

**THE BILL BLACKWOOD  
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

A Report Outlining the Professional  
Use of Forensic Hypnosis  
for Small Departments

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## **ABSTRACT**

Investigative or forensic hypnosis is one of the many tools available to Law enforcement officers for the successful conclusion to a criminal investigation. Hypnosis as an investigative tool, however, has not been fully accepted by the law enforcement community nor with the prosecutors within their respective jurisdiction. This is primarily due to the suspicious nature of police officers, the lack of understanding, and the adverse publicity hypnosis has received over the years from stage hypnotists, horror movies, and books.

Further hesitation is due to the many misconceptions surrounding the use Of hypnosis. The belief that the hypnotist has complete control over the subject's mind and can have the subject submit to things that would conflict with their moral standards would be at the forefront of these misconceptions. Misconceptions such as these are totally erroneous (Spiegel 73-85).

The purpose of this project is to present the justification for the development and implementation of forensic hypnosis use in small departments. A review of the history of hypnosis, liability issues involved, legal aspects concerning case law, and educational theories used in the field of forensic hypnosis are presented.

The conclusion of this research indicates that forensic hypnosis is useful in criminal investigations when administered by properly trained personnel and should be utilized. In addition, with the stringent constraints and qualifications of the hypnotist, hypnosis is a well monitored and protected investigative field. Forensic hypnosis should be utilized in difficult cases as a last resort, possibly clearing unsolved cases.

## **Introduction**

Today's law enforcement professionals are faced with ever increasing demands from the citizens they protect and serve. A vast array of technology exists to assist the police in this endless endeavor. However, items of investigative interest of the past could prove helpful as well. The use of hypnosis had been traced back in time to as early as 1770. The ancient science has only been used in more recent years for assisting victims and witnesses to recall information repressed by the conscious mind.

The purpose of this project is to present justification for the development and implementation of forensic hypnosis in small departments. Forensic hypnosis is a highly specialized field which specifically targets victims and/or witnesses of violent crimes. This investigative tool, when used by professionally trained police officers can assist in the recalling of repressed memories or details from the subjects.

The problem and issues to be examined will include the explanation of the misconceptions surrounding the use of hypnosis and the need for hypnosis use in smaller departments. The reason this is directed to small departments is due to the limited resources these departments have. Many smaller departments have not instituted the use of hypnosis because of the lack of understanding, training involved, and budgetary constraints.

The intended audience of this project will include the administrators of the Dumas Police Department. It will also be available to administrators of departments which are comparable to ours in size, as well as prosecutors of the respective jurisdictions.

There are several sources of information which will be reviewed and are pertinent to this project. These will include journals, books, articles, and personal knowledge obtained from prior training. There will also be a review of current case law pertaining to the use of hypnosis, as well as laws and regulations which govern the use of hypnosis.

The intended outcome of this project will be to summarize and present facts to smaller departments concerning the use of forensic hypnosis. This will

include a review of the history of hypnosis, the liability issues involved, and the mandated requirements regarding the use of hypnosis.

### **Historical, Legal Context**

The history of hypnosis as a therapeutic measure is as old as civilization itself. It was practiced by priests and medicine men of the ancient Greeks, Egyptians, and Oriental tribes, wherein prevailed an air of the supernatural. As early as 1770, a catholic priest in Europe, Father Johann Gassner demonstrated his ability to heal people by combining religion with hypnotic Suggestions. In 1773, followed Franz Antone Mesmer, a Viennese physician, from whom the term mesmerize was derived. Mesmer might be called the father of hypnosis for, although his theory of "animal magnetism" was wrong, he was probably the first to present the idea that cooperation of the patient was an essential factor in the successful use of hypnosis (Macuse, F.L., unk.).

During the early 1800's there were two schools established for training in hypnosis for treating patients. They were the Nancy School of Hypnosis and the Paris School of Hypnosis. These two schools had totally different beliefs in hypnosis, and due to this, there was an academic feud between the two. The Nancy concept was finally accepted and ended the "Mesmeric Theory."

In the late 1800's and early 1900's, the use of hypnosis for entertainment became popular. Professor Leonidas wrote a book detailing methods for producing various hypnotic phenomenas for stage entertainment. Thus the misconceptions concerning hypnosis were born (Howell 1988). Much of the controversy is aggravated and compounded by serious misconceptions about hypnosis itself. In order to minimize the areas of unnecessary friction, it would be well served to deal with the most common misconceptions and clarifying them (Spiegel 73-85).

The most common misconception is that hypnosis is sleep. Hypnosis is not only not sleep, but is the very opposite. It is defined as a state of alert attentive, receptive, integrated concentration characterized by a parallel awareness (Anand B.K. 452-455). Another serious misconception is that the hypnotist projects the hypnotic spell onto the subject. The hypnotist, however, Projects nothing at all. Instead, he simply taps the natural trance capacity

that is inherent in the subject. Trance capacity is a talent that is genetically determined or learned in an imprinted manner during early developmental years, or both (Spiegel 73-85). In a formal hypnosis session, the hypnotist simply taps this capacity with the subject's cooperation and compliance. The idea that hypnosis is dangerous is still another myth. Hypnosis itself is not dangerous but the trance state can be used mischievously (Spiegel 73-85).

One of the features of the trance is that the person enters such a state of intense concentration that peripheral awareness decreases, customary guardness decreases, and an assumption of trust occurs. These aspects combine with the subject's susceptibility and make the subject more vulnerable to deception, coercion, exploitation, or trickery. Still another misconception is that women are more hypnotizable than are men. Repeatedly, scientific studies have shown that when tested appropriately, there is no difference in distribution of hypnotizability between the adult male and female population (Spiegel 146).

Harry Arons, a longtime veteran in the field of hypnosis, who trained many of those in the medical field, developed and conducted the first training program for law enforcement officers in 1959. The training and use hypnosis as an investigative tool was met with a tremendous amount of resistance by some citizens, prosecutors, and defense attorneys as well (Arons 107).

As written in the Journal of Police Science and Administration, Timm stated that review of the literature suggests that the use of forensic hypnosis, as well as other memory assistance techniques, may increase the quantity of information witnesses provide in criminal offenses. The amount of information received may be affected by manipulating factors affecting recall (Timm 442-450).

Michael Boulch, a well renowned activist of hypnosis was quoted as saying, "We don't enhance their memory, we refresh it." This statement was made in regard to a defense attorney claiming that a hypnotist can "feed" information to a witness or victim (Edwards, San Antonio Express). There is however, some evidence that hypnotic training and sensory deprivation can, at times, enhance the hypnotic response, but the effect is modest and tied to the subject's initial susceptibility. In general, hypnotic susceptibility is a

stable trait that most people possess (Nash, Michael and Baker, Elgan 150-155).

Forensic hypnosis is conducted in a totally different way than is stage hypnosis in that the sessions take place in a private setting. Safeguards have been put in place and must be followed very closely. Investigators trained in the use of hypnosis are taught that every interview must be tape recorded and/or video taped from the moment the subject of hypnosis is presented to the witness and continued without interruption until the interview is terminated. These recordings are also available to the defense attorney and to his consultants in hypnotic methods (Reiser 75-84).

The law already recognizes hypnosis as a useful investigative tool (McCormick 208 at e1.510). Hypnosis as an evidentiary tool is gaining wider acceptance.

The stringent guidelines pertaining to hypnosis were instituted in part because of *State v. Hurd*. The Supreme Court of New Jersey held that hypnotically induced testimony could be admissible if the hypnosis sessions complied with mandated guidelines. In *State v. Hurd*, these guidelines specifically identified experienced psychiatrists and psychologists as the only professionals qualified to conduct the hypnosis sessions (*State of New Jersey v. Hurd*, 86 N.J. A 2d 86, 88, 1981).

The Supreme Court of California decided that a hypnotized witness was completely incompetent to testify about any matter which surfaced during the hypnosis session. Since this ruling, the California legislature has enacted a rule of evidence whereas this testimony can be admitted if strict guidelines reminiscent of *Hurd* are followed (*People v. Shirley*, 8,641 2d 775, Cal. Sup. Ct. 1982).

#### **Review of Literature or Practice**

In the United States, the benefits and pitfalls associated with forensic hypnosis procedures have been vigorously argued in numerous legal proceedings. Therefore, studies from the scientific community appear particularly timely and relevant (Timm 442-450).

Several field and laboratory studies indicate that subjects for whom

forensic hypnosis techniques are used are more likely to offer additional information. A field study conducted by Schafer and Rubio in 1978 reported that in 10 out of 13 cases in which forensic hypnosis was employed, additional information was obtained which substantially assisted authorities. Studies Conducted by (Kroger and Douce 1979) consisted of 23 criminal cases which Involved 53 witnesses. In more than 60 percent of the cases, new information was discovered utilizing hypnosis.

Reiser and Nielson in 1980 reported the results of a survey based on 400 forensic hypnosis sessions conducted by members of the Los Angeles Police Department between 1974 and 1979. there results revealed that 80.2 percent of the sessions resulted in additional information and that it was of value in 67.5 percent of the sessions (Timm pp. 442-450). It should be noted, however, these field studies are more of a reflection of the benefits perceived by those administering the procedure than a more objective evaluation requiring documented corroboration of those new leads.

Laboratory research on the use of hypnosis to improve recall has resulted In mixed findings. In a study conducted by (Dhanes and Lundy 1975) it was suggested that those differences in the outcome may be due to certain methodological considerations (Timm 442-450). When positive results were obtained, it was noted that the material recalled was usually contextual in nature; conversely, when negative results occurred, it was typically based on recollections of nonsense material.

A study was conducted whereas 65 subjects viewed a film consisting of Several mock-crime segments. It was reported that memory was significantly enhanced issuing hypnosis and that hypnotized witnesses did not confabulate anymore than did the unhypnotized witnesses (Griffin 385-389).

Bower, Monteiro, and Gilligan in 1978 found that hypnotically induced emotional states appear to produce state-dependant learning effects. Therefore, it is possible that forensic hypnosis may serve to assist subjects to recall information that they initially encoded while in an atypical emotional state causing them to return to a similar state during the retrieval process.



Rosenthal in 1944 suggested that hypnotic hypermnesia may stem from the calm and freedom from anxiety associated with hypnosis in which memories are creatively reconstructed. Therefore, subjects in a state of hypnosis would be less plagued by tension while attempting to recall information.

In one Los Angeles Police Department survey, it was determined that there was an increase in recall from approximately 75 percent of those traumatized witnesses who were hypnotized. This additional information proved helpful in the investigations of the cases studied.

Between June 1, 1980 and January 1, 1993, statistical records of the Texas Department of Public Safety revealed that in 73 percent of the 447 hypnosis sessions conducted by their investigators, additional investigate leads developed. The Texas Department of Public Safety on January 1, 1984, instituted a policy involving investigative hypnosis. Under policy 25.10.00, a committee was established to monitor the department hypnosis program, review laws and court decisions relating to the use of hypnosis, and to recommend appropriate policies (Texas Department of Public Safety 1984).

In order for an investigative hypnotist within the Texas Department of Public Safety to maintain his or her credentials, they shall conduct a minimum of six investigative or practice sessions each year to maintain proficiency and attend either an in-service or approved advanced hypnosis course at least once every two years.

The Texas Department of Public Safety restricts its investigative hypnotists from utilizing hypnosis for therapeutic purposes or public entertainment under policy 25.05. These restrictions include weight reduction and prevention of smoking.

Ten independent surveys were mailed out by the author relating to this project. Of the ten surveys mailed out, six responses were received. Chief Donnie Harland of the T.S.T.I. campus police in Amarillo, Texas, stated that forensic hypnosis was utilized one time during the time period of 1993 to 1996. The case was cleared in part due to the use of hypnosis. Chief Harland went on to say that the prosecutors in his jurisdiction support the use of hypnosis and

that his departments policy restricts the investigating officer from conducting the hypnosis session (Harland, Survey 1996).

Lieutenant Abdon Rodriguez with Tulia Police Department in Tulia, Texas, in his response stated that forensic hypnosis was utilized approximately five times during the year of 1996, however, no statistics were available to document its usefulness. Lt. Rodriguez also stated that his department does not have a policy governing the use of hypnosis (Rodriguez, Survey 1996).

Lieutenant Perry Gilmore with the Amarillo Police Department, Amarillo, Texas, states in his response that hypnosis is utilized approximately four times per fiscal year in his department. In those instances where hypnosis was used additional information was received in 25 to 50 percent of the cases. Lt. Gilmore also stated that the prosecutors within his jurisdiction support the use of hypnosis, however, there is no policy within their department regarding the use of hypnosis. The remaining responses received from the survey yielded no useful information for this project (Gilmore, Survey 1996).

#### **Discussion of Relevant Issues**

All data obtained under hypnosis is vulnerable to the counterclaim of memory contamination or coercion (innocent or designed,) even though incredibly accurate information can at times emerge. It is imperative to document all prehypnosis data as separate and distinct from information obtained during and after the hypnotic interview. If this is not done, the prehypnotic testimony also risks losing its credibility. The most one can legitimately expect from the hypnotic interview is further information, which may serve as leads for more conventional evidence gathering. Information elicited through hypnosis itself deserves low or no priority until it is supported by other data (Spiegel 73-85).

Even confessions of guilt made under hypnosis are vulnerable to counter claims of coercion and deception, especially in demonstrably highly hypnotizable persons. This certainly does not hold for persons who are not hypnotizable and probably does not apply to those who test low on successability tests. During the research of this project, it was more prudent in an 1897 case in which Joseph Ebanks was convicted of a murder. A defense expert witness, a hypnotist, said

that Ebanks denied his guilt under hypnosis. The court refused to allow the hypnotist to testify, stating, "The law of the United States does not recognize hypnotism and it would be an illegal defense." The California Supreme Court affirmed the trial court's decision (People V. Ebanks 117 Cal. 652 08/23/1897).

However, this is not a simple issue to address. It is easy to identify information elicited under a formal hypnotic interview, but it is not so easy to identify post hypnotic influences in testimony after the hypnotic interview has occurred and determine to what extent perspectives and facts are contaminated by the interview.

One could argue that if the hypnotic interview can be so vulnerable to contamination, why not simply ban all users of hypnosis in the forensic area. This could be accomplished through legislature processes but would only eliminate the formal use of hypnosis. It would in no way solve the actual dilemma. Such arbitrary orders cannot eliminate the spontaneous hypnotic experience that most people are prone to, especially under the stress of legal or police interview settings.

Fact or fiction can become intertwined and even more confounded when neither the subject nor the hypnotists knows when the subject is actually in a hypnotic trance. This is why it is important for the hypnotist to administer tests of the proper degree through the hypnosis session.

Instead of attempting to order hypnosis out of existence, it becomes our responsibility to be more knowledgeable about the sensitivity to its occurrence and usefulness. After conducting a comprehensive assessment of forensic hypnosis in police investigations and judicial processes, Udolf recommends limited, but controlled use of hypnosis by police officers trained in the field, as well as having the courts recognize hypnosis (Udolf, 1983).

Hypnosis has not been found to be reliable in obtaining the truth from a reluctant witness. Even if it were possible to induce hypnosis against one's will, it is well documented that the hypnotized individual can still willfully lie. It is of even greater concern that cooperative hypnotized subjects remember distorted versions of actual events and are themselves deceived. When recalled

under hypnosis such false memories are accompanied by strong subjective conviction and outward signs of conviction that are most compelling to almost any observer. Once again, caution and independent verification are essential in such circumstances (Encyclopedia Britannica, Vol. 9, page 139).

As previously stated in this project, the legislature has put in place safeguards and guidelines pertaining to the use of hypnosis. More specifically, the Texas Legislature passed Senate Bill #929, which went into effect on January 1, 1988. This bill states that all peace officers who practice and utilize hypnosis in their investigations must meet minimum requirements for their training, testing, reporting procedures, and certifications (Senate Bill #929 Section 3, 1988).

The Texas Commission for Law Enforcement Officer Standards and Education is currently the only governmental body in the United States which mandates minimum training requirements, testing, and certifications of individuals utilizing hypnosis as a professional police investigative tool (Howell, Seminar, 1988).

There have been numerous high profile cases in which hypnosis was used to develop investigative leads or by the defense. Among these are:

The murder of U.S. District Judge John Wood

Kenneth Bianchi - The Hillside Strangler

Robert F. Kennedy assassination - Sirhan Sirhan

The case which was quite possibly the catalyst in stimulating the use of hypnosis in criminal investigations was the kidnapping in Chowchilla, California. On July 15, 1976, three persons kidnapped a school bus occupied by 26 children and the bus driver. After all occupants dug themselves out of a make shift grave, it was decided hypnosis would be used to develop investigative leads. Dr. William S. Kroger, a leading authority on hypnosis, conducted the session with Frank Edward Ray, the bus driver. Through ideomotor response techniques, all of the digits but one were retrieved on the license plate of the suspects vehicle. As a result of the information obtained through hypnosis and good investigative leads, three suspects were arrested and convicted in the kidnapping (Kroger 358

374.) Due to the magnitude of these cases, and public scrutiny, hypnosis was utilized to develop investigative leads which led to the successful clearance of these cases (Howell 1988).

As the use of hypnosis began to emerge in police investigations, Dr. Martin Reiser, Director of Behavioral Science Service for the Los Angeles Police Department, spearheaded the first organized hypnosis unit for that police agency. He was responsible for the development of the training program, selecting officers, as well as training, monitoring, and evaluating the use of hypnosis in conducting investigative hypnosis sessions.

Dr. Reiser contends that hypnosis is like a scalpel used for surgery. The surgeon trained to do heart operations uses the scalpel to make the incision to reach the heart, the brain surgeon uses the scalpel to reach the brain, and the person trained in mental health uses hypnosis for one objective, while the police officer uses hypnosis for an entirely different objective (Reiser, 75-84).

Investigative hypnosis is not a substitute for good investigative work, only an additional investigative technique that should be used when all other techniques have failed to produce additional leads (Reiser, M., and Nielsen, M., 1980). Even then, all information should be corroborated and verified after the hypnosis session to confirm the validity.

The cost of equipment needed for forensic hypnosis sessions is relatively low in comparison to other law enforcement equipment. An available room in the department, which should be quite and free of interruptions, can be utilized. The cost of a video recorder can range from \$200.00 and up depending on what type of features are desired. The cost of training in hypnosis and the licensing fee can be obtained for under \$500.00.

It is my belief that the benefits of utilizing forensic hypnosis would far outweigh the cost incurred if the leads developed could possibly clear a single difficult case.

## **Conclusion**

The ultimate findings for the use of forensic hypnosis in police investigative work indicates that the use of this tool, when conducted by trained

police professionals and when used properly, can be quite effective in assisting witnesses and victims to recall with a high degree of accuracy, important details related to the incident in which they were involved.

The problems addressed in this project were the lack of support from the police community in general, prosecutors, and the general public. In part, the problems generated are attributed to the lack of understanding of which has been explained throughout this research.

This research has revealed the history of hypnosis, training required, ethics involved, and current case law. Also shown were high profile cases which were cleared through the use of hypnosis.

After careful consideration of the research findings, recommendations would clearly indicate the need for the use of hypnosis in smaller departments aligning them with larger ones for the clearance of difficult cases.

Dr. Herbert Spiegel, a leading authority on hypnosis, possibly said it best in a letter to Dr. Fred Frankel, President of the International Society of Hypnosis in defense of forensic hypnosis. In his writing, he states, "If we have a special knowledge about hypnosis, it is our ethical obligation to share this knowledge with others in their own fields who are diligently pursuing their own work. To presumptuously claim that only we can utilize this knowledge inflates our role, invites ridicule, and undermines our own credibility. Is a police interrogator any less competent to handle a possible abreaction or to seek appropriate psychiatric or psychological help than a dentist?" (Spiegel Vol. 23, N.2).

Important information can be obtained through the use of hypnosis that cannot be brought out through standard interview techniques. This will also save the investigator time by obtaining information which may aid in the development of leads.

These leads may bring the solution of difficult criminal cases to a close sooner, saving time and money for the department using forensic hypnosis techniques in conjunction with standard investigative processes.

In conclusion, the use of hypnosis by law enforcement personnel in criminal

Investigations warrants, at the very least, the review and support of administrators within police agencies. Through the research of this project, it is my belief that it would be a waste of resources not to allow hypnosis to be utilized when all other avenues of investigation have been exhausted.

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