

LAW ENFORCEMENT MANAGEMENT INSTITUTE

EMPLOYING THE USE OF INVESTIGATIVE AND  
FORENSIC HYPNOSIS WITHIN AN AGENCY

A LEARNING CONTRACT  
SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR  
MODULE II

BY

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The background, legal basis, and benefit of hypnosis to law enforcement was described in this author's research document, "The Use of Hypnosis in Criminal Investigation."<sup>1</sup> Having established the basis for using hypnosis, the next step is to establish the criteria for forming an hypnosis unit within an agency. While laws and procedures vary between states, the following guidelines will serve as a general working model. This model can be adapted as jurisdictional and administrative requirements dictate.

The U. S. Supreme Court in Rock v Arkansas<sup>2</sup> and the Texas Court of Criminal Appeals in Zani v Texas<sup>3</sup> have given great impetus to the increased use of hypnosis as an investigative tool and as an evidentiary tool in the resolution and prosecution of criminal offenses. The law enforcement community should join together with the appropriate professional associations and establish procedural guidelines and standards which would make the admissibility of hypnosis-refreshed testimony lawful in all jurisdictions.

In Rock v Arkansas the defendant sought to have testimony, elicited under hypnosis, admitted into evidence.

The trial court refused based on the per se rule of evidence. The appeals court decision stated that, the per se rule of evidence, in the State of Arkansas, pertaining to the nonadmissability of such evidence was unconstitutional.<sup>4</sup> The subsequent Texas ruling in Zani v Texas stated that due to defendant testimony under hypnosis being admissible, that the State should also be allowed to introduce such testimony, if it is shown to be reliable.<sup>5</sup>

The State of Texas, through the Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE) and the Texas Association of Investigative Hypnotist (TAIH) undertook a plan to establish credible training requirements, certification standards, and a pre-licensing test requirement, to provide a solid foundation for police officers who wish to become investigative and forensic hypnotists. The training regimen was supervised by expert assistance from Dr. Michael Boulch of the Therapeutic and Forensic Hypnosis Institute. Officers attending this training must demonstrate competence prior to graduation. A solid background in hypnotic procedures and legal ramifications is provided during this session of training. In addition, continuing education is provided through annual courses to deliver updated information on both techniques and law. An advanced course is also available from Dr. Boulch for those who achieve the license from the State of Texas.

The State of Texas is the first state to establish regulations and to require licensing of the investigative hypnotists. The Commission, TAIH, and numerous educational, medical, and mental health experts on hypnosis constructed an examination that was validated in California. Each officer who completes the course of training, must submit to and demonstrate proficiency examination, prior to Commission licensing and before performing investigative hypnosis sessions.

In order to ascertain current practice in police departments throughout the nation, a survey was sent to 20 major police departments. The survey request was provided to New York, Boston, Philadelphia, and Baltimore in the Northeast; to Miami, Atlanta, and New Orleans in the Southeast; to Houston, Dallas, Albuquerque, and Phoenix in the Southwest; to Chicago, St. Louis, and Kansas City in the Midwest; and to Portland, Las Vegas, Los Angeles, San Francisco, Denver, and Seattle in the Farwest. These are major metropolitan areas with progressive law enforcement agencies. These areas also represent the major State and Federal court systems within the nation and would hopefully produce a cross section of the current thinking on this topic. The survey requested of the twenty agencies whether they employed a hypnosis unit, number of personnel within the unit, criteria for personnel selection, personnel training requirements, and specifics of departmental

policies and procedures regulating the conduct of investigative hypnosis sessions.

Of the twenty agencies surveyed, twelve, or sixty percent, responded. All but two of those agencies responding stated that their agency did not have an investigative hypnosis unit. One agency stated that such a unit was not feasible due to the current state of the law and court decisions. Five agencies stated that if such a service were required, that a civilian, from outside the agency, was obtained. Only one agency exhibited interest in such a unit and requested a copy of the research documents.

The written survey request was followed up by telephoning officials within those agencies who did not respond. In all only two police departments surveyed maintained a hypnosis unit. Also, only Texas has any formal, accredited training resulting in certification and licensing. Within Texas only one agency, outside of the Department of Public Safety, was found to have any formally established hypnosis unit or any proscribed policies and procedures. Although there is a growing list of officers qualified and licensed to perform investigative hypnosis and do so for their agency or others, few formal units exist at this time. However, any police department or investigative agency that needed a unit in forensic hypnosis would need to follow these procedures.

The first decision centers on how many investigative hypnotists will be required. The answer is obviously

predicated upon how large the agency is and the volume of serious offenses necessitating the use of hypnosis for resolution. It would be prudent to obtain one or two investigators at first. By monitoring their hypnosis activities, through detailed reporting, and the demand for same, the agency could accurately gauge the future of personnel requirements. It deserves mentioning at this juncture, that not only do subjects of hypnosis need to be convinced of the success of hypnotism, but the officers working the cases must also be educated as to the worthiness of the procedures. Without the officers participation, when events require, the hypnosis unit will be paralyzed and ineffective.

The agency head and supporting commanders must now advertise the available positions and seek out those most suitable volunteers for assignment. Volunteers are preferable because they must want to be involved if to encourage efficiency. Should the agency decide on two hypnotist, it is suggested, if possible, that both a male and a female be obtained. There will be occasions when a subject of a session will be more at ease with one or the other. The officers selected need not, but may be, investigative personnel. The officers selected must present a professional appearance, be genial of nature, able to communicate effectively with varied age groups, genders, and ethnic personages, and capable of maintaining a non-emotional, but sympathetic, detachment from the subject of

the hypnosis session. The hypnotist is also going to have to be knowledgeable in the technique of asking questions which are not suggestive and leading.

The hypnosis unit having been formed must then be provided with the requisite equipment and office accommodations suitable to the performance of the mission. An office of suitable space and high degree of quiet is essential. There will either be an audio recording system, or, if affordable, a video recording system. The room should have soft or variable lighting and be away from departmental or outside distractions. For the subject of the session, the unit should have a comfortable arm chair, or even a recliner, which does not swivel and is not on casters. The officers of the unit should display their hypnosis training certificates, licenses, and association memberships on the walls to inspire confidence.

Personnel must be provided with current and professionally recognized training. Within the State of Texas the foremost hypnosis trainer is Dr. Mike Boulch. Boulch is the Director of the Therapeutic and Forensic Hypnosis Institute and conducts basic and advanced courses in conjunction with the University of Texas at San Antonio. The basic course of training takes one week and includes fifty hours of classroom instruction in the history of hypnosis, legal considerations, procedures, and practical applications. In addition to the training provided by Dr. Boulch, the Texas Association of Investigative Hypnotist

also provides an annual seminar in Huntsville through Sam Houston State University. Where seminars with leading practitioners present the most current information on the subject.

Having completed the classroom instruction and demonstrated competent application of the procedures, through practical exercises with volunteers from the local area, to fulfill licensing requirements, officers must take a state administered written examination. Successful completion of this examination is a mandatory prerequisite for certification and licensing by the Texas Commission on Law Enforcement Officers Standards and Education.

The officers and their agency head must be mindful of the legal mandates surrounding the use of hypnosis. In doing so, the agency must generate and promote appropriate policies and procedures in order to make memory enhanced testimony admissible in court proceedings and to reduce any perceived civil liabilities.

The current basis upon which criminal courts are evaluating the admissibility of testimony, enhanced through hypnosis, comes from Zani v Texas. In this ruling the Court of Criminal Appeals adopted guidelines which were first enunciated in the Colorado case of People v Romero.<sup>6</sup>

The Texas court has established four factors or potential dangers to admissibility of hypnosis enhanced testimony. These factors include (1) hypersuggestibility, (2) loss of critical judgment, (3) confabulation, and (4)



memory cementing. On the other side of the issue, the Court has also established ten factors which will test the trustworthiness of the hypnosis enhanced memory. These factors must be proven to the satisfaction of the trial court at each trial of a case in which the hypnosis techniques were employed.

The State must present testimony at trial evidencing that the hypnotist has undergone a level of basic and continuing training and education in hypnosis to demonstrate professional competence.

There must also be a demonstration of a record of knowledge possessed by the hypnotist concerning the case prior to the hypnosis session. Further, there must be a record of the knowledge of the incident recalled by the subject prior to a state of hypnosis. In addition, there must also be a record of all the contacts between the hypnotist and the subject in their entirety.

The Court should also take into consideration the location at which the hypnosis session was conducted. At the same time the Court should also reflect upon whether any other individual was present during the session and what influence or participation, if any, that individual had or may have had upon the subject of the session or the session in general.

Another factor for consideration is how appropriate to the session were the techniques of induction and memory retrieval that were employed. Also, was the use of hypnosis

appropriate for the type of memory loss that was present in the case. Once the hypnosis refreshed testimony is obtained the court must know if and what type of corroborative evidence was obtained to support the testimony.

The Court must also ascertain the degree of, if any, any cueing or suggestive questions or comments on the part of the hypnotist, which would prompt a desired response from the subject of the session. Finally, there is a desire on the part of the Courts to establish an independence on the part of the hypnotist from law enforcement, prosecutors, and defense attorneys. Obviously, this total independence is not possible. Consequently, the law enforcement hypnotist must conduct the hypnosis sessions in a rigidly acceptable manner. If conducted appropriately, the tapes of the session will be self evident.

A part of the hypnosis units infra-structure and an aid in adhering to the professional standards is the policies and work forms which are used by or guides the unit. It is suggested that the agency establish the unit's guidelines and forms prior to inception and allow for future revision of same. Attached hereto are sample forms which will meet these requirements. A procedure based on the training and legal requirements should be incorporated in the departments procedural manual.

The agency may desire to provide an introduction to hypnosis in the agency manual with a brief description of the capabilities and misconceptions associated with hypnosis

as an investigative tool. Included in the agencies' policies will be the criteria utilized for the selection of personnel, who may apply for the unit, and the requisite training those selected must undergo.

In addition the agency will establish the limits within which this investigative tool will be employed. These regulations should include the requirement that the hypnotist must perform a minimum number of sessions per year, either investigative or research, and that the hypnotist must attend a minimum number of in-service training hours. These requirements are essential in maintaining the level of knowledge and capability which may later be transformed into expert testimony in Court. Based on training and demonstrated performance, the officer will be evaluated periodically. This evaluation will be the basis for continued or revoked authorization to perform as a hypnotist.

Hypnosis is mainly an aid to an investigative process and any evidence or information obtained must be independently corroborated. One of the primary regulations governing hypnosis use is that the officer shall not perform a session when a defendant or potential defendant is the subject of the session. Another prohibition is that the officer not use the hypnosis skills to perform any type of theatrical or therapeutic sessions. Such activity demeans hypnosis and the hypnotist as an investigative tool and professional hypnotist.

The hypnosis session is recorded through audio or video tape as soon as the subject enters the room. The hypnotist must obtain the written consent of the subject. This consent must state that the subject is entering hypnosis with the officers assistance to aid in an ongoing investigation and that the subject is doing so voluntarily. When the subject of the session is a minor, the hypnotist must first discuss the session with the subject's parent or guardian, and obtain the written permission of the parent or guardian. The other occasion when the officer must obtain permission to conduct a session is when the subject is under the care of a psychologist, psychiatrist, or physician. This medical person will be contacted and informed of the situation.

Another important guideline is that the hypnotist should not conduct a session in which the subject of the session is involved in a case on which the hypnotist is the primary investigator. Prior to conducting a session the hypnotist should obtain the time frame and location of the incident in question and a general outline of the incident. The primary investigator may provide the hypnotist with one or more questions which are of greater importance.

At the beginning of the session the hypnotist will complete a checklist of personal information about the subject of the session. This information will aid in determining if the session should be conducted and if so what scenario should be employed. During the same period, prior to induction of the subject in to a state of hypnosis,

the hypnotist will explain what hypnosis entails, how the process works, and dispel any misconceptions that the subject possesses about hypnosis.

The hypnotist will determine the best technique for induction, deepening, and eliciting of information. Upon concluding, the hypnotist will bring the subject out of hypnosis refreshed and relaxed. A discussion will be held with the subject to ascertain if there is any hypnotic hangover, prior to the subject be allowed to depart.

The hypnotist will then meet with the primary investigator and review the information obtained during the session, with emphasis on new leads and corroborated information. The desirability for an additional session is also discussed as well as sessions for any other witness or victim which may prove beneficial.

The agency now possesses the personnel, training, equipment, facilities, and unit regulations necessary for employing an old, but newly attested to tool of investigation. As with anything else, you will receive a benefit based on the degree and quality of your expenditure. All law enforcement agencies should seriously consider establishing an investigative and forensic hypnosis unit. The lessening of legal restrictions upon the use and evidentiary introduction of hypnosis refreshed testimony and the relative low cost of training makes the use of hypnosis a tool which will increase the resolution of serious crimes

and aid in the swift and certain prosecution of criminal offenders.

## NOTES

1. Gerringer, Arthur E. 1990. The Use of Hypnosis in Criminal Investigation. The Law Enforcement Management Institute, Austin.
2. Rock v Arkansas, 107 S. Ct. 2704, 1985.
3. Zani v Texas, 758 S.W.2d 233 (Tex.Cr.App.) 1988.
4. Rock v Arkansas, supra, note 2.
5. Zani v Texas, supra, note 3.
6. People v Romero, 745 P 2d 1003, 42 CrL 2181, 1987.

APPENDIX A  
INVESTIGATIVE HYPNOTIST

Hypnosis Session Checklist

Session Conducted for:\_\_\_\_\_.

Date of Session:\_\_\_\_\_Case No.\_\_\_\_\_.

Location of Session:\_\_\_\_\_.

Subject of Session:\_\_\_\_\_.

Age:\_\_\_Sex:\_\_\_Witness\_\_\_Victim\_\_\_Other\_\_\_Trauma Involved

Other Persons Present:\_\_\_\_\_

- 
1. Was Consent Obtained? \_\_\_\_.
  2. Does subject appear to be fatigued or depressed? \_\_\_\_.
  3. Does subject appear to be emotionally upset or intoxicated? \_\_\_\_.
  4. Is subject under medical treatment? \_\_\_\_\_. For \_\_\_\_\_.  
Doctor \_\_\_\_\_. Medication \_\_\_\_\_.
  5. Is subject under treatment by a psychiatrist or psychologist? \_\_\_\_\_. Doctor \_\_\_\_\_.
  6. Has subject ever been treated for a mental problem?\_\_\_\_.  
When?\_\_\_\_. Doctor?\_\_\_\_. Nature\_\_\_\_.
  7. Does subject wear contact lenses?\_\_\_\_. Removed?\_\_\_\_.
  8. Is subject known to be addicted to drugs or alcohol? \_\_\_\_\_.
  9. Does subject have any phobias?\_\_\_\_. What?\_\_\_\_.
  10. Does subject appear to be in good mental and physical condition? \_\_\_\_.
  11. Subject's favorite color?\_\_\_\_\_. Hobbies\_\_\_\_\_.  
Favorite place?\_\_\_\_\_.
  12. Has subject been hypnotized before?\_\_\_\_\_.  
Number of times?\_\_\_\_\_.  
Reason for session?\_\_\_\_\_.  
Hypnotist conducting session?\_\_\_\_\_.



13. Was session audio taped?\_\_\_\_  
Was session video taped?\_\_\_\_\_.
14. Was artist sketch sought?\_\_\_\_ Obtained?\_\_\_\_\_  
Artist employed?\_\_\_\_\_.
15. Does subject have or has had any cardiovascular or  
heart problems?\_\_\_\_. If so, when?\_\_\_\_.  
Doctor?\_\_\_\_\_.
16. Does subject have or has had any back or neck  
problems?\_\_\_\_\_.
17. Is subject taking any kind of medications,  
prescriptions or otherwise?\_\_\_\_ What?\_\_\_\_\_.
18. Was subject's childhood normal?\_\_\_\_\_.
19. Does subject have a pet?\_\_\_\_\_.
20. Has subject been hospitalized in last three  
years?\_\_\_\_\_
21. Has subject experienced any fainting spells or seizures  
in the past?\_\_\_\_ When?\_\_\_\_\_ Type?\_\_\_\_\_
22. Does subject know what a documentary film  
is?\_\_\_\_\_

Pre-hypnosis interview commenced at \_\_\_\_ M. Concluded \_\_\_\_ M.  
Hypnosis session commenced at \_\_\_\_ M. Concluded \_\_\_\_ M.  
Post-hypnosis interview commenced at \_\_\_\_ M. Concluded \_\_\_\_ M.

APPENDIX B

Offense\_\_\_\_\_County\_\_\_\_\_Date\_\_\_\_\_

Victim\_\_\_\_\_Time\_\_\_\_\_. M.

Summary of offense\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Technique utilized for eliciting information\_\_\_\_\_

Summary of result of session\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated level of hypnosis.\_\_\_\_\_

New investigative information obtained?\_\_\_\_\_

Result of investigation.\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature of Hypnotist:

\_\_\_\_\_  
Arthur E. Gerringer  
Investigative Hypnotist

APPENDIX C  
INVESTIGATIVE HYPNOTIST

HYPNOSIS CONSENT FORM

I, \_\_\_\_\_ do hereby voluntarily and freely consent  
and agree to enter hypnosis with the assistance of Arthur E.  
Gerringer for the sole purpose of aiding in a current  
criminal or civil investigation.

\_\_\_\_\_  
Signed

Date: \_\_\_\_\_

\_\_\_\_\_(Parent if Juvenile)

\_\_\_\_\_  
Arthur E. Gerringer  
Investigative Hypnotist

\_\_\_\_\_  
Witness