

# Eyewitness testimony and the Oklahoma bombing



AMINA MEMON and DANIEL B.W. RIGHT ask what psychological studies can tell us about the search for the shadowy 'John Doe 2'.

ON 19 April 1995, the Alfred P. Murrah Federal Building tumbled to rubble as the sound of the explosion echoed through Oklahoma City. One hundred and sixty-eight people died and over 600 people were injured.

The media shock waves spread throughout the world with news of the United States' most devastating terrorist act. Rumours rapidly proliferated about Middle Eastern and other international terrorist groups being responsible. However, the spotlight turned inwards to the possibility that this horrific deed could have been carried out by an American.

Gulf War veteran Timothy McVeigh was arrested and later convicted (*US v McVeigh*, 1997). One of his Army colleagues, Terry Nichols, was found guilty of involuntary manslaughter and conspiracy (*US v Nichols*, 1998).

'Conspiracy' is a keyword here.

McVeigh and Nichols were known to have right-wing, anti-government views. According to a national poll (Johnson, 1996), 68 per cent of Americans felt that there were other people responsible for this, besides McVeigh and Nichols, but who were still free. Stephen Jones, McVeigh's lawyer, said that 'the idea that two men did it defies logic' (Johnson, 1996).

There is even a website newsletter called *The John Doe Times* ([xld.com/public/jdt/jdtindex.htm](http://xld.com/public/jdt/jdtindex.htm)) that focuses the conspiracy theories on Elohim City, a complex of houses on the border of Oklahoma and Arkansas. According to the newsletter, which is produced in conjunction with an Alabama militia, Elohim City was the gathering place for many of the people allegedly involved. How strong is the evidence for these beliefs?

Both in the media and in the courthouse

(particularly for the Nichols trial), defence lawyers used several witnesses who believed they had seen John Doe 2, the man reported with McVeigh prior to the explosion, to suggest that someone other than the defendants was responsible for the bombing.

Eyewitness testimony plays a critical role in the apprehension, prosecution and trial of criminal offenders. A recent survey of British police officers indicated that the police believe eyewitnesses are accurate and reliable most of the time (Kebell & Milne, 1998).

Gary Wells, an international authority on eyewitness identification, was called as an expert witness by the prosecution. During the course of his testimony, he described how errors in eyewitness identification may occur as a result of poor encoding, retrieval and inappropriate testing (*US v McVeigh*, 1997).

In this article, we use the alleged sighting of John Doe 2 to examine possible errors of eyewitness identification in the McVeigh and Nichols trials. (It is important that we make clear that we are not stating that either there was or was not a John Doe 2, only that, because of the malleability of eyewitness reports, we cannot be sure.)

We will show how, in such a high-profile case as this, eyewitness accounts may be especially vulnerable to distortion (see Memon *et al.*, 1998; Wright & Davies, 1999, for more extensive reviews of eyewitness testimony). Extracts from Gary Wells' testimony will be used to illustrate questions of interest to lawyers and misconceptions about eyewitness abilities.

### Events at the body shop

Although several people testified that they had seen someone resembling John Doe 2, the media and courts focused on reports of John Doe 2 when allegedly seen, with McVeigh, at Elliott's body shop two days before the explosion (17 April). Therefore, we will also adopt this focus.

Before going to this shop to rent the truck used in the explosion, McVeigh (using the alias 'Robert Kling') arrived by taxi at a nearby fast food restaurant at about 3.40pm. Both the taxi driver and a security camera indicated that McVeigh was alone.

About 20 minutes later, McVeigh arrived at the body shop to pick up the truck he had reserved. He spoke with Vicki Beemer who dealt with the paperwork. He then went with Eldon Elliott to inspect the van. A mechanic, Tom Kessinger, claimed that he observed part of this routine transaction. While much debate exists about

how memory operates for highly emotional events (see Christianson, 1992; Memon *et al.*, 1998), this initial viewing was an everyday occurrence for these witnesses.

The next day, 18 April, there was another seemingly uneventful transaction at Elliott's body shop. Michael Hertig, an army sergeant, and Todd Bunting, a private, arrived at about 4pm to pick up a rented truck. Bunting wore a black T-shirt and a baseball cap with a blue and white zigzag pattern. Part of a tattoo would have been visible beneath his left shirt-sleeve.

On 19 April, the FBI were able to identify the vehicle number of the truck used. Agent Scott Crabtree telephoned Elliott's and asked for everyone to stay there until they had figured out who was present on the afternoon of 17 April. Suddenly the routine transaction, two days before, had become a focal point of the largest criminal investigation in the FBI's history.

Beemer, Elliott and Kessinger were questioned about Robert Kling, whom the FBI called John Doe 1. In testimony, Kessinger admitted that they discussed their memories prior to Crabtree arriving.

When they were interviewed, Beemer and Elliott each gave rather sketchy reports of Kling's appearance. Kessinger's description of Kling was more detailed than those given by Beemer and Elliott. Because of this, the FBI asked for his help in constructing an artist's impression. This was shown on television and in newspapers (see Figure 1) and led to Timothy McVeigh being identified as John Doe 1. This, in combination with circumstantial evidence, pointed towards McVeigh's guilt.

Kessinger also described a second person (not Nichols) who was with McVeigh when picking up the truck. He said that this John Doe 2 was shorter than John Doe 1, was dark-haired, tanned and had a tattoo partially covered by the left sleeve of his shirt. He said John Doe 2 wore a blue and white baseball hat with zigzags. It was another fairly detailed description and the sketch of John Doe 2 was shown in the national media (see Figure 2).

After their initial interviews, the memories of Beemer and Elliott transformed, becoming more detailed and confidently held. While Beemer continued to say her memory was poor for John Doe 2 ('he just blended in'), she was very confident. Elliott came to remember this second man and gave details even about the baseball cap he was wearing (with blue 'lightning stripes').

What can eyewitness research tell us about the accuracy of Beemer, Kessinger and Elliott's recollections?

### Confidence and accuracy

Should the investigators have assumed that Kessinger's confidence — expressed right from the beginning — meant that he was more accurate than the others? The simple answer is: it depends. For many years, laboratory simulations of eyewitness testimony concluded that inaccurate witnesses are just as confident in their memory as are accurate witnesses (see Sporer *et al.*, 1995, for a review).

More recently, it has been shown that the relationship between confidence in identification and accuracy depends in part on participants' ability to identify the target. Both accuracy and confidence are higher under conditions that lead to good memory of the target than conditions that lead to poor memory (Lindsay *et al.*, 1998). This makes sense, because in real-life cases there is a great variability in the factors that may affect witnesses' ability to identify the suspect (e.g. attention, duration, delay, or distinctiveness of face).

However, there are two important things to note. Firstly, those conditions that lead to higher confidence in correct identifications (such as only a short delay before being asked to recall an event) also lead to higher confidence in false identifications (Lindsay *et al.*, 1998).

Secondly, if witnesses are led to believe that they are correct, then they will be more confident. This was demonstrated in a recent study by Wells and Bradfield (1998), the results of which were also described by

Wells during his expert testimony in the McVeigh trial.

Wells and Bradfield (1998) had mock witnesses view a line-up without the culprit (called a target absent or blank line-up). Afterwards, some were told that they chose the culprit. Not only were these people more confident than the control group, they also gave more details in later descriptions and said they paid more attention when viewing the crime.

### Cross-contamination of witnesses

Eyewitness memory research has established that adults (Zaragoza & Lane, 1998) and children (Ackil & Zaragoza, 1995) are subject to reconstructive errors in recall, particularly when confronted with misleading information. In other words, a witness can be highly suggestible.

Witnesses may come to believe that they actually remember seeing items in an event that in fact have been (falsely) suggested to them (Wright & Stroud, 1998). There is evidence to suggest that memories created this way do persist over time and become deeply ingrained (Brainerd & Poole, 1997).

Currently, the most popular theoretical explanation for suggestibility effects is source misattribution (but see Ayers & Reder, 1998 for alternative accounts). In other words, witnesses are confusing information obtained outside of the context of the witnessed event (post-event information) with the witnessed event itself. Memories of details from various sources can be amalgamated with memories of that event (Allen & Lindsay, 1998).

Gary Wells specifically made this point about memory blending when asked about the impact of television coverage in *US v McVeigh* (1997). What follows is an extract from direct questioning:

Q: Now, suppose the eyewitness was told to shut the television image out of their mind and only rely on their memory of the previous event. Wouldn't that take care of the problem?

A (Gary Wells): No. You're asking a person to do something they can't do. Their memory by this point is blended. In other words, the first time in which they saw the person which they are being asked about has been blended with — with this second time — in which they may have seen the person on television,

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Figure 1: Photograph of Timothy McVeigh and the FBI sketch of John Doe 1.

*and so there's no real way for them to — for people to sort that out. It's just a single memory.*

Social factors may also distort memory reports. In eyewitness testimony, one source of social influence on memory comes from contact and exchange of information among witnesses.

In some of our own work (Wright & Self, in preparation), participants were asked in pairs whether they had seen several cars in a previous phase of the study. When responding second, people were influenced by the answers of the first person. If the first person said she or he did see the car previously, this raised the probability that the second person would also say this, irrespective of whether the car really was previously seen.

Did Kessinger's confident recollection influence his co-workers in a similar way?

The FBI interviewed other customers who had been at the body shop, and came across Todd Bunting (see Figure 2). They felt Kessinger might have been describing him. If so, this would be a case of 'unconscious transference' (Ross *et al.*, 1994). This is where the memory of someone seen in one situation gets transferred into another, probably as a result of source misattribution or amalgamation of memories or both.

Kessinger was shown a photograph of Bunting and said this was not John Doe 2.

Figure 2: Photograph of Todd Bunting and the FBI sketch of John Doe 2.

However, a year and a half after the explosion, and after several further interviews, Kessinger was shown Bunting dressed as he was on 18 April. Kessinger changed his mind and said the person he described was Bunting.

However, even after Kessinger became convinced that the man in the John Doe 2 sketch was Bunting, he still believed that a John Doe 2 existed. After all, given that his co-workers now reported a John Doe 2, and both the newspapers and the general public said there was, he had reason to think that he must have been right about there being a John Doe 2.

Another relevant area of eyewitness research is the effects of prior exposure on subsequent recognition. If a suspect is viewed previously (in the media, in mugshots, in an earlier line-up), this affects identification accuracy in subsequently presented line-ups (Gorenstein & Ellsworth, 1980).

Several studies have shown that when witnesses view a line-up after having looked at mugshots, they are more likely to identify one of those depicted (regardless of whether that person is the perpetrator) than people not shown that mugshot (see Lindsay, in press, for a review).

### Repeated recall attempts

After high profile crimes, people are usually very helpful in trying to assist police investigators — sometimes too helpful. Many people who witnessed the bombing will have seen the reports of John Doe 2 and may have seen McVeigh in the flesh. They may think about their memories and try to 're-collect'.

This process can increase the likelihood that they actually believe they saw what they only imagined (Garry *et al.*, 1996). Their memories of McVeigh and of the drawing of John Doe 2 get incorporated into an otherwise vague image, and the memory may become more detailed as the person tries to think harder.

Source misattribution errors can also increase with repeated recall attempts (Zaragoza & Mitchell, 1996). While the three body shop witnesses were interviewed promptly on the day of the bombing (just two days after McVeigh was at the body shop), they were then interviewed on multiple occasions over the following years. It is likely that these witnesses exchanged information with each other and would have heard information from other witnesses through the media.

Such witnesses are then faced with the task of distinguishing their own

recollections from those gained through other sources. For example, these particular witnesses must encounter numerous strangers during the course of their work that may resemble each other in characteristic ways. Their memories of these encounters would have to be sufficiently detailed for them to be able to identify a specific encounter with a particular individual.

Again, social mechanisms play a part. An eyewitness recollection may also be driven by social desirability effects. Many of the witnesses, because of this desire to assist, will have dug deep into their memory stores to excavate whichever bits of information they feel may help. Unfortunately for the investigators, these minute mental fragments may be created by the search process.

### Reliability of descriptions

The descriptions of John Doe 2 and Todd Bunting are not detailed enough to make an identification. Instead, the descriptions tend to be non-distinctive. One witness, Jeffrey David, could not even describe the face but only the build of the person. The witnesses are not entirely consistent in their descriptions either. This is fairly typical.

In both laboratory and field studies, person descriptions tend to be poor and typically refer only to cardinal features such as hair, face structure, build and clothing. There is a general tendency to underestimate height and weight (Flin & Shepherd, 1986).

A field study of actual eyewitnesses conducted in Canada (Cutshall & Yuille, 1989) noted that 50 per cent of the estimates of height, weight and age were incorrect. The researchers suggested that this could be due to an error in perceptual judgements or to a memory problem (see Sporer, 1996, for a detailed discussion of factors that can influence size estimates).

Research on individual differences in quality of person descriptions and identification ability is sparse (the first author is currently investigating this topic in her laboratory).

Gary Wells was asked to comment on witnesses' ability to describe faces during cross-examination in the McVeigh trial:

*Q: In fact, studies show, don't they, that there are some people who are naturally better descriptors, describers than other people, isn't that right?*

*A (Gary Wells): No. I don't know of any studies that show people to be naturally better describers.*

*Q: Well, you do know of studies that show there are people — there is very little correlation between the accuracy of the recognition of a person they saw just because they were able to describe them better; isn't that right?*

*A: I believe I published the definitive study on that even to this date. There is something of a correlation between — it's not large — it's not that people who are good describers*

*are good identifiers but, rather, faces that are easy to describe tend to be more easy to identify because they have unique features.*

### The truth about John Doe 2?

So what can eyewitness testimony research tell us about the mysterious John Doe 2? It is clear that no memory is a perfect representation of the original event. Neisser (1967) likened memory to a palaeontologist trying to reconstruct a dinosaur from bits and pieces of fossils together with knowledge about what dinosaurs might be like.

Was Kessinger in a similar situation, putting two and two together? Did Beemer and Elliott use the extra information supplied by Kessinger to help in their reconstructions? Did John Doe 2 play a part in what has come to be known as the most bloody mass murder in American history? Given the imperfections of memory, we may never know for certain.

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