# Prospective Memory

Almost everything in this series concerns retrospective memory, the memory for what happened. Prospective memory is a different faculty: the memory for what one intends to do. It is remembering to perform a planned action at the right future moment, to take medication, pass on a message, keep an appointment, turn off the stove. Prospective memory has its own profile and its own characteristic failures, and it bears on a distinct legal question, not whether a witness accurately recalls a past event, but whether a person remembered or forgot to do something they meant to do.

This paper explains the kinds of prospective memory, why it fails, how common and ordinary those failures are, and where this bears on legal questions of forgetting, negligence, and intent.

## Event-Based and Time-Based Intentions

Researchers distinguish two kinds of prospective memory (Einstein & McDaniel, 1990). An event-based intention is triggered by an external cue, remembering to give a colleague a message when you see them. A time-based intention must be performed at a particular time or after an interval, remembering to make a call at three o'clock, with no external prompt to help. Time-based tasks are generally harder because they depend on self-initiated monitoring rather than on an environmental reminder, and intentions cued by a salient, directly relevant cue are remembered far better than those whose cue is peripheral.

## Why Intentions Are Forgotten

On the multiprocess view (McDaniel & Einstein, 2000), remembering an intention can be relatively automatic, when a salient cue brings the intention to mind, or effortful, requiring the person to keep monitoring for the right moment. Failures occur when no good cue is present, when attention is loaded by competing demands, or when a routine is disrupted. Under demanding conditions intentions are forgotten quickly, often within moments, even when the person fully meant to act (Einstein, McDaniel, Williford, Pagan, & Dismukes, 2003). Habitual, repeated actions are especially vulnerable to absent-minded omission, which is how well-practiced and highly motivated people nonetheless forget to do important things.

## Everyday and High-Stakes Failures

Prospective memory failures are ubiquitous and consequential. They account for a large share of everyday lapses and for serious errors in demanding professional settings such as aviation and medicine, where a task interrupted at the wrong moment is simply never resumed (Dismukes, 2012). The most tragic illustrations are the cases in which an attentive, loving parent, their routine altered, forgets a sleeping child in a car. These failures are not explained by indifference or low motivation; they arise from the ordinary architecture of memory for intentions under load and habit.

## Relevance for Testimony

Prospective memory bears on cases that turn on whether a person remembered or forgot to perform an intended act, claims of forgetting a safety step, missing an obligation, or leaving a task undone. The central contribution of the science is to establish that forgetting an intention is common, normal, and fully compatible with genuine care and good faith; the fact that someone forgot to do something does not, by itself, show indifference, recklessness, or intent. This speaks to the plausibility of a genuine-forgetting account and to how a forgetting is to be understood, questions that can bear on negligence and on mental state. It does not resolve those questions, which remain for the trier of fact; the expert's role is to explain how memory for intentions works, not to opine on what a particular person remembered or intended.

## Special Issues in Legal Practice

The principles described above apply with equal force to every party in a legal proceeding. Memory operates the same way regardless of who is asking the questions, and the science summarized here favors no side. What differs between the parties is not the science but the vantage point — the particular places where memory issues tend to surface, and the particular errors each party is best positioned to guard against. The two summaries below identify those recurring issues. They are offered for orientation, not as litigation strategy; in every case the controlling question is what the evidence in that case will, and will not, support, and the expert's role is to inform the trier of fact rather than to advocate for either side.

### Special Issues for Prosecutors

For the State, prospective memory is relevant where a case concerns a defendant's or witness's failure to perform an intended or required act. The prosecution is well positioned to recognize that forgetting an intention is ordinary and does not itself establish a culpable mental state, and equally to note that the science describes how such forgetting happens rather than excusing it (Einstein et al., 2003). The error to guard against is treating the mere fact that an act was performed or omitted as proof of what the person remembered or intended, when memory for intentions is fragile under load and habit. The safeguard is to ground claims about a person's mental state in the full evidence rather than in an assumption that people reliably remember their intentions.

### Special Issues for Defense

For the defense, prospective memory bears on cases in which a client is alleged to have deliberately disregarded an obligation that may instead have been genuinely forgotten. The defense is well positioned to show that even highly motivated, careful people forget intentions under competing demands and disrupted routines, so a failure to act is consistent with honest forgetting rather than indifference or intent (McDaniel & Einstein, 2000; Dismukes, 2012). The corresponding error to guard against is overclaiming. The research establishes that genuine forgetting is plausible and common; it does not establish that any particular omission was in fact a memory failure rather than a choice. Responsible cross-examination and expert testimony should explain the ordinariness of prospective memory failure and inform the assessment of mental state, leaving the ultimate determination to the trier of fact.

### References


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