

**THAT'S THE MAN. OH WAIT!
MAYBE NOT**

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*A memory is like a
cobweb*

*Tangled like a grandma's
thread*

*It is like that foggy night
when you can't even see
the light*

*Memory is a vision of a
cataract eye*

*for which hazy and blurry is the end that
draws nigh now tell me, can you still on it
rely?*

*A mind wanders and
memories fade will you still
let it persuade?*

Antonio Beaver was convicted in 1997 for 18 years under the charge of first degree robbery. Beaver was identified by the victim from a lineup including him and three other men. The victim described her attacker as an African-American clean-shaven man with the gap in his teeth and around 5'10" tall. Beaver a man with a mustache and around 6'2" tall and the only man with chipped teeth in the lineup was identified as an attacker by the victim. In

2001, when beaver asked for a DNA test, it led to exoneration of Antonio after he served a decade in jail for the crime he never committed.”

Antonio was convicted on the basis of an identification by the witness. Likewise, there are hundred of cases where clean-handed people were convicted solely on the basis of eyewitness testimony which later turned out to be faulty. Such instances makes the eye witness identification highly questionable and unreliable. The commonly held belief that the direct evidence is the best type of evidence makes eyewitness identification readily acceptable. Notwithstanding, most recent logical review represents an uncertainty on unwavering quality of such dependence.

FACTORS EFFECTING RELIABILITY OF EYEWITNESS IDENTIFICATION

According to the scientific research and practical experience there are distinct factors that can have an influence on the veracity of the identification made by the eyewitness. The shortcomings can be reflected either in the original situation under which the crime took place(factors inherent in the event) or the effect it had on the observer(factors inherent in the witness) or at the time of the test identification parade.

Factors inherent in the event

The criminal scenes are usually fast moving and debilitating situation. Under such circumstances an observer is encountered to the attacker only for a brief timeframe and it is not possible for him to pay attention to the details and other subtle elements. Also the tumultuous stream of events of a crime in progress clash with the perceptual ability of the human eyewitness. Therefore, in a situation where a lot of events are taking place simultaneously it is not possible to expect from a human brain to absorb the material facts and later recall them with accuracy. The variables like distance, poor lighting and fast movements rank an uncertainty on the proficiency of the consideration paid by the onlooker. There are situations when a person is not paying attention to the events thus making his recollection highly dubious. For instance, in a situation where a person standing in a line in the bank not paying much attention to the man standing next to him who robs the

bank, is suddenly a witness and is expected to remember. The phenomena of unconscious transfer is also one such factor on which there is a need to reflect. Under this phenomena the insignificant event converges with the significant event thus leading to stirring up of facts and befuddling the face of a person seen in an insignificant event with that of a person actually involved in a significant event. In an experiment where students witnessed the assault on their professor and when they were later asked to identify, 40% of the witnesses identified the innocent bystanders. Such is a consequence of unconscious transference where the witness often confounds the person present at the crime scene with the person who actually committed the crime. According to me we all have mistaken someone to be somebody else at least at one point of time, and it is highly likely for the phenomena of unconscious transference to kick in when it comes to the identification of the accused.

Factors inherent in the witness

There are also certain factors inherent in the witness that makes the dependability of the identification by the witness sketchy. One such factor is stress. Usually the witness who may also be the victim under the crime scene is exposed to a level of stress and is more inclined towards taking measures that are necessary to save his life. They tend to be more considerate to the fact of saving their lives then paying attention to the other details. Hence, the statement “I could never forget what he looked like” may in my opinion merely mean that the victim may never forget the incident and not literally how the attacker actually looked like. The studies also suggest that the age of the person, injuries caused because of the crime, the physical impairments such as the eyesight or the hearing impairments and whether the person was under the influence of alcohol or drugs at the time of the incident have a huge bearing on the efficiency of the functioning of the body of such eyewitness. However, as far as I think when it comes to alcohol or drugs different human beings react to these in different ways and therefore a set inference cannot be drawn from the same. The prejudices or biases of the witness also have a great impact on the identification made by him. The biases can be racial, religious and even on certain physical characteristics. The human beings are guided by varied stereotypes that can act as an encroachment on how they perceive things. This may lead the witness to depict his stereotype instead of the reality of the events that indeed did happen. Well specially in a country like

India, according to me majority of the population is guided by varied type of stereotypes and studies have shown that such stereotypes can have a huge influence on the identification process. We human beings also see what we want to see. A person may assert of seeing falsies not even present. The people see things what matters to them the most. For instance, a hairstylist may focus on a hairstyle of a person. They perceive according to what suits them the best and makes them most comfortable. Or perceive things in the light of their preconceptions. Different human beings perceive a same thing differently. A glass half full for one person maybe half empty for the other. Human brains is influenced by such numerous components that plays different roles in different situations, and in my opinion the extent of reliability placed on such human memory is deadly as at the end of the day it maybe an innocent's life at stake.

Factors inherent in pretrial identification procedure

The procedure by which the identification process is carried out may also rule the identification made by the eyewitness. The time gap between when the crime took place and the time when the test identification is held plays an important role as a person tends to forget information with the passage of time. As time passes a person may fill in the gaps, thus reconstructing his memory. The way in which a lineup is carried on that is, the number and the time of people included in a lineup can effect the identification process. A lineup should be such where all the items or persons have an equal chance of being selected and are similar to each other. This helps in a situation where a witness is merely guessing. A teacher when framing multiple choice question, often provides with options that are similar and confusing. Such should be police lineup tests to make them more dependable that is, it should be confusing enough to call it a test. The suggestions, hints and pressure at the time of test identification parade should also be considered. A sign of approval through gestures may lead to selection of a person on the basis of that approval and not on the basis of the memory. The eyewitness is also under constant pressure to choose a person from

the lineup even if the accused is not even present. This usually happens when there are lack of instructions given to the witness prior to the lineup. After the witnesses points out the accused and the subsequent feedback can lead to increase his confidence. The questions asked by the witness if are the leading questions, it maybe a huge setback to the accuracy of such identification. In an experiment where a question asked from the witness about an accident the word smashed was used instead of bumped, they reported seeing broken glasses where in fact in reality there was no broken glass.

Realism and the research

However it is true that the scientific experiments are made in more than a perfect situation in a laboratory, which is different from real crime scenes, the experiments to show true results are carried out in situations which are more realistic, as it cannot be denied that the realistic studies

would serve as a better benchmark to analyze the actual human psychological behavior.

Therefore, in my opinion the studies of the experiments where the witnesses are put into a near realistic situation and the fact that the act is staged is not disclosed to them should be relied on. The revelation of the fact will eliminate various factors that are present in a real situation and it is important to consider them.

The identification procedure in the USA

There are certain safeguards adopted by US legal system against the limitations of an eyewitness identification. One such safeguard is of motion-to-suppress. Under this safeguard defense counsel can file a motion to suppress the identification on the grounds of it being suggestive. Another safeguard is that of Voir Dire which is a process to select jury members. This can help the attorneys to select the jurors who can analyze the eyewitness identification critically. In American trials, courts usually show head-in-the-sand attitude towards the admissibility of expert testimony. In *People v Lerma*, when defense filed a motion to call an expert for his testimony on identification by the eyewitness, it was rejected on the ground that it will be leading for the jurors. Under the American legal system, it is the duty of the jurors to find the facts of the case and the judges in the court often believe that testimony by such experts will usurp the role of jurors as finder of the facts. However, such a limitation does not exist in India and therefore courts in India should be more considerate for allowing the experts that will contribute to clarity of the facts. Also in reality such testimony by experts provides an assistance in formulating a rational decision as light is thrown on the aspects that are not known to a layman.

Suggestive Safeguards

Human memory is not analogous to the video tape recording and cannot be expected to play the exact crime scene with the minutest details. Therefore, in order to enhance the accuracy of the identification and to make the best use of the best available evidence it is necessary to incorporate certain changes in the identification process. One such necessary component can be usage of expert testimony. Testimony by experts provides an assistance in formulating a rational decision as light is thrown on the aspects that are not known to a layman. Therefore, according to me it is important to give the judges discretion to call for an expert evidence who would be neutral to the identification made by the witness, that is he would neither support prosecution's case nor the defendant's case, instead he would bring forward the complexities in the process of identification by an

eyewitness on the basis of facts and circumstances of the case in hand or if prosecution brings in an expert witness, the defense should also be allowed to offer its own expert testimony on the same subject, thus leading to accuracy and fairness. Expert witness testimony should also be permissible in support of pretrial (out-of-court identification) on due process objections related to recommended police procedures. This will help to show lineup was conducted improperly. In light of the number of innocents convicted due to misidentifications by the witnesses, it becomes much more important to use expert testimony in the cases involving eyewitness testimony. The judges should also view eyewitness evidence as any other trace evidence such as fingerprints, DNA and like as there are certain biochemical changes that take place in the witnesses' brains at the time of the crime. Therefore, the judges should make sure that proper scientific procedure was followed in collecting and producing such evidence. The absence of adherence of such a procedure will help the judge to weigh the reliability of such an evidence. An effective cross-examination by the defense who is well with the psychological aspects that may effect the eyewitness identification can also help to point out the loopholes in such identification. Certain safeguards at the time of lineup can also prevent miscarriage of justice. The witness for example ought to be informed that the culprit may not be available, to keep him from having undue certainty that the culprit is present in the lineup, consequently prompting a misidentification. Witness should also be informed that the examination will proceed in the event where they don't make an identification preventing them from feeling pressurized into making an identification. The officers leading the lineup ought to themselves stay uninformed of the character of the suspect (blind administrator), to keep them from giving incidental signs or intimations. There should be a sequential rather than simultaneous lineups or the presentation of photos. The people forming a lineup should match the specifications told by the witness and every filler should share resemblance in order to enhance the accuracy. The test identification parade should also be videotaped in order to maintain the wholeness of the entire procedure.

**Taking the best out of the
best**

All lady drivers are not bad drivers. The crimes in the America are not always committed by the blacks. In our daily lives, everyone has at least at some point of time have mistake someone to be someone else. People may not perceive things they don't have knowledge about or may refuse to perceive such things they don't like. Past experiences of an individual may also have an influence on how he perceives certain things. In a crime where a weapon is used, and a person afraid of such weapon may centralize his attention to the weapon and may never pay heed to the attacker. The identification by such a person will be doubtful and dangerous. Different human beings perceive different things in different ways. The identification by an eyewitness is based on memory which is subjected to variety of factors having influence on it. To make the best use of the best available evidence it is essential to eliminate as many factors that could act as a hindrance to the eyewitness testimony. Around 75% of the exoneration cases taken up by the innocence project involve eyewitness error. In order to prevent the accused to roam freely and conviction of an innocent it is important to reform the process of eyewitness identification and adopt the corrective measures.