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To cite this article: Neil S. Hibler & Alan W. Schefflin (2012) Maximizing the Usefulness of Hypnosis in Forensic Investigative Settings, American Journal of Clinical Hypnosis, 55:1, 32-55, DOI: [10.1080/00029157.2012.687700](https://doi.org/10.1080/00029157.2012.687700)

To link to this article: <http://dx.doi.org/10.1080/00029157.2012.687700>



Published online: 06 Jul 2012.



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Maximizing the Usefulness of Hypnosis in Forensic Investigative Settings

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This is an article written for mental health professionals interested in using investigative hypnosis with law enforcement agencies in the effort to enhance the memory of witnesses and victims. Discussion focuses on how to work with law enforcement agencies so as to control for factors that can interfere with recall. Specifics include what police need to know about how to conduct case review, to prepare interviewees, to conduct interviews, and what to do with the results. Case examples are used to illustrate applications of this guidance in actual investigations.

Keywords: forensic hypnosis, investigative hypnosis, law enforcement use of hypnosis, memory enhancement

Mental health professionals who are skilled in hypnosis and interested in consulting with law enforcement agencies may find this article to be a helpful guide. Our intent is to address police procedures and factors common in criminal cases that can contribute to distortions of the memories of crime victims and witnesses, or that can help facilitate accurate recollection. There are many practical issues discussed regarding what police need to know about how hypnosis is used as a memory enhancement procedure, and how this tool might be applied to their casework. The focus is on establishing collaborative consulting relationships that maximize the potential of hypnosis as a crime fighting weapon, complying with legal requirements, and minimizing the risk of memory errors in recall. This article is not a substitute for an in-depth review of the forensic hypnosis literature, or for the development of forensic hypnosis skills. It is an introduction to how the hypnosis professional can effectively communicate with law enforcement to assure that investigative and hypnotic efforts are complementary.

Mental health professionals who are familiar with the usefulness of hypnosis as a therapeutic tool for processing painful recollections and handling negative emotions recognize its value in dealing with witnesses and victims, especially those who may be

traumatized. On the other hand, many criminal investigators find hypnosis a curious and easily misunderstood phenomenon which they may view with caution or even disdain. Law enforcement professionals have to be protective of their cases, especially because they are obligated to deal with many legal challenges that may confound their efforts and which clearly demand that they proceed with cautious attentiveness to applicable rules of criminal investigation. The consequence is that police typically do not understand how hypnosis can effectively complement their efforts, which helps to explain in part why it is not used more often in solving crimes. Using hypnosis in a way that complies with legal and best practice guidelines can bridge this gap, making the collaboration a fresh, safe attempt to work with witnesses and victims. Definitions of the hypnotic interaction that are based on empathetic trance management (Eimer, this issue; Hunter & Eimer, 2012; Zarren & Eimer, 2002) can be helpful for understanding how the hypnotic process can be used to reduce apprehension and to elicit confidence and a sense of protection. Police have a vested interest in accessing the experiences of witnesses and victims who are uncomfortable, if not distressed, by their exposure to trauma.

Certainly, hypnotic memory enhancement is not a panacea. Experience has shown that there is only modest promise for enhancing recollections that result in advancing investigations. Just the same, occasionally information is obtained that has real significance and which may even result in solving a crime when other methods have not been successful.

Hypnosis and Law Enforcement: A Brief History

Gravitz (1983) has reported that the first recorded instance of the use of hypnosis in the investigation of a crime occurred in 1845. After a storekeeper discovered money missing from his cash drawer, he went to his neighbor who, in a state of hypnotic “clairvoyance,” or “magnetic sleep,” described a teenage male as the thief. The boy later confessed.

The first reported legal case in the United States involving the admission in court of posthypnotic testimony occurred in Binghamton, New York in May 1846 (Gravitz, 1995). John Johnson was put on trial for the murder of Mrs. Bolt, who had mysteriously disappeared one evening after confiding to her husband that Johnson had raped her. A witness, Ann Burdick, was hypnotized (“mesmerized”) by her husband and she produced new memories. The trial judge admitted Ann’s testimony into evidence even though she had been hypnotized. Expert opinion was offered questioning the reliability of her hypnotically refreshed recollection. The expert testified that Ann was a hysterical woman and such women, upon hearing of a “remarkable occurrence” in the neighborhood, tend “to dream of it, and after dreaming will mix facts with what is purely imaginary, and be apparently incapable of separating facts from fancy . . . ” (Gravitz, 1995, p. 329).

The first appellate decision in the United States involving hypnosis is *People v. Ebanks* (1897). Ebanks, the defendant in a criminal case, was hypnotized by an expert who

then wanted to testify that Ebanks, while in a trance, made statements professing his innocence. The expert also wanted to testify that he believed that Ebanks was telling the truth and was not guilty. The trial judge refused to permit this testimony: "The law of the United States does not recognize hypnotism. It would be an illegal defense, and I cannot admit it" (*People v. Ebanks*, 1897, p. 665). The California Supreme Court held that the trial judge was correct in his ruling.

Some hypnosis experts have written or testified that *Ebanks* established a rule of *per se* inadmissibility, which rendered any testimony elicited during or after hypnosis inadmissible. These experts are mistaken. The legal issue involved in that case was *not* the admissibility of hypnotically refreshed memory at all, but rather the admissibility of expert testimony about Ebanks' statements and his guilt. The California Supreme Court correctly upheld the trial judge's ruling that such testimony was inadmissible, as do courts today. Hypnosis to refresh memory was not even on the minds of the justices. When *Ebanks* was decided, there were only a few brief references to hypnosis and memory in the 43 legal articles available at that time, and there were no appellate court opinions on this topic.

The modern relationship between hypnosis practitioners and law enforcement officials essentially began in the 1950s. Hypnosis for memory refreshing in investigative settings was pioneered by lay hypnotists (Arons, 1967). Their involvement with police, however, was not generally publicized beyond some reports that appeared in lay hypnosis journals. In 1952, a student article in a law journal expressed a favorable view about hypnosis and memory recollection (Solomon, 1952). A few years later, a New York County Assistant District Attorney argued in favor of the use of investigative hypnosis, except to obtain confessions: "Hypnosis has outgrown its infancy. It now demands its legal emancipation. A court that will not heed this plea bespeaks rigidity and unenlightenment" (Levy, 1955, p. 333).

Police were generally skeptical of hypnosis for at least two reasons. First, hypnosis was viewed as a strange, occult-like phenomenon which either made people act like fools (stage hypnosis) or which controlled their minds (Hollywood hypnosis). Its value to law enforcement was difficult to understand. Second, no court in the United States had given approval to the admissibility of hypnotically refreshed recollection, so there was a real danger that the use of hypnosis would contaminate witnesses, thereby preventing them from providing helpful in-court testimony.

The second problem was eliminated in 1968 when a Maryland court for the first time officially ruled that hypnotically refreshed recollection was admissible in court (*Harding v. State*, 1968). Once this door had opened, police departments embraced hypnosis as an aid to solving crimes (Block, 1976; Diggett & Mulligan, 1981; Hibbard & Worring, 1981; Kuhns, 1981; Monaghan, 1980), a phenomenon which attracted widespread media attention. Police training institutes were established, and eventually thousands of police officers received hypnosis instruction (Reiser, 1980).

Law enforcement embracing of investigative hypnosis created a backlash from professional hypnosis societies. Led by Martin Orne, who sought to shut down police hypnosis

practices, licensed professionals argued that there were dangers of memory contamination when hypnosis is used by unskilled lay hypnotists. Orne originally favored an approach that permitted the introduction of hypnotically refreshed recollection only if certain guidelines were carefully followed (Orne, 1979), but he soon took a harder line and argued that no hypnotically refreshed recollection should be admissible in court even if trained licensed professionals scrupulously followed the guidelines he had developed. His position was reinforced by psychiatrist Bernard Diamond (1980), whose law review article, though filled with major errors about hypnosis and memory, proved persuasive to courts.

In response, in a four paper debate with Orne and Karlin in the *Cultic Studies Journal*, Schefflin (1997) first challenged their claims that the science supported the view that hypnosis inevitably contaminates memory, and then challenged the wisdom of their endorsement of a *per se* exclusion rule which states that any memory that is first recalled during or after hypnosis cannot be the basis for courtroom testimony:

According to the . . . *per se* exclusion rule for hypnotized witnesses, a person who has been lobotomized can testify in court, a person who has received massive electroshock treatments can testify in court, a person who has taken enormous dosages of mind-altering psychiatric drugs or psychedelics can testify in court, a person who has suffered substantial organic brain damage can testify in court; but a person who had been competently hypnotized by an experienced licensed professional who carefully followed strict guidelines to avoid undue suggestions, cannot testify in court. (p. 207)

The legal and the scientific debate about the admissibility and reliability of hypnotically refreshed recollection continues to this day. The number of cases in which hypnosis is a factor, however, has greatly diminished due to the adoption by about half the states of a *per se* exclusion rule. The federal government, however, continues to employ hypnosis in solving crimes, as do the other half of the states. Naturally, no hypnosis practitioner and no law enforcement official should employ hypnosis without first determining the applicable law in the jurisdiction in which the hypnosis will be done. A chart is appended at the end of this article that provides this information.

For police officials to be comfortable with any use of hypnosis, they need to know there have been cases in which it has been helpful, how it is employed and what they need to do to assure interviews are appropriate and effective (Garver, 1987; Hibler, 1992; Kroger & Douce, 1979; Wester & Hammond, 2011).

Preparing to Consult With Law Enforcement Agencies

Utilizing hypnosis in a forensic setting requires the licensed specialist to have a well-established hypnosis skills set, to which knowledge of additional investigative techniques may be helpful. It is important to emphasize that the licensed professional has an ethical duty to safeguard the mental health of the subject. The police desire to learn

additional information must be subordinated to the protection of the subject's emotions. While it is proper to deal carefully with a subject's resistance to trance induction and trance management, the subject's best interests must predominate. This is especially true where the subject's discomfort may constitute an implied revocation of the informed consent that should previously have been obtained. The hypnosis specialist must be prepared to deal with a subject's discomfort at revisiting traumatic experiences, and the possibility of a subject's potential abreactive response. As with other areas of specialty practice, there is no substitute for skill development through research, training, and supervision.

Legal Considerations

One of the most basic requirements for the law enforcement agency is to determine the applicable law governing the use of hypnosis for investigative and testimonial purposes. It is essential that the hypnosis consultant and law enforcement official agree to the approach to be used during the hypnosis session. In jurisdictions where hypnotically refreshed recollections may be admitted in court, two different approaches to conducting the hypnosis interview are available.

The "Federal Model" for forensic hypnosis was developed by the Federal Bureau of Investigation (FBI) to maximize investigative capabilities without jeopardizing the prosecutability of cases (Ault, 1979). It involves a team approach that relies on a qualified mental health professional to manage the hypnosis, and a law enforcement investigator (hypnosis coordinator) who is prepared to provide instruction on what information may be sought and whether the subject's recollections are purely for the development of investigative leads, or whether the subject might later be asked to testify in court.

Because this team approach is a collaboration between experts in hypnosis and crime investigators for the purpose of maximizing the potential to explore memory, it may be necessary to have other people present during the hypnosis session. Accordingly, there is an investigator who functions as a hypnosis coordinator (who manages arrangements with the mental health professional, prospective interviewees, and others), the investigator responsible for the case, a camera operator, and potentially additional resources such as a police artist, language interpreter, or others who may be necessary to ensure the success of the exploration as well as to make sure that the welfare of the witness is protected.

The Guidelines, or Totality of the Circumstances, Model is an alternative approach which was designed to maximize controls over potential sources of inadvertent influence during the hypnosis interview (Schefflin & Shapiro, 1989). Under this model, the hypnosis specialist must have very little knowledge of the case and only the hypnotist can be present in the room with the subject during the interview. Consequently, the recording of the interview and the probative merit of the inquiry is the exclusive responsibility

of the mental health professional. While this method is intended to ensure the privacy and welfare of interviewees, it presumes that the mental health professional has sufficient investigative knowledge to ask questions and pursue replies that would exhaust the available memory trace. Mental health professionals who are not well versed in investigation, interviewing, and interrogation procedures can be at a disadvantage under this model, as the probative value of the inquiry reflects only their own individual appreciation and understanding of the potential investigative value of information sought to be discovered. Thus, this process is individual; it is not interactive as it is with the Federal Model.

The prosecutor or law enforcement official responsible for the case should be asked to advise which model is required in the case in question. Ultimately, the prosecutor for the investigation will determine the appropriate approach, which varies depending upon whether federal, military, or state law is involved. The hypnosis consultant should be trained and qualified in each model, realizing that if the Guidelines, or Totality of the Circumstances, Model applies, the mental health professional should not be provided details of any case in which he or she would be involved prior to being “on camera” during the interview, unless the details have been reduced to writing and later made available to the court and defense counsel. Because these practices and precautions are not routine for law enforcement agencies, departments usually find it helpful to assign a specific investigator to oversee their involvement with hypnosis. The role of that investigator, “the hypnosis coordinator” evolved in order to maximize the development of this resource and to facilitate its use.

The same forensic considerations apply to uses of hypnosis by advocates in the defense of those accused of criminal activity. Very little has been reported regarding the use of hypnosis by prosecutors or the police with those accused of crimes (Mutter, 1984). In general, mental health professionals must be wary of accepting a law enforcement request to use hypnosis with suspects or criminal defendants because those individuals have constitutional rights that might be violated if the hypnosis is without their full knowledge and informed consent.

On the other hand, if defense counsel wants to hire a hypnotist to probe the memory of a suspect or defendant, these constitutional protections are not involved. Indeed, the United States Supreme Court has held that a *per se* exclusion rule cannot be applied to criminal defendants without violating the Sixth Amendment right to put on a defense (*Rock v. Arkansas*, 1987).

Just as this article focuses on prosecutorial practices which are intended to avoid conflict with legal protections afforded those under investigation, law enforcement agencies invariably refrain from employing hypnosis with suspects, preferring that the defense address their own needs when considering a defendant’s memory. As will be detailed later when discussing interview procedure, if a police witness makes a self-incriminating statement when under hypnosis, the interview should be ended, and the matter referred to prosecutorial authorities.

Case Review

Investigative strategy typically attempts to exhaust all reasonable sources of information. Hypnosis sometimes has potential in supporting that effort. When properly employed, hypnosis may, at a minimum, help to ensure the thoroughness of inquiry where there is reason to believe it might be possible to obtain additional information. At a maximum, the effort may result in additional information, the accuracy and value of which must await independent corroboration (Hibler, 1984). That is to say, when information developed in hypnosis is validated by other investigative evidence, the results of the hypnotic inquiry demonstrate accurate memory recovery. Most often the hypnotic process is not involved in trial, as the validated findings have the capacity to stand alone without the necessity of having the hypnosis subject testify in court. A common example is the identification of a rape suspect using hypnotic inquiry to describe the rapist, his vehicle, or other identifying case facts. At trial, reliance may be placed on DNA or other evidence to obtain a conviction.

Of course, not all cases are created or treated equally. There are specific indications, as well as contra-indications, when considering memory enhancement with hypnosis. The following suggestions are driven by influences on memory and legal precedents that have evolved in the effort to ensure fair and just use of this memory enhancement method.

When to Use Hypnosis

Last Resort

With the possible exception of instances in which the loss of life is imminent, such as fast-breaking kidnapping cases, hypnosis should be considered only after all other logical, traditional investigative methods have been tried. Such thoroughness has the advantage of eliminating potential controversy resulting from hypnosis, if the interviewee is expected to testify. Hypnotic interviews are not a shortcut; they are attempts to provide information available by no other means. Traditional approaches invariably are necessary to corroborate information obtained in trance.

Serious Crimes

As with other complicated, expensive, and procedurally intricate methods, hypnosis should be reserved for cases in which there is a serious offense and significant need to consider all reasonable approaches to apprehending a criminal or mitigating the harm his or her conduct might cause (such as when a terrorist has planted a bomb that has not yet exploded).

Potential for Recall

At best, hypnosis can only recover memory which logically would seem likely to be available. There needs to be some reasonable expectation that the interviewee would have been able to see, hear or otherwise meaningfully have a sense of any facts that would have investigative importance. Hypnosis cannot impart extra-human abilities. Asking for unrealistic recall in trance may contribute to confabulation or erroneous recollection that harmfully could be believed to be true. Created or false memory may occur regardless of the precautions taken, yet setting up expectations that are unreasonable may undermine the accuracy of the information reported.

Likelihood of Independent Corroboration

No memory is necessarily accurate; hypnosis does not alter that fact. There is no evidence that a memory recalled during or after hypnosis is more likely, or less likely, to be accurate (Brown, Scheffin, & Hammond, 1998). However, because of a general skepticism about hypnosis, it is wise for law enforcement personnel to obtain independent validation to affirm the potential meaning or value of any hypnotically obtained information. Such corroboration is helpful for hypnotic results to have probative value. Sometimes the validated recollection may eliminate the necessity for the hypnosis subject to testify at all. That is to say, the presence of fingerprints, serological, other physical or indisputable evidence with which to confirm hypnotically accessed memory helps determine the accuracy of an interviewee's recollections, and may make the interviewee's presence in court unnecessary.

When Not to Use Hypnosis

Known Subjects Cases

If a witness has prior knowledge that an individual is a person of interest or is alleged to have been involved in a crime, that knowledge has the potential to contaminate recall by transposing information about the suspect into the memory trace.

Flawed Cases

Problems with cases because of investigative glitches or mistakes make for a difficult prosecution. Hypnosis cannot fix that problem. There are innumerable issues that can create risks to memory, mislead investigations, and otherwise complicate information that might have forensic value. Among the more common problems are the following:

Exposure of a Suspect to Witnesses Without the Control of Lineup Procedures

In a fresh breaking case, exposing a handcuffed suspect to a victim/witness to see if that person was the perpetrator could imprint the image of the handcuffed suspect. The result would be to confuse the image of the suspect in custody with the original memory of the individual who committed the crime.

Witness Collaboration

When witnesses are not isolated and have the opportunity to swap their perceptions, there can easily be influences that can distort recollections.

Undue Influence

Victims and witnesses can be pressured by others to reach conclusions which provide closure but overextend the actual recollection and contribute to inaccuracy. Pressuring of any kind can make a difference; it can be helpful to have some sense of to whom a potential hypnotic interviewee has spoken about his or her experience and what was said. Influences from others may also affect willingness to be interviewed.

Involuntary Participation

Interviews must not be coercive. The threat of punishment or promise of reward only magnifies the potential for distortion. Any violation of consent is also an ethical issue. For example, there was a rape investigation in which the victim was a college student from a foreign culture. The victim believed that having lost her virginity meant she could never marry. The victim's mother warned her to never tell her father of the assault. Prior to the hypnosis interview, the victim signed the hypnosis consent form, but then began to cry. When asked what was happening, she said that she felt pressure to cooperate to be an honorable person, but she actually wanted nothing to do with the investigation—she wanted her privacy and to be left alone. She spontaneously added that she could not imagine herself being involved in a trial and wanted the attention from the assault to stop. Her wishes were respected. No hypnosis interview was conducted.

Credibility of the Interviewee in Question

Some cases present individuals whose interest in the case is for the wrong reasons. Sometimes witnesses volunteer under questionable circumstances, such as the desire to seek notoriety from being involved in a high profile incident, or the hope that a monetary reward may be forthcoming. In a high profile case with a great deal of media coverage, a

“self-proclaimed” witness to a kidnapping played cat and mouse with detectives regarding details of what he allegedly had seen. He emphasized that if a white panel truck was in anyway involved, he wanted the \$50,000 reward. Because of his awkward and questionable manner and the vagueness of his claim, he was asked to submit to a polygraph examination prior to hypnosis. His response was to decline the polygraph and to end further cooperation, saying that he might have been mistaken.

What to Do After Case Review

The authority approving the use of hypnosis in any particular case has to consider factors regarding the potential effect of hypnosis in the investigation and eventual prosecution of the case. Again, the law of the jurisdiction dictates the hypnosis consultant’s role; the two models that exist are in conflict as to what the examining hypnotist might know about the case and how hypnosis should be employed. It is wise for a law enforcement agency to have an established policy for using hypnosis. Hypnosis consultants can be helpful to a department in establishing an investigative hypnosis policy to assure hypnosis is appropriately considered, employed, and available when needed. Perhaps most importantly, such guidance should facilitate the management of potential interviewees with the goal of aiding their capacity to remember.

Some “routine” investigative methods can contaminate memory before hypnosis is planned. While every use of hypnosis has the potential of obtaining inaccurate information, the more enduring risk comes from confusing, if not indelibly altering a witness’s memory, and in doing so unintentionally corrupting that person’s capacity to testify. Here is an example of the malleability of memory and how well-intended police procedure can interfere with recollections that hypnosis may develop.

A small credit union office was entered by two masked men who were clearly witnessed by one customer service worker. When interviewed by police, she was able to describe their activities and attire, and she reported what they said. All of this information was verifiable from cameras monitoring the premises, with the exception of some exterior cameras that had been disabled. The robbers had taken the worker with them through a rear exit to a waiting vehicle. She was the only one who had seen the getaway car. The intent of hypnosis was to obtain a description of the vehicle and perhaps the license plate, which she said she saw but was unable to recall. As this was the only witness to the vehicle, the prosecutor wanted to be certain it would have been likely that she had seen the tag. In the effort to again revisit the crime, the witness was asked to participate in a reenactment.

With great precision, the reenactment was conducted on the same day of the week and at the same time of day as the actual crime. Care was taken for the witness to describe the action, but no one assumed the roles of the subjects, so as to avoid creating a new memory that might “overlay” the original. The reenactment was helpful in reviewing the events of the crime, making clear that the witness would have been able to observe

the getaway vehicle and the rear tag. A hypnotic interview was later conducted. The witness was highly motivated and very cooperative. Results of the interview produced some additional details as to what had happened, and included a spontaneous recitation of a license plate number, which was very satisfying to the witness.

Additional hypnotic inquiry included descriptions of the robbery vehicle as being very familiar; the same make, model, and color as used by the investigators. Running the license plate confirmed that during the reenactment the witness had seen the police vehicle and inadvertently imposed that image over the memory trace of the vehicle used in the robbery. This case example also addresses the importance of preparing witnesses and setting reasonable expectations for all involved.

An additional problem may be raised by a victim or witness who has an enhanced need or desire to be of assistance to the police. Such a person may generate, with or without hypnosis, information that is not accurate in an effort to be extra-zealous in being of some assistance to the solving of the crime (McConkey & Sheehan, 1995).

To summarize, case review is intended to consider how best to advance the investigation, and how to appreciate the potential for obtaining additional information from victims and witnesses while respecting that their recall can be inaccurate. Hypnosis specialists must be careful to observe whether certain motivations or emotions of the subject may interfere with the reliability of hypnotic recall.

Preparing for the Hypnotic Interview

How questions are asked can have a crucial impact on the answers obtained. While historical truth may not be crucial in therapy work (Spence, 1984), it is exceptionally important in forensic questioning. A good forensic examiner must use interviewing techniques that reduce the likelihood of interfering with memory traces, while enhancing the likelihood of reliable and accurate responses, whether hypnosis is used or not used (Hibler, 1985).

It can be helpful for law enforcement investigators to re-interview prospective hypnotic interviewees to update their recollections and to understand what has occurred since the last law enforcement contact. These additional contacts can be helpful to identify or clarify the limits of what might be expected under hypnosis. In all cases, it is advisable to have a written or recorded record of the pre-hypnosis recall. Here are some considerations for police when re-interviewing a witness regarding activity of sufficient investigative importance to potentially consider hypnosis:

- If possible, make the distinction between the subject's perceptions of the incident "now" as opposed to what the witness said to investigators or others previously. Many television shows depict detectives asking a witness: "Tell me what you told the other officer," when it could well be more important to report perceptions at the

time of the current inquiry, regardless of what the witness may have thought or said earlier.

- Asking “open ended questions” typically expands the inquiry, without leading or suggesting memory content, and can easily develop details the witness does not believe to be important, but which may in fact be quite helpful to criminal investigations. This is the same style of inquiry that is recommended when interviewees are in hypnotic trance. Using this permissive, non-leading style is essential in minimizing influences on an interviewee’s memory, whether in trance or not. Many experienced investigators employ this approach routinely, finding that it has far greater likelihood of eliciting details than simply asking questions that seek “yes” or “no” replies. In fact, as lawyers will often tell you, a witness is in more danger during direct examination than during cross-examination. The reason is that on direct examination, the witness is asked general questions which cannot suggest the desired answer. Thus, the witness is given free reign and may inadvertently say things his or her counsel would have preferred to remain unrevealed. By contrast, on cross-examination, leading questions are used to control how the witness will respond. Thus, new material is less likely to be disclosed. Leading a witness toward an investigator’s presumptions can reinforce elements that draw the witness away from what happened (as it was perceived) and how it might be more fully and accurately addressed.
- Ask witnesses/victims to explain what happened by simply letting them narrate, in their own words and in their own manner, the events as they occurred.

Often, witnesses tell investigators about their experience and while doing so, spontaneously report what had occurred as if it were occurring again. Regardless of how they relate to the experience, the police officer conducting the interview should follow the witness’s lead. During pauses, it is sensible to ask what is happening. Let the witness tell the story with minimal guidance from the questioner. Open ended questions permit recollection to follow its natural path, and it provides insight into how the witness processes information.

Open-ended questions, such as those below, facilitate the exploration of available memory without suggesting or implanting information.

- “How else can you describe that?”
- “What else can you say about that?”
- “What makes it seem that way?”
- “Is there anything else you sense that you have not yet told me?”
- When an interviewee replies “That’s all there is,” simply follow through by asking “What happens next?” (and continue until they are satisfied that their statement is complete).
- The narrative can also be repeated, using each telling to fully address and explore the memory trace in the sequence and context in which the experience occurred.

This is the same style of inquiry that should be used in hypnosis. Indeed, because the hypnosis session will be recorded, experts later will examine whether the content of a witness's narration was the product of free recall, or was tainted by unduly leading or suggestive questions. Exposing prospective hypnotic witnesses to this style of inquiry early in the investigative process not only capitalizes on a very effective approach that minimizes distortions, it helps to prepare those who will be hypnotized because the same process will be used during the trance.

Experienced investigators know that over time witnesses give similar statements, yet details often change to some degree. Statements that are repeatedly identical may indicate the disclosure was rehearsed. Sometimes this occurs when a witness attempts to protect his or her credibility by maintaining consistency. Such control can occur at the expense of important details about which they are less certain. Hypnosis consultants and investigators should refrain from giving criticism when statements seem rehearsed or when they vary widely over time. If there is a need to question cooperation or honesty, that should be raised by an investigator who will not be associated with using hypnosis. There needs to be balance between being thorough and avoiding undue influence, while trying not to undermine rapport that may be needed to later effectively utilize hypnosis. The following are some important factors to consider:

- Evaluate the current witness statement relative to what the case file reveals to have been the initial or “fresh complaint.”
- What has been reported by the witness since that time?
- Re-interviewing by police should be guided by the following considerations:
 - (a) Determining what factors have produced additional/different information.
 - (b) Determining what information about the case the witness has come to know about from other sources.
 - (c) Determining, if the witness has reached conclusions, the factors on which these opinions are based. Again, open-ended questions will likely be helpful; open-ended questions seek to understand what the interviewee knows, how he or she came to know it, and what else is perhaps less clear but part of his or her experience.
 - (d) Finally, in some scenarios, witnesses discount their potential value in an investigation, which may cause investigators to overlook potentially valuable leads from which more valuable leads may grow. One example is when an investigator asks witnesses “Tell me what seemed important,” rather than asking “What happened?” Additionally, some cases occur in settings that produce many witnesses; finding those with the greatest potential exposure to the incident can be challenging.

Hypnotic interviews can sometimes be helpful in identifying other witnesses who might have been exposed to details not revealed to interviewees already identified. An example of one such case involved a car bomb which was detonated in a parking

lot adjacent to a military office building. Police interviews of those who stepped forward to tell what they knew did not reveal details that were helpful. Using hypnosis, however, additional witnesses were identified, and their recollections accurately described not only the vehicle and its driver, but the fact that the driver departed the scene on a motorcycle, which was later found. Fingerprints on that escape vehicle confirmed the identity of the rider as being a known subject, already wanted for other bombings.

Obtaining Informed Consent

Obtaining informed consent for hypnosis is invariably a two-step process. First, the potential hypnotic interviewee is approached by an agency investigator, who introduces the general concept of using hypnosis and explains the process (Hibler, 1979). The consulting hypnosis professional will be helpful in providing police with practical descriptions of hypnosis and the interview process. It should be noted, however, that if the Guidelines, or Totality of the Circumstances, Model is employed, the mental health professional should not have direct contact with the interviewee prior to the actual interview.

The second step in obtaining informed consent is a formal process where the hypnotist obtains a written signed informed consent document which describes the nature of hypnosis, the misconceptions about it, the fact that no memories might be recovered, and that any memories that are recalled may or may not be accurate. The hypnotist should emphasize that the subject should be as relaxed as possible, and that the hypnosis session can be ended if any discomfort bothers the witness. The hypnotist should also invite the witness to express any questions or concerns he or she may have, and the hypnotist should guard against creating any undue expectations that the hypnosis will “work.”

When police contact prospective hypnotic interviewees, it is also important that the police shape their expectations with great modesty. The hypnotic interview is one of many efforts “to leave no stone unturned.” Witnesses should not feel any pressure to “solve” the case. Research in the federal sector has reported that in about 12% of cases, something useful results from using hypnosis. Certainly cases are “solved” in only a fraction of that percentage (Hibler, 1992). Just the same, in important cases, when the investigative trail is cold, even a small amount of potential new information may be worth the effort.

Interview Considerations

Once all parties are in agreement, preparations can be made for conducting the interview. In keeping with agency policy and the interview model directed by law, the following considerations are typical for investigative hypnosis interviews:

- *People:* Coordination has to be made to schedule the hypnosis professional, interviewee, Hypnosis Coordinator (Federal Model), case agent, and potentially

a police artist or language interpreter. In the Guidelines, or Totality of the Circumstances, Model, the mental health professional can have no prior knowledge of the case and no others can be in the interview room.

- *Time*: The length of an interview is dependent on the nature of the traumatic experience to be considered, the comfort of the interviewee, the time it might take to place the subject into an adequate trance, and the nature of the details that might be discoverable from memory. Many interviews are concluded within a few hours, some take all day or longer. Asking parties to be available for the day allows time to pace the process and avoid unnecessary pressure to rush (or produce).
- *Place*: The most important factor is privacy, a place free from distraction. In the Guidelines, or Totality of Circumstances, Model, the interviewee is accompanied only by the mental health professional. The Federal Model permits others to be present, but as a practical matter, only those essential to the inquiry should be in the same room as the interviewee. Others with a need to be involved can observe in a separate space where observers can watch the interview on a television monitor, and can discuss the evolving information in the context of the investigation's findings. Keeping observers to a minimum reduces the likelihood of unintentional influence, while maintaining a professional atmosphere that respects the interviewee and protects information developed from unnecessary disclosure. If the need arises for others to know of the interview outcome, they can be briefed by the case agent or they can view the tape recording, if that is necessary. Many agencies use their own spaces out of convenience. If there is a particular need for privacy it may be preferable to use another available facility, such as adjoining hotel rooms or other settings.
- *Material objects*: In addition to arranging people's schedules and space for the interviewee, equipment is needed to record and aid in identification procedures.
 - (a) Audio/video recording equipment is needed to videotape the session. The camera will ideally be augmented with separate microphones for the interviewee, mental health professional, and with the Federal Model, a hypnosis law enforcement coordinator. The camera needs to be affixed to a tripod and set far enough back to have *all* participants in the recorded image. Ideally, the recorded image will include a digital image with elapsed time; if a date-time generator is not available, a clock should be clearly visible in the recorded image. In the Guidelines, or Totality of the Circumstances, Model, a camera operator is not allowed. Arrangements need to be made to ensure recording tapes are changed without missing any interview content. That is accomplished by the hypnotist carefully monitoring how much time has passed. If the Federal Model is used, tapes are changed by a camera operator who signals the mental health professional as the recording tape nears its end, so that the interviewee can be brought out of trance before making the change, or alternately

- the operator can switch to a second camera, without need to disturb the hypnosis.
- (b) Resources to make facial or other identifications may be needed. These typically include a police artist/identikit operator (or other facial construction process), photographic line-ups, license plate guides, or whatever identification resources are dictated by the case.
 - (c) While not absolutely critical, the interview room would ideally have a comfortable chair for the interviewee (such as a recliner).
 - (d) Other items such as a clipboard, blank paper, and pencils (for automatic writing) are helpful to have on hand, as well as a box of Kleenex for interviewees who display strong emotions.

Interviewing is next. Under the Guidelines, or Totality of the Circumstances, Model, the interview is conducted exclusively by the mental health professional. Interviews conducted under the Federal Model usually involve an investigator whom the hypnosis consultant has prepared to assist in the questioning. Using this team approach, there also is a case investigator (who knows the case best). That investigator may submit written questions to the coordinator during the hypnosis session by writing the question in a note that is passed to the interviewing investigator in a manner that does not interfere with trance management.

As just mentioned, investigators who would assist with inquiry during interviews (employing the Federal Model) will require specific preparation from the hypnosis consultant. In such cases, interviews are a collaboration in which the mental health professional is responsible for explaining hypnosis, obtaining fully informed consent, trance management, use of specific enhancement techniques, and the welfare of the interviewee. The hypnotic coordinator assists with administrative issues, such as recording the date, time, and those present during interview. When prepared by the mental health hypnosis consultant, the hypnotic coordinator can be very helpful in questioning, particularly because of their understanding of investigative procedure and the merits of obtaining certain specific details in the case.

This collaboration is best realized when the assisting hypnotic coordinator has some understanding of different methods of trance induction, deepening, and trance phenomenon. In particular, it is important for them to appreciate that during hypnosis, simple questions and encouragements (prompts) facilitate responding. Likewise, the use of pauses, silence, and inflection can be important to facilitating the hypnotic experience while exploring memory. It is recommended that before investigators assist in hypnotic inquiry, they review a variety of tape recorded forensic hypnosis interviews. The American Society of Clinical Hypnosis (ASCH) has a library of such videos. Viewing interviews in this manner is valuable preparation, helpful in appreciating different approaches, including ways of managing trance and the wide range of behaviors that can occur in hypnosis.

The course of the interview should follow a structured approach (Hammond et al., 1995). The role for investigators using the “Federal” or “Team” approach involves:

- Instructing the camera operator to begin recording and then opening the interview by the hypnosis coordinator stating the place, date, time, and identifying all present; and
- Asking for permission from the interviewee to record, and obtaining an acknowledgment from the interviewee that informed consent has been obtained.

The hypnosis coordinator states the purpose of the interview, and then turns attention to the mental health professional:

- The mental health professional establishes rapport and conducts a mental status examination and evaluation;
- Explains hypnosis (to include discussing accepted definitions, misunderstandings, hypnotic characteristics and interviewee’s experience with hypnosis and sense of it);
- Describes possible procedures to be used; and
- Administers measures of hypnotic susceptibility and then returns attention to the hypnosis coordinator.

The hypnosis coordinator then asks the interviewee to describe the event in question (seeking that they provide an uninterrupted narrative of the experience), after which attention is returned to the mental health professional.

The mental health professional conducts a hypnotic induction for the interview, evidencing hypnotic phenomena with which to demonstrate hypnotic capacity and depth of trance. It should be noted, however, that some interviewees do not easily respond to tests of hypnotic trance depth and capacity, and may later deny that they were in hypnosis at all. Just the same, it is not unusual for such interviewees to provide additional information during the interview that is later proven to be valid and helpful to the investigation. Consequently, observation of natural signs of trance phenomena can also be helpful in documenting the interviewee’s hypnotic experience. One example of such a case involved a patrol officer who had driven past a residence where two men were carrying household items to a car parked in front of the house. Hours later the officer received a radio call to respond to that residence where a burglary was reported. The officer immediately realized that he had witnessed that crime while it was in progress. He apparently did not get a good look at the burglars, but had driven slowly past their vehicle. He had looked at it closely, yet he was at a loss when trying to describe it. Using hypnosis was a challenge; the officer repeatedly alerted and became increasingly frustrated. He was comfortable describing the event with eyes closed, but resisted attempts to evidence hypnosis or measure trance depth. The interview ended with a suggestion that his sense of the experience might be clearer at a later time. The next morning the officer was on the steps of the police station waiting for the hypnosis team to arrive, proudly presenting

a listing of some two dozen details of the suspect vehicle. Among the items described was a magnetic antenna affixed to the vehicle's roof and a police scanner on the dashboard, which seemed to explain how the thieves were able to evade the authorities. Police then canvassed the neighborhood where the burglary had occurred. The vehicle had been seen in the area prior to the crime, apparently when looking for signs that homeowners were away. The police then canvassed other neighborhoods where recent break-ins had occurred, revealing the suspect auto had been seen in those locations as well.

The law enforcement investigator then encourages recall of the event, allowing the narrative to initially be "free recall" that is not interrupted, followed by repeating the narrative with non-leading questions and prompts to continue the dialogue. Actually there is not just one way to enact the recall, nor evidence that one method is better than another. So long as the elicitation of information is permissive and open-ended, whatever works, works. The mental health professional can use age/time regression to prompt recall; the interviewee has just narrated the experience without hypnosis, typically little guidance is needed to pick up where they left off.

Because communication when in hypnosis is often soft-spoken, slow to respond, or prone to fall into silence, encouragements such "Um-hum," "all right," and "go on" can be helpful in developing the descriptions. Often interviewees spontaneously narrate their recollection as if they are re-experiencing the event and sometimes it is helpful to ask questions in the present tense, such as "What is happening now?" Questioning is conducted by both the hypnosis coordinator and the hypnotist. The mental health professional is responsible for trance management and the welfare of the interviewee. This includes addressing emotions that may present, and temporarily terminating the trance in order to change recording tapes or take a break. Before taking breaks, those present should be told not to discuss the case when not being recorded. Finally, at the conclusion of the inquiry, the mental health professional ends the hypnosis, using re-alerting procedures suited to ensuring the welfare of the interviewee.

After concluding the hypnosis, it is helpful to discuss recalled information with the intent of identifying any changes that resulted. The interviewee may be asked for explanations about any differences from his or her pre-hypnotic recollection.

The mental health professional may provide a post-hypnotic suggestion for further recall after trance, but the wording must be careful to avoid suggesting that additional memories will in fact be forthcoming. An example would be a permissive suggestion, such as "Additional information sometimes comes to mind after hypnosis. If other thoughts come to you later, be sure to let the police investigator know."

Before concluding the interview, the mental health professional should ask the interviewee how he or she feels. The session should be concluded after confirming the interviewee is comfortable. The method of re-alerting is at the discretion of the mental health professional, as are the means of trance induction and trance management. The reason for ending the session after affirming the interviewee is comfortable is to assure that time is taken to allow the interviewee to re-alert and deal with any uncomfortable post-trance phenomena that might be present (Kluft, 2012).

After the Interview

Regardless of which interview model is employed, there are several tasks that are important to assuring the value of the hypnotic effort. The mental health professional should provide a brief memorandum for the record that discusses the procedures employed, observations regarding trance depth, hypnotizability, and trance validity. This document should also address any issues relating to the welfare of the interviewee during and after the hypnotic experience. A copy of this memorandum from the mental health professional is retained with the case file. The investigator should secure the videotape recordings as evidence. For purposes of review, copies of the tape may be made.

Follow Up

It is always valuable to sit down with the case agent and others involved in the case to process the information that was developed. At a minimum, it will provide closure to the expectations of others regarding the experience. It can be helpful to review the information reported during the interview as potentially further confirming what was already known, to question how much confidence should be placed in what was known, or to consider how best to proceed with new information not already known.

Sequencing of further investigative activity should be considered using existing evidence to validate hypnotically obtained information and to logically expand the investigation as that corroboration warrants. Hypnosis cannot be a trier of fact; hypnosis is a means for developing information which has potential utility if validated.

Follow up also involves getting back in touch with the interviewee. Often additional information comes into awareness long after the interview; that retrieval can occur spontaneously or when encouraged by the post-hypnotic suggestion. Reaching out to the interviewee facilitates reporting such further thoughts that may have evolved, while at the same time providing an opportunity to affirm the interviewee's welfare. Although difficulties rarely arise, if an interviewee later reports having emotional discomfort, the police should encourage involvement with a mental health practitioner, but not the mental health professional conducting the forensic hypnosis interview. The forensic hypnosis interviewer would experience a conflict of roles if asked to provide intervention.

Conclusion

Using hypnosis in forensic settings requires care and preparation; adverse consequences can easily result. If properly conducted, hypnosis may advance important investigations and result in solving crimes. Such promise that exists is achieved through a partnership between the mental health professional with hypnosis qualifications and

law enforcement authorities. Preparing for interviews requires coordination with the prosecutor to determine which interviewing model applies in the jurisdiction involved. Conducting the interview requires preparation and well-developed hypnotic skills coupled with careful, open-ended questioning and recall enhancement techniques. Information that results from interviewing is of unknown validity. Law enforcement investigation is then necessary as the value of the information obtained must be determined by independent corroboration, evidencing that the recollections are in fact reliable.

Mental health professionals with hypnotic skills, initiative, and the desire to make a difference have demonstrated that sometimes otherwise inaccessible memories can be accurately retrieved. This collaboration between police and hypnosis professionals contributes to the protection of our communities. Law enforcement needs and appreciates all the help it can get.

Memory accessed under hypnosis is subject to the same distortions as is memory accessed in the normal waking state. However, it can potentially also be further distorted as a result of the subject's possible heightened suggestibility and the potential dominance in trance of imaginative non-logical processes (Brown et al., 1998). Hypnotically refreshed recollections may be perceived by interviewees with more confidence, when the accuracy of the retrieved information is actually unknown. It is important to emphasize that there is no additional "magic" when hypnosis is used for memory retrieval.

Experts in memory, hypnosis, and law have collaborated to produce standards of care for forensic hypnosis (Hammond et al., 1995). The ASCH guidelines explain the nature of the relevant memory and hypnosis issues, and they provide procedures that should be followed for conducting a hypnotic inquiry. These guidelines should be carefully consulted before any hypnosis sessions are conducted. It is also advisable that any hypnosis specialist desiring to assist law enforcement first receive specific training in forensic hypnosis. Such training is generally available from several professional hypnosis organizations, or it may be obtained on a private consulting basis.

Working with law enforcement to help solve crimes can be tremendously rewarding. But, because the stakes are so high, the qualifications of the hypnosis specialist must be impeccable, and the hypnosis work that is done must pass scrutiny with experts who are likely to evaluate it if the case will go to trial. Hypnosis has played a role in law enforcement for well over a century (Schefflin & Shapiro, 1989). There is every reason to believe it will continue to do so for the next century.

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Appendix

State and Federal Hypnosis Rules

Per Se Exclusion Rule

Alaska
 Arizona
 Arkansas
 California
 Connecticut
 Florida
 Georgia
 Hawai'i
 Illinois
 Indiana
 Kansas
 Maryland
 Massachusetts
 Michigan
 Minnesota
 Missouri
 Nebraska
 New Jersey
 New York
 North Carolina
 Oklahoma
 Pennsylvania
 Utah
 Virginia
 Washington

Per Se (Open) Admissibility Rule

North Dakota
Oregon
Wyoming

Guidelines/ Totality of the Circumstances Rule

Alabama
Colorado
Idaho
Iowa
Kentucky
Louisiana
Mississippi
New Mexico
Ohio
South Carolina
South Dakota
Tennessee
Texas
Wisconsin
First Circuit Federal Court of Appeals
Second Circuit Federal Court of Appeals
Third Circuit Federal Court of Appeals
Fourth Circuit Federal Court of Appeals
Fifth Circuit Federal Court of Appeals
Sixth Circuit Federal Court of Appeals
Seventh Circuit Federal Court of Appeals
Eighth Circuit Federal Court of Appeals
Ninth Circuit Federal Court of Appeals
Tenth Circuit Federal Court of Appeals.
Eleventh Circuit Federal Court of Appeals

No Definitive Court Ruling

Delaware
District of Columbia
Maine
Montana
Nevada
New Hampshire
Rhode Island
Vermont
West Virginia
District of Columbia Circuit Federal Court of Appeals

Summary

Per Se Rule: 25 states

Open Admissibility Rule: 3 states

Guidelines/Totality Rule: 14 states + 11 Federal Courts of Appeals

No Definitive Rule: 8 states + the District of Columbia + U.S. Court of Appeals for the District of Columbia

Thus, of the 63 jurisdictions, currently 25 have a *per se* rule, and 38 do not. No court has analyzed the recent (last 10 years) scientific literature on hypnosis and memory.

Because of possible changes in the law, it is advisable to obtain the latest information on the current rule in the jurisdiction where the hypnotist intends to do forensic work.