

LAW ENFORCEMENT MANAGEMENT INSTITUTE

THE USE OF HYPNOSIS IN CRIMINAL INVESTIGATION

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The history of clinical and therapeutic hypnosis dates to the beginning of civilization. Hypnosis had many practitioners such as priests, tribal medicine men, soothsayers, and magicians. Hypnosis has been used to influence all types of human and animal like behavior, to induce or remove spells, and to achieve cures or perceived cures of human suffering. While practiced over the centuries, hypnosis gained an acceptance and increased usage approximately 3,000 years ago as the Greeks, Persians, Hindu, and Indian oracles came to understand it's effects upon people. "Hypnosis is a human phenomenon and is as old as man". (Reiser 1980)

The term hypnosis was coined in 1843 by a Scottish physician named John Braid. The name hypnosis was taken from the Greek word "hypnos" meaning to sleep. Braid concluded that it was suggestions made to an individual which actually produced the hypnotic results. It was not until the 1880s that hypnosis began to emerge as a viable therapeutic alternative. Jean Martin Charcot "equated susceptibility to hypnosis with pathology." (Reiser 1980) Amboise-Auguste Liebeault and Hippoly Marie Bernheim in France "did much to

popularize the use of hypnosis for therapeutic purposes." (Reiser 1980)

In the early twentieth century hypnosis became a tool of theatrical entertainment and hypnosis was used in treating amnesia and paralysis victims returning from the ravages of World War I. "Hypnosis seems to be cyclic" (Reiser 1980) and after years of dormancy, rejection, and skepticism, there has come a resurgent interest in it's varied applications.

To facilitate the continued and enhanced use of hypnosis, it became necessary to overcome misconceptions about the validity of hypnosis. The most common misconception was, and in some minds still is, that hypnosis was a state of sleep. In fact, an individual who is in a state of hypnosis is totally aware of all that is transpiring around him or her. This is true regardless of the level of the hypnotic state. The individual who is hypnotized is in a subconscious state, while the individual who is asleep is in an unconscious condition. The other main misconception is that the hypnotized person surrenders control of his or her will to the hypnotist. Quite the contrary. An individual who enters hypnosis cannot be compelled to do or say anything under hypnosis that he or she would not normally do or say. "In 1955 the British Medical Association endorsed the teaching of hypnosis, and in 1958 the American Medical Association and the American Psychological Association followed suit." (Reiser 1980) This

and other progressive steps notwithstanding, some individuals within the medical and mental health fields feel that the teaching and use of hypnosis should be much more selectively regulated. Some of this controversy stems from genuine concern while others come from a more personal bias and desire to limit the field of competition on monetary grounds.

There are four main uses for hypnosis today. The first is for entertainment and is referred to as stage hypnosis. The second type is known as self-hypnosis and is used for enhanced personal relaxation, job skills improvement, test taking, and other situations in which an individual desires to increase a particular act. The third type of use is in clinical or therapeutics. In this area hypnosis is used in behavior modification, emotional distress, and surgical procedures. The last, and the one with which this document is concerned, is law enforcement investigations.

The earliest known use of hypnosis by law enforcement personnel came in 1897 in the State of California. (People 1897) Further use was very sporadic until the mid-century mark and into the 1960s. The use of hypnosis by law enforcement has been repeatedly challenged in the courts in almost every state. Its use has been resisted by members of the medical community, defense attorneys, prosecutors, and citizens. A major reluctance rests on the position that police were not sufficiently educated or trained to be allowed to engage in the use of hypnosis.

Then, in 1959, the first training session for police officers in the use of hypnosis was begun. Mr. Harry Aaron, a long time practitioner and trainer of medical personnel, started teaching the police. From that meager beginning the training of qualified law enforcement personnel has been extended across the nation. The focal point of this training is to enable the retrieval of consciously forgotten information. In Texas this quality training emanates from the Therapeutic and Forensic Hypnosis Institute and the North Central Texas Regional Police Academy in association with the Hypnosis Institute at Colleyville.

While hypnosis enjoyed a limited use for the next two decades a notorious case in California in 1976 is probably responsible for the use of hypnosis coming of age in investigations. That year three men kidnapped twenty-six school children. Dr. William Kroger performed the session which retrieved the suspects vehicle license number. That lead resulted in the arrest and conviction of three men. Even though hypnosis continued to encounter legal barriers, its use became widespread. A few years later the Los Angeles Police Department established a full time hypnosis unit, the first in the United States. A stringent format for the selection of personnel, training, and procedural guidelines were designed. A statistical analysis was maintained and it was found that in those investigations where hypnosis was employed, new information was obtained 60 to 70 percent of the time. That percentage has grown to 80 to 90 percent as

officers and procedures have become more refined in the use of hypnosis. An examination of twenty-seven hypnosis sessions conducted by the author over the past two years reveals that in twenty-one of the sessions, or 80%, previously unknown information was obtained. Hypnosis is credited with the solution of a growing number of criminal offenses. "The forensic use of hypnosis has increased sharply in the first decade owing to its perceived usefulness as an investigative tool and to the establishment of proprietary, four day or shorter hypnosis training programs for police officers." (Orne, Dinges, and Orne 1984) It must be remembered that as successful as hypnotism is, it is no substitute for good investigative procedures. "In some highly publicized cases, valuable leads have emerged after hypnosis was employed." (Orne, Dinges, and Orne 1984) It is of paramount importance that the previously unknown information gained through hypnosis be corroborated in order to validate its worth in court.

Contrary to the beliefs of a small circle of antagonists, hypnosis is not mind control. Hypnosis involves trust and cooperation on the part of the subject and between the subject and hypnotist. The subject is actually more alert under hypnosis due to an increased state of physical relaxation. Most recently some attorneys and health field professionals have voiced an alarm that the police will use hypnosis to coerce witnesses or suggest desired responses from witnesses or victims. While this is a disadvantage it

must be noted that it is not due to hypnotism, but due to the unethical and non-professional actions of the hypnotist conducting the session. Pierre Janet wrote in Psychological Healing in 1925 that "even in bad hands, suggestion and hypnotism do not seem to have been able to do much harm." D. B. Cheek asserted that "more harm is done with ignorance of hypnosis than can be done by intelligently using the forces of suggestion." (Cheek and LeCron 1986) Yet, the argument goes on. Some feel that once a witness has been hypnotized for the purpose of enhancing memory, his or her recollection has been so contaminated that he or she is effectively rendered incompetent to testify. This contradicts published experience. There is no evidence of danger in using hypnosis by law enforcement personnel in the investigation of criminal offenses. "As with any tool, the only danger with hypnosis lies in its misuse. Conn gives an unqualified no to the question, 'Is Hypnosis dangerous?'" (Reiser 1980)

There does exist another possible disadvantage to the use of hypnosis. This factor is that an individual can lie under hypnosis. This is not a disabling problem, however, because individuals with the propensity for falsehood should be weeded out in the interview process prior to being a subject of hypnosis.

In the end, barring unethical conduct on the part of the hypnotist, hypnosis provides a great advantage to the criminal investigator. "Knowledge of the uses and limits of hypnosis by the interrogating professionals enhances the

judicious process of eliciting information and evidence and used knowledgeably with appreciation of their limits, hypnosis techniques can be helpful." (Spiegel 1980) There has been a number of high profile investigations in which hypnosis played a pivotal role. These include the assassination of U. S. District Judge John Wood, the Hillside Strangler, the assassination of Robert F. Kennedy, the Atlanta mass murders, and many more. "The very nature of hypnosis renders it the most efficient procedure for retrieving forgotten data." (Bodisch 1980)

The law already recognizes hypnosis as an effective and useful investigative tool. Like any other tool of law enforcement hypnosis has been the target of many diverse court challenges. The arguments for and against the use of hypnosis are as plentiful as the number of attorneys, both prosecution and defense, and courts which litigate the question. Dr. David B. Cheek has stated that "It would be a great wrong to exclude all evidence derived from the use of hypnosis." (Cheek 1981) Also, "Hypnosis as an evidentiary tool is gaining wider acceptance." (McCormick 208)

There has been an increase in court decisions liberally defining what may be employed to refresh the memory of a victim or witness. The Ninth Circuit U. S. Court of Appeals has taken the position that, "It is quite immaterial by what means the memory is quickened; it may be a song, a face, or a newspaper article, or a writing of some character. It is sufficient that by some mental operation, however

mysterious, the memory is stimulated to recall the event, for when set in motion it functions quite independently of the actuating cause." (Jewett 1926)

The courts have begun to move away from decisions revolving around reliability and admissibility and have started focusing on the hypnotic process itself. In doing so the courts are applying procedural guidelines which must be followed during the hypnosis session. Hypnosis as an evidentiary tool is gaining wider acceptance.

In Maryland, a girl was shot and raped, but could not recall the crime. Hypnosis aided her recall, the testimony was admitted, and the defendant was convicted. The Maryland Court of Special Appeals noted in confirming the conviction that "Modern medical science recognizes that hypnosis can aid in recall, though fantasy may be mingled with fact." (Harding 1970)

In 1971, the court in Oregon held that hypnosis is allowed as long as the defense is allowed to conduct adequate cross examination. (State 1971) The credibility of the witness and the admissibility of the testimony was also upheld in 1975. (Kline 1975) In 1979 a landmark case was heard in the County Court in Syracuse, New York. The defendant was convicted of first degree rape. Assistant District Attorney William Fitzpatrick praised the use of hypnosis. The victim, who could not recall the crime, identified her attacker under hypnosis. (Syracuse 1979)

In the most recent cases of note the Texas Court of Criminal Appeals and the U. S. Supreme Court have made far reaching decisions on the questions of admissibility of hypnotically recalled testimony and the procedural aspects of conducting hypnosis sessions. The U. S. Supreme Court struck down the per se rule of evidence in Arkansas that all hypnosis refreshed testimony was unreliable. The court stated in a five to four opinion that wholesale inadmissibility was constitutionally arbitrary. Thus, as in Texas, the testimony is admissible if shown to be trustworthy. (Rock 1985)

This decision and others draw upon a Colorado case in 1987 to establish the parameters of trustworthiness as to the procedures used and the subsequent testimony obtained. In People v Romero, 745 P 2d 1003, a set of factors were promulgated. These included, but were not limited to: the level of training in the uses and applications of hypnosis by the hypnotist; the hypnotist's independence from the investigators or attorneys'; the existence of a record of any information given to or known by the hypnotist prior to the hypnosis session; a record of the entire session conducted by the hypnotist; the location of the session and presence of other individuals; the appropriateness of the induction and memory retrieval techniques used; and the existence of any corroborative evidence. Obviously, the non existence of suggestions by the hypnotist would also go to

the weight, admissibility, and trustworthiness issues.

(People 1987)

In Rock v Arkansas, 107 S. Ct. 2704, the U. S. Supreme Courts decision resulted in defendants hypnotically refreshed testimony being admissible. Thus, the Texas Court of Criminal Appeals decision in Zani v Texas, 758 S.W.2d 233, was very notable. The court stated in essence that if a defendants testimony, if trustworthy, was admissible, then the State must also be allowed to introduce such testimony, if it is found to be trustworthy. The court relies on the trustworthiness being demonstrated by clear and convincing evidence. The Court of Criminal Appeals also adopted the procedural guidelines as established in the Colorado case of People v Romero, 745 P 2d 1003. (Zani 1988)

Based on these judicial decisions the courts now recognize hypnosis not only as an investigative tool of law enforcement, but also, under strict guidelines, recognizes hypnosis as an evidentiary tool. The continued and enhanced position of hypnosis in criminal proceedings will be the responsibility of those who conduct the investigative and forensic hypnosis sessions.

Hypnosis is a very viable and valuable weapon in the law enforcement arsenal.

"Hypnosis is by no means a panacea for the trial process. Under proper analysis, hypnosis provides a useful method for obtaining otherwise inaccessible information for the fact finder, which like any testimony is subject to inherent problems of memory and perception. It is recognized by many courts that hypnosis does not function as a truth determinant. As a result of professional pioneers, hypnosis is now being

used to refresh a witness' memory and has the basis for expert opinions." (Bodisch 1980)

Hypnosis has come out of the dark ages to become a respectable tool for law enforcement and is now accepted as another valuable technique in the war against crime.

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