that, but now my belief is somewhat tempered by experience.

Partly to deal with the above issues, all of which I will comment on shortly, I persuaded the Research Board of the British Psychological Society to convene a working party on Memory & the Law¹ and produce a report summarizing the relevant scientific findings and legal considerations in a way that would be accessible to all those who had to deal with memories as evidence in their professional practices, from lawyers, to insurance brokers, to accident assessors,

and beyond. The Memory & the Law (M&L) report (British Psychological Society, Research Board, 2008) had a number of contributors and international advisors (fully listed in the report) and made 10 key points that I will elaborate on below. However, the ultimate aim of the M&L report was to produce something of a “bible” of what the scientific data told us about the nature of human memory, a bible that could be consulted by practitioners and guide them in their approach, assessment, and treatment of issues in which memory was key evidence; interestingly, it nearly always is used, which makes the law’s indifference to what the science of memory has to tell it even more surprising. The M&L report fell short of being the bible I had envisaged and is currently undergoing a major revision. Nonetheless, it has, I think, proved to be a useful start, and I hope it will continue as a “live” document, regularly updated until one day it is the bible of memory for practitioners we originally hoped it might become. Before turning to the 10 points of the M&L report, I will briefly elaborate on some of the issues that I raised above.

ON BEING AN EXPERT WITNESS

In the United Kingdom—and I am not sufficiently familiar with the legal systems of other countries to extrapolate, but I imagine the situation in these countries is probably much the same—the view is that because jurors have their own memories upon which they can reflect, there is no need for expert advice. The jurors in effect have sufficient self-knowledge about memory to be able to make sound and safe judgments. In my experience, the public has little understanding of the nature, functions, and mechanisms of memory; indeed, why should they? Nor do they have much awareness of just how constructive and error-prone human memory is or how relatively simple it is to create false memories. When I give talks to groups of lawyers and judges, I always include the simple and elegant demonstration of Roediger and McDermott (1995), the so-called Deese, Roediger, and McDermott (DRM) procedure, and induce a false memory of having seen the word “sleep” in a list of words referring to sleep but not including the word itself. I usually also get them to tell me who “really” remembers seeing this word in the original list; that is, they have an image of it, recall something they thought about it when they saw it, and so on. Typically, more than 90% falsely recall the word and remember it too. Reactions range from outrage at such a “cheap trick” to wry amusement, but none miss the point (they are, after all, lawyers) and that is: they all now have a false memory themselves. Interestingly, another impression I have from these exercises with professionals is a certain degree of resistance. They are interested in the science and have a lot of testing questions and good insights into the implications. but at base they resist the view of memory that the DRM and

other procedures so powerfully imply. And, indeed, the view of memory we have come to from the broader study of autobiographical memory, neuropsychology of memory, neuroscience of memory, and malfunctioning memory in psychological illness (all of which, incidentally, I tell the professionals about in the 50 minutes between list presentation and recognition test in the talk). The law and many other areas are highly resistant to the notion that memory is complex.

AN EXAMPLE MEMORY FROM A CASE OF SEXUAL ABUSE

Consider the jurors and, indeed, the public in general for that matter. A very common belief is that the more specific a memory is, the more likely it is to be correct, whereas memory research tells us that the more specific and detailed an account of a memory, the more likely there are to be errors. This in fact is the reverse of what courts believe. By way of illustration here is a memory in an extract of a transcript of a police video interview that I have created from the many of cases of *historic sexual abuse*² in which I have given an expert opinion. Reflect upon how this transcript triggers your own implicit everyday beliefs about memory. Note that, typically in these cases, an adult complainant (C) describes one or more memories dating to childhood, often to early childhood. Also note that the police officer’s (PO) questions reflect what I have come to believe is an obsession on the part of the police, in Britain at least, with remembering clothes, rooms, furniture, weather, time, duration, spoken utterances, feelings, and thoughts. They too suffer from the erroneous belief that remembering many specific details is a sign of accuracy.

- PO: You’re here to see us today about something that happened when you were little—a long time ago, right?
- C: (Nods)
- PO: You’re 37 now; is that correct?
- C: (Nods)
- PO: Sorry C, I meant, meant to say that well, really, you need to you know er speak up, say “yes” or “no” or whatever. Can you do that?
- C: (Nods)—yeh, sorry
- PO: Its ok, so can you, uhm, tell me then about this first incident as best as you can and don’t worry if you say things, you know you wouldn’t say, difficult things, y’know in this room I have heard a lot. I know it’s difficult but that’s why we’re here... and it doesn’t matter if you can’t remember everything; just tell me what you remember and if there’s something you don’t remember well just say “Don’t remember” and that’s fine.
- C: Mum was about to go out, I don’t know, to the chippie I think... I wanted to go but she wouldn’t take me, I just was sort of not feeling comfortable

- with 'im, didn't know why, just a feeling... you know... on me own and all...
- PO: And who was he, C? Did you know his name?
- C: Well he was called Johnno... but his full name was John McWilliam and he was Mum's boyfriend... just for a few months I think.
- PO: Why do think that?
- C: I remember that this was just before I went to school. I had my fourth birthday in August and was going early... late birthday you see but had got my uniform, hanging up on the front of the cupboard in my room, grey skirt and white shirt I was really made up about it...
- C: But at Christmas I remember Frank was with us, and he became my step-dad until Mum left him. He was nasty too, beat her up, never done nuthin' to me 'tho, just like Johnno, both bastards...
- PO: Take us back to your Mum going out to the chip shop; what exactly was happening?
- C: I was watching TV, Tellie Tubbies I think, can't really remember but sort of can see you know that green grassy place they use to have, like a park or sumit', and sort of tunnels—holes in the ground like, or sumit' they lived in... Johnno's sitting on the couch next to me and he starts sort of tickling me... (pauses)...
- C: ... then he says "Come and sit on my knee C." I was just a girl y'know, I didn't know about it... well about anything like that, he was a sort of Dad, anyway I did... (stops)
- PO: C I know it is difficult... would you like a break? Maybe have a cig outside and I'll get us some coffee?
- C: (Shakes head) No... let me try... it's hard (starts to cry)
- PO: Here have some of these (hands tissues)...
- C: (Takes deep breaths)... he starts to stroke my legs, I had a skirt on... and I could feel y'know, feel him underneath me, anyway he says "Let's go in your bedroom" and picks me up...
- C: We lived in Chiselwick Street Flats then, knocked 'em down now, just down the bottom off Borough Road they used to be, on the right there, just a car park now... me mum had a flat from the council, it were just two bedrooms, living room and this really small bathroom and then the kitchen. My small bedroom was off the living room and Mum's was next to it... bigger.
- PO: When he picked you up, how did he do that, can you remember?
- C: He just put one arm under my legs, sort of behind my knees and other round my back and just stood up and carried me in, he was laughing, like it was something funny he—we—were doing some sort of game... and he put me on the bed and pulled my knickers down until they were off... I was just little I didn't get it, what he was doing... (cries)
- PO: And when Johnno laid you on the bed, what position was that in?

- C: Oh, on me back with me head towards the headboard and then he stood up but I wasn't really looking then but I can remember the sound of him unzipping his pants... and then when I looked, sort of turned me head, he had nothing on, below...
- PO: So, he'd taken his trousers and underpants, completely off?
- C: Yeh.
- PO: But kept his top on?
- C: Yeh
- PO: Can you remember what his top was like?
- C: Used to wear these black t-shirts all the time and, oh I dunno, but I think I remember it was black...
- PO: A black t-shirt
- C: Yeh...
- PO: ...and what did he look like?
- C: I dunno, didn't know what to make of it, do now, his thing was sticking out and he got my hand and put it on it and moved it sort up and down and said "You do it" and I did, but dunno, I think I was just sort of baffled or something, didn't know what to make of it, I was just lying there looking up at me new school uniform on the cupboard, thinking about that, about going to school... (cries)...

Is it possible to remember in such detail an event that took place 33 years earlier? Adult recall of childhood rarely contains much detail, even for negative events. An assumption often made is that the event was so traumatic that it would be remembered in detail; it would be "burnt into the brain." But the scientific evidence is that traumatic memories are fragmentary, disordered, disjointed, and often contain details that do not derive from experience. Furthermore, this line of reasoning assumes that the event would have been traumatic for the 4-year-old C, but would it? In order for an event to be traumatic, it must surely be understood at least at some level, but would a 4-year-old have the conceptual knowledge to understand such an event? The evidence indicates that a child of that age probably would not. On the other hand, consider how convinced you are by this made-up extract—very convinced, I would guess. It plays on our implicit everyday beliefs or assumptions about memory. It confirms those assumptions and makes us feel that our everyday understanding of memory must be correct. If C can remember the school uniform hanging up in her room, surely she can remember everything else. Surely it all must be true.

MEMORIES FOR RAPE IN CHILDHOOD AND ADULTHOOD

Memory for childhood sexual abuse (CSA) is an emotive issue. In the scientific arena, findings are hotly contested and entrenched positions abound. Nobody

contests the idea that CSA occurs or that it can be damaging. All that the M&L report suggests, and that I suggest here, is simply that judgments and appraisals of accounts purportedly of memories should be much more informed by our scientific understanding of the nature of human memory. Perhaps C was abused in the manner described but retains only a few fragmentary memories of what occurred. During the long retention interval of 33 years, while thinking about these fragments, she has gradually built up a narrative in which even she cannot now distinguish what has been added from what is remembered. This probably happens all the time in human memory—something our legal system should be aware of.

A further implication of the modern view of human memory is that had C presented with a fragmentary mixed-up memory full of amnesic gaps, with distorted and incomprehensible details, that would have been almost completely acceptable to a memory researcher. It is what we would expect on the basis of all we now know about memory. In contrast, legal agencies would have found such an account extremely worrying, and almost certainly it would never have reached a court because of the present system of ill-informed and erroneous beliefs about memory. Such memories are typical of adult women who have been raped, and because of their nature, that is, fragmentary, containing amnesic gaps, and with details inconsistently recalled, they do not go to court since their evidence can be easily made to look unreliable. The defense lawyer only has to say, "So, you are telling the court that you cannot remember what he looked like, the time of day, how long this supposed assault lasted, anything he said, or indeed what he was wearing—yes?" and the credibility of the witness's evidence is seriously compromised, particularly when followed up with the aggressive question "So, Ms. C, how do we know you can remember anything at all about this rape?" It is a tragic irony that the erroneous beliefs about human memory that permeate our legal agencies lead to prosecution on the basis of fluent, highly detailed narratives of events that took place in childhood (for which there usually is no other evidence), but a fragmentary, jumbled account, with gaps, of an assault that took place on the weekend is not accepted because it is viewed as too easy to discredit in court. The point is that the very features of reports that make them more likely to be accurate are taken by courts as evidence of unreliability, whereas features of reports that make them more likely to be filled with errors are taken as evidence that they are accurate. This, of course, is only possible because everyday beliefs about human memory, ones that are largely implicit, powerfully influence how we respond to accounts of "memories." The modern view of memory shows us, however, that people should *not* remember everything or even very much; when they do, that's where the problems lie. It is this modern view of the complexity of human memory that the law finds so troubling.

NONEXPERTS, EXPERTS, VIVID MEMORIES AND TRAUMA

What of the individual who is prepared to give an expert opinion when he or she is not an expert, and what, too, of the courts that are prepared to so naively accept such opinions? Actually, the nonexpert "experts," the courts, and jurors are all similar in that they hold everyday beliefs about memories. One belief is that the more *vivid*, the more "burnt in" a memory is, the more likely it is to be accurate. The evidence in fact shows that there are plenty of documented, highly vivid memories that are in fact wrong, and occasionally even wholly false. Here is one of my favorites, given to me by a barrister who realized it was false during a talk I was giving to his bar association:

A middle-aged man recalled his father distracting him when he was a young boy (about 4 years old) by asking him who was the first man on the moon. He had been intensely interested in the moon landings when he was a young boy, and this incident occurred while his father was talking on the telephone to his mother, who had just given birth to his younger brother. My informant had a vivid and fond memory of his father placating him in this way; he was highly agitated by the birth, and in his memory he could see his father on the telephone and almost hear his voice. It was only decades later that he realized that his brother had been born in 1968, 1 year before the first moon landing.

Another common belief is that a traumatic event will lead to memories that will have an enduring effect on a person's life. It seems that sometimes they do, sometimes they do not, and for quite a lot of people, the majority in fact, they seem to have no enduring effect at all. An important question here is: what is traumatic? What is traumatic for one person may not be so for another. Furthermore, what we think is traumatic for children, on an (implicit) assumption that it would be traumatic for an adult, may not be so at all. These are complicated matters on which there is much and often conflicting research, and an expert is required to present the scientific view to a court.

Interestingly, it often is the case that all a scientist such as a memory researcher can do is say, "There is no scientific evidence bearing on this matter" or "The evidence is too weak to make any strong recommendation." I think that too is useful for a court because the court has sought expert advice in good faith and has been reassured that there is none; it can then get on with the business of administering justice. The nonexpert is usually not in a position to make such definitive statements. When I became an expert witness, one of the first cases in which my advice was sought was one in which a very young preverbal infant had been sexually assaulted. At the trial, a professional medical expert witness was asked for his view, based on his expert knowledge, of how likely it was

that the infant, a girl, would be affected by the abuse later in life. His view was that she certainly would be affected, but he wanted to consult before giving a definitive answer. Later he reported to the court that he had consulted a senior medical colleague, who also considered that she was unlikely to have a normal sex life because of the enduring effects of the memory of the abuse event, which might possibly influence her, even unconsciously, for the rest of her life. This was also the view of the medical expert. One still occasionally encounters such nonexpert "expert" views, especially about memory, in our courts. My own statement was that there was no body of scientific evidence either way. We simply did not know whether the girl would be adversely affected, and if so how, or whether there would be an effect or no effect. The so-called expert opinions were based on belief and not on any (scientific) evidence.³ Toward the close of the next section, I consider what expertise a memory expert should ideally have. Here we might note that someone who has read the M&L report is *not* a memory expert. Nor, in my view, is someone who has taken a course, or several courses, on memory or read textbooks, journals, or other specialist materials. It seems to me that a memory expert is someone who has contributed scientifically to the study of human memory and that contribution has been recognized by his or her peers. As we will see, however, this is not a popular view among other (nonmemory) expert witnesses who are often asked to comment on specific memories.

TEN THINGS THE LAW AND OTHERS SHOULD KNOW ABOUT HUMAN MEMORY

The M&L report was an idealistic attempt to show the complexity of human memory (to a broad nonexpert audience), to rule out erroneous everyday beliefs (such as those evoked in you when you read the fictitious case of C above), but most of all to produce a statement that *all* memory researchers could accept and say to the courts and other professionals "At a minimum this is what we know, this is what we suspect, this is what we are uncertain about, and this is what we do not know" and to back it up with full references to review articles and the relevant bodies of scientific evidence. The aim was to place a document in the public arena that memory experts could point to as support for the points they make in specific cases. It has to some extent been successful in doing that and, hopefully, the revised version will be even more authoritative. In court there is a problem when time is limited, and typically one cannot go through the evidence supporting any single point in detail and sometimes not even at all. This can give rise to the selective use of findings by others to undermine the expert view. Indeed, the selective use of evidence to undermine or refute another expert's evidence is one of the most common

tactics encountered in our courts. Having an agreed-on and comprehensive document that one can point to and say "Here is the scientific evidence upon which my expert advice is based" will surely help. This is especially true when that document is balanced and lists points of relevance in a way a court can understand, and those points are in turn backed up by full reference to the evidence from which they originate.

The main advice in the M&L report is contained in a series of key points/guidelines that are reproduced in Table 14.1: the 10 things the law and other professional bodies should know about memory. The report also contains extended sections describing the research supporting the guidelines; for that reason, I do not describe the research here. The reader is referred to the report itself, which is available at the Internet address given in note 1 below. The M&L report provides accessible recommended reading, and for those who wish to study further, there is a full technical reference section. For ease of comprehension, the guidelines are presented in a jargon-free, nontechnical manner. They give a view of human memory that accurately captures its complexity, as well as the great difficulties in determining what "accuracy" might mean here and how it could ever be determined. Indeed, the bottom line is that accuracy cannot be established without corroborating evidence that, as far as possible, is independent of the rememberer. However, because we now have a much better understanding of the nature of memories, there are informed judgments that can be made about, for example, how closely an account that is claimed to be of a memory actually corresponds to what we know of memories. In other words, the guidelines in Table 14.1 can be used to gauge how memory-like an account is. This will be useful in evaluating accounts of memories that, when there is no other evidence, may well be all that a proceeding hinges on.

The guidelines are also something of an antidote to commonly held largely incorrect beliefs about human memory. Consider, for example, the belief that if there are gaps in a memory, then that memory is unreliable and, ultimately, so is the witness who reports it. Guidelines i and iv in Table 14.1 address this incorrect belief. Memories for experienced events are time compressed, contain only short time slices of experience, and are never complete. In other words, exactly the opposite is true: *a valid memory must contain omissions, gaps, and forgotten details*. Another common belief is that when a specific detail or set of details is recalled, the account is probably of a memory and, moreover, that account is more likely to be accurate than an account of a memory containing no specific details. Guidelines v and vi in Table 14.1 speak directly to this belief. In fact, recalling highly specific, often incidental details such as exact times and dates, spoken utterances verbatim, feelings, thoughts, weather, clothes worn during childhood experiences, and so on is comparatively rare. Also, it has been found that such highly specific details can be wrong and, indeed, even

Key Points

- i. **Memories are records of people's experiences of events and are not a record of the events themselves.** In this respect, they are unlike other recording media such as videos or audio recordings, to which they should not be compared.
- ii. **Memory is not only of experienced events but it is also of the knowledge of a person's life, i.e. schools, occupations, holidays, friends, homes, achievements, failures, etc.** As a general rule memory is more likely to be accurate when it is of the knowledge of a person's life than when it is of specific experienced events.
- iii. **Remembering is a constructive process.** Memories are mental constructions that bring together different types of knowledge in an act of remembering. As a consequence, memory is prone to error and is easily influenced by the recall environment, including police interviews and cross-examination in court.
- iv. **Memories for experienced events are always incomplete.** Memories are time-compressed fragmentary records of experience. Any account of a memory will feature forgotten details and gaps, and this must not be taken as any sort of indicator of accuracy. Accounts of memories that do not feature forgetting and gaps are highly unusual.
- v. **Memories typically contain only a few highly specific details.** Detailed recollection of the specific time and date of experiences is normally poor, as is highly specific information such as the precise recall of spoken conversations. As a general rule, a high degree of very specific detail in a long-term memory is unusual.
- vi. **Recall of a single or several highly specific details does not guarantee that a memory is accurate or even that it actually occurred.** In general, the only way to establish the truth of a memory is with independent corroborating evidence.
- vii. **The content of memories arises from an individual's comprehension of an experience, both conscious and non-conscious.** This content can be further modified and changed by subsequent recall.
- viii. **People can remember events that they have not in reality experienced.** This does not necessarily entail deliberate deception. For example, an event that was imagined, was a blend of a number of different events, or that makes personal sense for some other reason, can come to be genuinely experienced as a memory (these are often referred to as "confabulations").
- ix. **Memories for traumatic experiences, childhood events, interview and identification practices, memory in younger children and older adults and other vulnerable groups all have special features.** These are features that are unlikely to be commonly known by a non-expert, but about which an appropriate memory expert will be able to advise a court.
- x. **A memory expert is a person who is recognised by the memory research community to be a memory researcher.** It is recommended that, in addition to current requirements, those acting as memory expert witnesses be required to submit their full curriculum vitae to the court as evidence of their expertise.

SOURCE: From *Guidelines on Memory and the Law: Recommendations from the Scientific Study of Human Memory* (p. 3) by the British Psychological Society, 2008. Leicester: British Psychological Society, 2008. Copyright 2008 by the British Psychological Society. Reprinted with permission.

wholly false. *Specificity does not guarantee correctness.* Indeed, very specific incidental details might serve the purpose of what is known as "trivial persuasion." The scientific evidence shows that accounts of memories that contain incidental and/or idiosyncratic, highly specific details are *believed* by the public to be more accurate. These types of (trivial) details act to persuade an audience that an account really is a memory of an experienced event, even though it may be incorrect or even not a memory of an experienced event at all.

In closing, let's apply the guidelines to some evidence. Imagine that an adult complainant in a case of historical sexual abuse recalls the following memories when making a witness statement:

I have two very early memories, funnily enough both about bath time, but I now think this is because that's how it started out—that's when he first started doing things. The first is standing shivering without any clothes on in our bathroom, having just got out of the bath, and I remember looking at the paint peeling on the wall round a mirror the bottom part of which had a funny sort of brown stain on it. The house needed decorating, but my father didn't do things like that, probably too drunk or out at the pub. Anyway this was when I would have been about four, maybe three. The second is my father taking me up to the bedroom after bath time. My mother was still bathing my older sister, and he was going to read me a bedtime book. I had my pink Barbie nightie on, and I remember him next to me when I was lying down. He was holding the book in his right hand and he sort of slipped his other hand under the sheet and up my nightie and started touching the tops of my legs. I mustn't have had any knickers on because I remember his fingers stroking my vagina. I just lay really still; I think I must have been shocked. Suddenly he closed the book, stood up, said, "Mum's coming; go to sleep now." My sister was seven then, so I would have been four.

There is no other evidence, and the defendant strongly denies this and the other allegations of sexual abuse contained in the statement. (Note that these statements are an amalgam of memories drawn from several recent cases.) Given that these accounts of memories, and of course other accounts from persons of later ages, are all the evidence there is, what can be made of them? Guideline ix in Table 14.1 is important here, and its elaboration in the report focuses in part on the concept of childhood amnesia. The term "childhood amnesia" refers to the well-established finding that people have few memories dating to 7 years of age and younger, and even fewer dating to 5 years of age and younger, and it is most unusual to find any memories at all dating to about 2.5 years and below. Thus, these two memories dating to 3 and 4 years of age, although not outside the normal range, are very early and well within the

period of childhood amnesia. Memories from this period are often rather idiosyncratic in that a rememberer often does not know why they are remembered or what they might mean. Often there is considerable doubt about whether they are memories or not (maybe they come from a family story, derive from a photograph, etc.), and often they are not experienced as full memories. The two memories in our example do not appear to have these features, making them unusual for very early memories. It does not follow from this comparison that they are erroneous or wholly false. Nonetheless, given their unusual nature, there are grounds for at least some concern.

Guideline vii makes the very important point that memory is strongly influenced by the individual's comprehension of an event when that event is experienced. In other words, the person's understanding of an experience influences not only whether it is remembered at all but also, given that it is remembered, *what* is remembered, that is, the content of the memory. The second memory in the previous example essentially shows an adult comprehension of the alleged event with an adult reaction. Moreover, both memories contain implausible details (see guideline v). The peeling paint and stained mirror are very unusual details to recall in a memory dating to 3 years of age. Remembering which hand was used to do what is also implausible given that children of age 4 do not have the concept of "handedness." In addition, the concept of a "vagina" is most unlikely to be held by a 4-year-old. Such adult knowledge could only have been added later, perhaps during periods of thinking and/or talking about the events. It may be the case that the witness can no longer distinguish between what has been added and actual memory fragments. In other words, the witness makes a permanent source monitoring error. Thus, the guidelines indicate that these memories, if that is what they are, are highly unusual and permeated with adult concepts. This information would, of course, be useful to a court.

Guideline x, surprisingly, turned out to be the most contentious guideline, at least for other expert witnesses. The original M&L report recommended that a "memory expert" should be someone with an acknowledged publication record in the area of memory research. In other words, the expert should be, or have been, an active memory researcher and one recognized by the community of memory researchers. This is a view that I still hold, although an expert who has made a scholarly contribution to the field rather than an empirical one would also have the appropriate degree of expertise. Additionally, it would be important for a court to be assured that the memory expert had the relevant expertise in the area of memory. These suggestions, however, led to something of a howl of outrage by other psychologists, some with professional and/or clinical qualifications, some of whom had long acted as expert witnesses but none of whom would be recognized by the memory research community as

memory researchers. In the end, we were forced to drop this requirement and instead used the rather weaker recommendation that a memory expert must submit his or her curriculum vitae as part of the evidence; then a court could at least make an informed judgment of the witness's expertise. This is a recommendation that I believe courts should routinely adopt.

Much more could be said about the above example memories, and the guidelines would help develop our understanding of them further. Importantly, however, the guidelines are not intended to *replace* decision making but rather to help *inform* the decision-making process. Also, they are not intended to be used to evaluate accuracy or truth. Their aim is rather more limited. It is simply to allow people who are not experts in the study of memory to gain some understanding of the extent to which accounts that claim to be of memories actually correspond to what we know about memories. Also, and in many ways of equal importance, the guidelines provide a basis for challenging (spurious) claims of expertise and for identifying the selective use of evidence.

NOTES

1. http://www.bps.org.uk/sites/default/files/documents/guidelines_on_memory_and_the_law_recommendations_from_the_scientific_study_of_human_memory.pdf
2. The phrase "historic sexual abuse" is used in British courts to refer to adults remembering and reporting sexual abuse from childhood.
3. The court accepted this but made it clear that it was not especially helpful. Experts are not much liked by courts, and experts who disagree with other experts are not liked at all!

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