

Book Review: Unlocking Memories: Cognitive Interviewing for Lawyers by Geoff Coughlin

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Book Review



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Book Review: Unlocking Memories: Cognitive Interviewing for Lawyers by Geoff Coughlin

Abstract

This is a book review of *Unlocking Memories: Cognitive Interviewing for Lawyers* by Geoff Coughlin.

Book Review

***Unlocking Memories: Cognitive Interviewing for Lawyers*, by Geoff Coughlin¹**JASON CHIN² & VANJA GINIC³

LITIGATORS SEEKING TO IMPROVE their interviewing skills may have noticed a recent addition to the market, a book titled *Unlocking Memories: Cognitive Interviewing for Lawyers*. Written by former English police officer Geoff Coughlin, it is marketed as a way to “elicit up to 40% more information from your witness interviews”⁴ in a manner that is both accurate and efficient. Grand aspirations, indeed.

The advertisement struck a chord with me because I am a lawyer and former psychologist. The cognitive interview is a well-established innovation from the forensic psychology field that is regularly used by law enforcement. Moreover, interviewing witnesses is an integral part of the fact-gathering process and one that, by my estimation, most junior lawyers simply learn by observation. There seems to be a genuine need for a book of just this kind.

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 4. Ark Group, “Unlocking Memories: Cognitive Interviewing for Lawyers” (2015), online: <www.ark-group.com/product/unlocking-memories-cognitive-interviewing-lawyers>.

Unfortunately, *Unlocking Memories* falls short in many respects. The book's organization is disjointed. It jumps from topic to topic rather than provide a step-by-step guide. The poor organization results from the book—despite its name—spending little time and attention on the actual cognitive interviewing part. Instead, Coughlin takes many detours: some are helpful (*e.g.*, a handy note-taking method), but others are factually inaccurate (*e.g.*, a discredited technique for inferring mental states from eye movements).

These concerns aside, a discussion of what Coughlin does and does not get right is instructive. Cognitive interviewing is an effective way to accurately plumb a witness's memory that is underused by lawyers. By embracing one scientifically sound interviewing technique and one pseudoscientific one, *Unlocking Memories* provides both a guide for how applied science can benefit a lawyer's practice, and an important cautionary tale for how it should not.

I. THE COGNITIVE INTERVIEW

Psychologists Ed Geiselman and Ron Fisher developed the cognitive interview about thirty years ago to provide a practical application for the dense scientific literature on how memory works.⁵ They endeavoured to use this body of knowledge to extrapolate an interview methodology that would get the most out of the witness while avoiding misinformation. For example, psychologists find that recall is often impaired by schematic information—knowledge about how events *typically unfold*, as opposed to how the particular event in question *did unfold*. Geiselman and Fisher solved this problem by having subjects recall the event both chronologically and in reverse order to break the schema (it is hard to follow a script while reading backwards).

Geiselman and Fisher identified four fundamental recall techniques that comprise the cognitive interview. They merit a review.

Context Retrieval is the principal technique. To employ context retrieval the interviewer instructs the witness to place himself or herself back at the time and place the event occurred.⁶ The witness attempts to recall any sights, smells, or noises present at the time the memory was formed. In theory, these cues should spark memories of the original event.

5. R Edward Geiselman et al, "Eyewitness memory enhancement in the cognitive interview" (1986) 99 Am J Psychology 386.

6. *Ibid* at 390.

Second, the interviewer instructs the witness to *report everything*, even if he or she thinks it might not be relevant or complete.⁷ This technique guards against witnesses editing out bits they think might not be relevant and fosters recall because even incomplete memories may jog other memories.

The final two techniques draw on the notion of schema-breaking.⁸ As mentioned, the interviewer instructs the witness to recall the event in a *different order* than that in which it actually occurred. In addition, the witness recalls the event from *multiple perspectives*, such as from the point of view of other witnesses.

II. THE USE AND ABUSE OF APPLIED SCIENCE IN THE LAW

When evaluating advances in applied science, two questions should be asked: (1) is the theory behind the method sound, and (2) has the method been tested?

While some of the logic behind the cognitive interview was initially questioned,⁹ a great deal of research subsequently supported the method's effectiveness. For example, a recent review of approximately sixty published studies found that the use of a cognitive interview (as compared to a standard interview) resulted in a large and statistically significant increase in the number of details remembered about the event in question, with a disproportionately small increase in error.¹⁰

Coughlin generally does a good job of laying out the cognitive interview across four stages, which includes: (1) setting the environment, (2) explaining what will happen, (3) using the recall techniques, and (4) concluding the cognitive interview.¹¹ Within his stages Coughlin highlights some problems that may arise, and ways to deal with them. Overall it is a sensible and straightforward application of the cognitive interview model.

Still, Coughlin should have noted some limitations inherent in cognitive interviewing that are well established in the scientific literature. Practitioners should know that research clearly shows that the technique is less effective with children and the advantage of a cognitive interview diminishes the longer ago the

7. *Ibid.*

8. *Ibid* at 391.

9. Amina Memon & Ray Bull, "The Cognitive Interview: its Origins, Empirical Support, Evaluation and Practical Implications" (1991) 1:1 *Journal of Community & Applied Social Psychology* 291 at 298.

10. Amina Memon, Christian A Meissner & Joanne Fraser, "The Cognitive Interview: A Meta-Analytic Review and Study Space Analysis of the Past 25 Years" (2010) 16:4 *Psychol Pub Pol'y & L* 340 at 340 [Memon et al].

11. Coughlin, *supra* note 1 at 62-92.

memory was formed.¹² And most importantly, the cognitive interview carries the risk of inaccurate memories and even confabulation (*i.e.*, the witness generates details that were not there). Research has shown that the single best safeguard is ensuring the witness understands that it is okay to say “I don’t know.”¹³

While I wish Coughlin had grounded his book more firmly in the science, there’s a more serious problem in *Unlocking Memories*: Coughlin’s rundown of the operative parts of the cognitive interview occupies only about thirty pages of a 180-page book. The rest is mostly harmless filler (*e.g.*, a half-page photo of a brick wall used to illustrate the metaphorical brick wall that can come between interviewer and witness). There is real danger, however, in Coughlin’s espousal of a discredited pseudoscientific interviewing technique called neurolinguistic programming, which I discuss below. I suspect the application of the cognitive interview to lawyering was simply too straightforward an endeavour, and Coughlin wished to pen a book rather than a manual or some other lower cost guide. Indeed, free versions of the cognitive interview are available online and are easily adapted to the legal context.¹⁴

III. ADDRESSING NEUROLINGUISTIC PROGRAMMING

Coughlin proposes, at several points throughout the book, that interviewers pay close attention to the eye movements of the witness. He even provides a diagram, reproduced twice—further evidence of filler—of a smiley face looking in various directions. If the face is looking left, then it is having an auditory memory; if the face is looking up, then it is having a visual memory, and so on.

Coughlin is drawing on a pseudoscientific field known as neurolinguistic programming (NLP), which suggests the connection between neurology and language can be used to provide a host of benefits to students of the NLP discipline, such as mindreading and subconscious influence. There is a real cost to instructing readers in this discredited technique. An already overburdened interviewer is now required to memorize the meaning of various eye movements and change the direction of the interview accordingly. This comes at the expense

12. Memon et al, *supra* note 9 at 354-56.

13. *Ibid* at 358.

14. See *e.g.* Saul McLeod, “Cognitive Interview” (2010) (blog), online: Simply Psychology <www.simplypsychology.org/cognitive-interview.html>.

of actually conducting the interview. There might be some value if NLP were supported by scientific research, but unfortunately it is not.¹⁵

NLP is an incoherent and discredited theory that has been used to gild the claims of parties as varied as pick-up artists and magicians. NLP proponents claim it represents a reliable method for determining the way in which people are thinking based on outward bodily manifestations—for example, the eye movements *Unlocking Memories* relies on.

As discussed, applied science should be both theoretically grounded and empirically supported. NLP is neither. The theory, dressed up in psychobabble rather than sound principle, has been around for decades without empirical support. An authoritative review stated: “Overall, there is little or no empirical evidence to date to support either NLP assumptions or NLP effectiveness.”¹⁶

Coughlin’s endorsement of this baseless strategy is likely an inadvertent mistake (he’s not a psychologist) but it is a costly one. Most importantly, it misleads the interviewer. Further, as most litigators know, an interviewer’s mental resources are already heavily taxed during an interview. The added task of tracking the witness’s eye movements can detract from tasks that have a demonstrable benefit, such as taking notes and conducting the interview.

IV. UNLOCKING MEMORY’S ORGANIZATION

Despite the pseudoscience, I hoped that *Unlocking Memories* might prove useful as a common sense guide to performing interviews. Interviewing can be an amorphous task that would benefit from some structure. Indeed, *Unlocking Memories* describes itself as a “practical text and toolkit.”¹⁷

Unfortunately, the book’s actual structure belies its mandate with a confusing, incoherent organization that regularly jumps from topic to topic. What I wanted—and what I think is logical in a book of this sort—is a manual that follows the progression of an interview from preparation, through the stages

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15. See e.g. Daniel Druckman & John A Swets, *Enhancing Human Performance: Issues, Theories, and Techniques* (Washington, DC: National Academies Press, 1988) [Druckman & Swets]; Tomasz Witkowski, “Thirty-Five Years of Research on Neuro-Linguistic Programming. NLP Research Data Base. State of the Art or Pseudoscientific Decoration?” (2010) 41(2) Polish Psychological Bulletin 58; Christopher F Sharpley, “Research Findings on Neurolinguistic Programming: Nonsupportive Data or an Untestable Theory?” (1987) 34:1 J Counselling Psychol 103.
 16. Daniel Druckman & John A Swets, *Enhancing Human Performance: Issues, Theories, and Techniques* (Washington, DC: National Academies Press, 1988) at 143.
 17. Coughlin, *supra* note 1 at xix.

of the interview, to any follow-up tasks. That was not the case: I found important interview preparation steps ranging from developing questions to where to sit relative to the witness spread through chapters two, three, and five.

The organization within chapters is also frustrating. Chapter three, for instance, is divided into *principles* and *interview stages*. While this organization seemed sensible at first blush, when trying to determine how I would actually use this book I noticed that some purported principles actually included tangible tasks, while others referred me forward to the stages described later in the chapter. This design issue pervades the book and renders it difficult to use.

V. CONCLUSION

Although this review has largely been negative, there are some useful tips in *Unlocking Memories*. As mentioned above, Coughlin's visual note-taking scheme is a sensible strategy. Coughlin also recommends using meaningful pauses to urge the witness to continue, while not wresting control from the witness. This is indeed an aspect of tested versions of the cognitive interview.¹⁸

Unfortunately, much of the rest of *Unlocking Memories* is either confusing or in opposition to established science. The paperback version of *Unlocking Memories* rings in at \$165. And when you factor in that the book's primary innovation—the application of the cognitive interview to advocacy work—spans about thirty pages, it's an awfully steep price to pay.

18. Memon et al, *supra* note 9 at 342.