

PROFILE OF AN FORENSIC / INVESTIGATIVE HYPNOSIS INTERVIEW

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The use of hypnosis and extensive news media coverage of the kidnapping of 26 school children and a bus driver in Chowchilla, California, probably was one of the catalysts that stimulated the use of hypnosis in criminal investigations. On July 25, 1976, three persons kidnapped 26 school children and the bus driver. All occupants were buried alive underground. After the bus driver and children dug their way out of the makeshift grave and contacted law enforcement authorities, it was decided that hypnosis would be used for memory enhancement to develop investigative leads. Dr. William S. Kroger, a Clinical Professor of Anesthesiology, University of California, Los Angeles School of Medicine; Teaching Consultant, Department of Psychiatry, Cedars-Sinai Medical Center, Los Angeles; Consulting Psychiatrist, Department of Neurology, City of Hope Medical Center, Duarte, California; and a leading authority on hypnosis conducted the session on Frank Edward Ray, the 55 year old bus driver, and retrieved all the digits except one on the license plate of the vehicle used in the kidnapping. As a result of the information developed through the use of hypnosis and investigation of leads, three suspects were arrested and convicted of kidnapping the students and bus driver.

On September 13, 1979, Leo E. Gossett, Assistant Director of the Texas Department of Public Safety, by memorandum, established a seven-member committee responsible for studying available data concerning law enforcement uses of hypnosis; developing recommended guidelines and criteria to be used in the selection and training of DPS personnel in the use of hypnosis; and developing recommended guidelines relative to such use.

The Texas Department of Public Safety (DPS) hypnosis program was implemented in 1980 after the committee reviewed numerous articles, training material, books on hypnosis; and met or consulted with numerous experts in the field. The committee then developed self-imposed guidelines and selected a 50-hour training course. The training course consisted of various lectures, demonstrations, and applications as related to the history of hypnosis; basic psychodynamics; emotional development; the nature, theories, and laws of hypnosis; principles of suggestion, criminological versus psychotherapeutic use of hypnosis; myths, misconceptions, indications, and deepening techniques; and information eliciting techniques; just to name a few. Personnel selected to receive this training were veteran law enforcement officers with many years of experience and numerous hours of classroom instructions in criminal investigation and interviewing techniques.

The initial basic training for our investigators was conducted in the DPS Academy by the Therapeutic and Forensic Hypnosis Institute of Houston, Texas, after an evaluation of the availability and adequacy of various training courses.

Some of our personnel had received basic and advanced training at the North Texas Regional Police Academy in Arlington, Texas and at the Law Enforcement Hypnosis Institute in Los Angeles, California. We subsequently developed and coordinated two in-service hypnosis schools in the DPS Academy, emphasizing practice session testifying in court, and advanced techniques to enhance the skill and confidence of our investigators.

From July 1, 1980 through December 31, 1990, 1,187 hypnosis sessions were conducted by DPS investigators resulting in additional information reported in 876 sessions (73.80%) and no additional information in 311 sessions (26.20%). The additional information gained in 876 of the hypnosis interviews varied from minimal information in some cases to additional information which led to the identification and arrest of the perpetrator. The cases in which hypnosis was used included a wide variety of offenses such as hit and run traffic fatalities, rapes, assaults, robberies, kidnappings, and murders.

The DPS stresses that hypnosis should be used as an aid to investigations, not a substitute. Investigators have been cautioned to assure that standard investigative methods have been fully utilized before hypnosis is used.

The Texas appellate courts have upheld convictions where hypnosis was used with either a crime victim or witness for the purpose of memory enhancement. See, e.g., Vester v. State, 713 S.W. 2d 920 (TEX. Cr. App. 1986); Goudette v. State, 713 S.W. 2d 206 (TEX. App. —Tyler 1986); Walters v. State, 680 S.W. 2d 60 (TEX. APP—Amarillo 1984); Zani v. State, 758 S.W.2d 233 (Tex. Cr. App. 1988); Laird v. State, 650 S.W. 2d 198 (Tex. App—Fort Worth 1983).

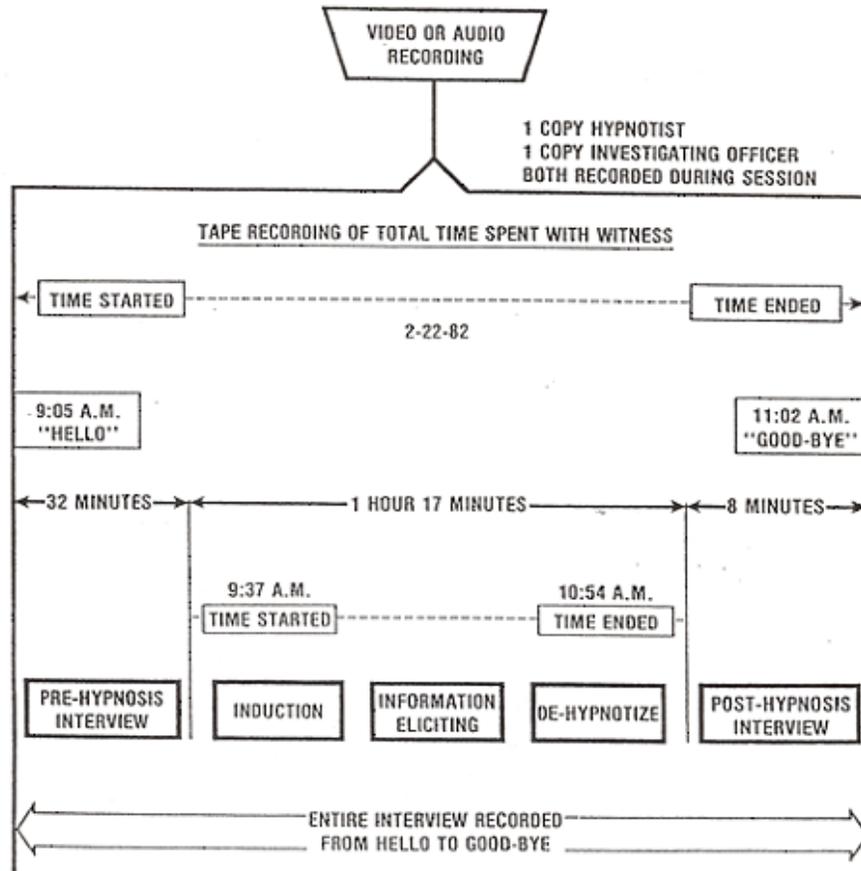
Many police officers, prosecutors and civilians have limited understanding about what occurs during an investigative hypnosis interview to refresh recall of a witness or victim of a crime event. It is hoped that the profile and brief explanations of what occurs during an investigative hypnosis interview will provide a better understanding of the components of this type of interview.

THE PROFILE CONSISTS OF:

- Pre-hypnosis Interview
- Induction
- Information Eliciting
- De-Hypnotizing
- Post-Hypnosis Interview

(Refer to Exhibit #1 for Details)

EXHIBIT #1 PROFILE OF AN INVESTIGATIVE HYPNOSIS INTERVIEW



PRE-HYPNOSIS INTERVIEW

The pre-hypnosis interview consists of very important components which may negatively affect the outcome of the session if not handled properly. The police hypnotist is NOT a member of the investigative team assigned to the case and should have only limited knowledge of the facts, i.e., if the person to be hypnotized is a witness or victim, as well as the time, date, location, and type of crime. There should be enough information to set the scene for the hypnotic review during information eliciting.

The investigator may be present but will not participate in the hypnosis interview of the witness.

Introduction to Witness/Victim

The first step is the introduction of the witness/victim to the police hypnotist at which time either an audio or video recording must be operating to document this initial contact. It is imperative that the entire contact between the police hypnotist and the witness/victim be audio or video recorded. In addition, it may be desirable for the investigating officer to make his/her own recording of the interview. The recording of the entire contact will provide the prosecutors, judges, defense attorneys, and jurors an accurate record of the interview; and to show that acceptable techniques were utilized and the interview was not impermissibly suggestive. If the police hypnotist is a uniformed officer, it may be desirable for him/her to be dressed in civilian clothes. Almost any location is sufficient as long as it is quiet, reasonably comfortable, and nonthreatening to the individual.

Rapport Building Session

One of the main tasks of the hypnotist is to establish and maintain rapport with the individual to be hypnotized by building a sense of trust in the hypnotist and the process.

Explaining Hypnosis

Explain the hypnosis process, what will be said and will be expected of the individual.

Discuss the Misconceptions

Explain the common misconceptions which most people believe about hypnosis, i.e., that the hypnotized person is not asleep or unconscious, will not divulge his secrets, cannot be compelled to tell the truth, will not get stuck in hypnosis, cannot be made to do foolish things, etc.

Many of these misconceptions come from the Svengali-Trilby novel by George Du Maurier (published by W. H. Allen-London A. Howard and Wyndham Company), and have been perpetuated over the years through television, motion pictures, and stage hypnosis.

It should be noted that a person could lie, confabulate, or make up information while hypnotized if the person is motivated to do so. It is for this reason the [Texas Department of Public Safety's](#) policy prohibits the use of hypnosis with suspects and defendants.

Answer Any Questions

Allow the individual an opportunity to ask any questions which he/she may have and provide appropriate response.

Have the individual sign a voluntary consent to participate in a hypnosis session for the sole purpose of aiding in the criminal investigation. . If the witness/victim is a juvenile, obtain parental consent. (Refer to Exhibit #2 for details.)

EXHIBIT # 2

HYPNOSIS CONSENT FORM

I _____ do hereby voluntarily and freely consent and agree to enter hypnosis with the assistance of _____ of the Texas Department of Public Safety for the sole purpose of aiding in a current criminal investigation.

(Signed) _____

Date: _____

_____ Parent (if juvenile)

_____ (Hypnotist)

_____ (Witness)

Checklist

Utilize the appropriate checklist with the subject to determine if the person is under the treatment of a psychologist, physician, or psychiatrist; wearing contact lenses; or has any phobias; etc.

By policy, the Texas Department of Public Safety prohibits a Department authorized hypnotist from hypnotizing a subject who is under treatment for a heart condition, epilepsy, diabetes, or other serious physical problem or is taking stimulants or sedatives, without the consent of the subject's physician. Consent is also required for persons who are under the care of a psychologist or psychiatrist. (Refer to Exhibit #3 for details.)

EXHIBIT # 3

CHECKLIST FOR INVESTIGATIVE HYPNOSIS SESSION

Case No. _____

Subject _____ Age _____ Sex _____

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 _____
Medication _____
- **5. Is subject under treatment by a psychiatrist or psychologist? _____
6. Has subject ever been treated for a mental problem? _____ When? _____
By Whom? _____ Type of Problem _____
7. Have subject remove contact lenses if worn.
8. Is subject known to be addicted to drugs or alcohol? _____
9. Does subject have any phobias? _____ If so, what? _____
10. Does subject appear to be in good mental and physical condition? _____
11. Is someone from requesting agency present? _____

* If subject is under treatment for heart condition, epilepsy, diabetes, or other serious physical problem or is taking stimulants or sedatives, do not proceed without the doctor's consent.

** Subjects under the care of a psychiatrist or psychologist will not be hypnotized without the consent of the psychiatrist or psychologist. The immediate supervisor will be fully informed of the reason for such care when authorization is requested.

Hypnosis Data Report

The hypnotist should keep notes or use an agency form to document the specific information relevant to the hypnosis sessions. Examples would be the names of all persons present, the time the initial interview started and ended, the time the hypnosis session started and ended, the type of crime, and the results of the hypnosis session, etc. (Refer to Exhibit #4 for details.)

EXHIBIT # 4

INVESTIGATIVE HYPNOSIS DATA REPORT

SUPERVISOR'S APPROVAL <input type="checkbox"/> YES <input type="checkbox"/> NO	
C R I M E D A T A	OFFENSE _____ COUNTY _____ DATE _____
	VICTIM _____ PLACE _____ TIME _____
	OFFICER REQUESTING ASSISTANCE _____ AGENCY ADDRESS _____ TELEPHONE NUMBER _____
	BRIEF SUMMARY OF OFFENSE _____
OTHER DATA WHICH MAY BE SIGNIFICANT TO STATISTICAL INFORMATION _____	
H Y P N O S I S S U B J E C T D A T A	NAME _____ SEX _____ DOB _____ AGE _____
	<input type="checkbox"/> WITNESS <input type="checkbox"/> VICTIM <input type="checkbox"/> OTHER OCCUPATION _____
	ADDRESS _____ HOME TELEPHONE NUMBER _____
	SUBJECT HYPNOTIZED BEFORE <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES—NUMBER OF TIMES _____ REASON _____
	PRIOR HYPNOSIS IN THIS CASE <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES—NUMBER OF TIMES _____ DATES/OFFICER CONDUCTING HYPNOSIS _____
	HQ-124 <input type="checkbox"/> YES <input type="checkbox"/> NO HQ-125 <input type="checkbox"/> YES <input type="checkbox"/> NO VIDEO TAPEO <input type="checkbox"/> YES <input type="checkbox"/> NO AUDIO TAPEO <input type="checkbox"/> YES <input type="checkbox"/> NO ARTIST SKETCH <input type="checkbox"/> YES <input type="checkbox"/> NO ARTIST NAME _____
	DATE _____ INTERVIEW STARTED _____ AM _____ PM SESSION STARTED _____ AM _____ PM SESSION ENDED _____ AM _____ PM INTERVIEW ENDED _____ AM _____ PM
	NAME OF HYPNOTIST CONDUCTING SESSION _____ NAME OF HYPNOTIST ASSISTING _____ LOCATION OF SESSION _____
	WITNESSES PRESENT _____ AGENCY ADDRESS & RELATIONSHIP IF CIVILIAN _____ TELEPHONE NUMBER _____
	BRIEF SUMMARY OF RESULTS ACCOMPLISHED (continue on back if necessary)
ADDITIONAL INVESTIGATIVE DATA <input type="checkbox"/> YES <input type="checkbox"/> NO	
OFFICER'S SIGNATURE _____ IO # _____ SERVICE _____	

INDUCTION

The hypnotic induction starts with a series of suggestions to the witness/victim to allow the eyes to close, to become aware of breathing, to allow the experiencing of mental and physical relaxation, and to count numbers backwards slowly. Some induction techniques commonly used by hypnotists are progressive relaxation, confusion techniques, counting, fractionalization, Chiasson's method or some version of these techniques.

INFORMATION ELICITING

The various information-eliciting techniques are designed to permit the victim/witness to recall forgotten or repressed information if he/she is willing and able to have such recall.

Some of the techniques used for eliciting information are the movie theater technique, the calendar technique, ideomotor finger signal, the blackboard technique, automatic writing, and artist composite sketch, to name a few. A commonly used technique for regression to achieve hypermnesia is the movie theater. This technique is designed to regress a person back in time for the purpose of mentally reviewing the circumstances while experiencing a feeling of detachment. This technique is used to separate the event and the mental review process by time as it is well documented that tension, anxiety, and trauma have a negative effect on recall and interrupts memory.

The procedure utilized in the movie theater technique consists of a series of instructions given to the subject, while in hypnosis, indicating they are going to review a special documentary film of the sequence of events as they occurred on the day in question. They are advised that the film can be stopped, reversed, fast-forwarded, freeze-framed, or played in slow motion to provide them an opportunity to make a closer review of any segment of the events. The person is told even though the event was traumatic they will be watching the documentary and will be able to remain calm, relaxed, and able to report the events as an investigative reporter.

The person is then directed, in imagination, to the inside of a theater and the review of the documentary film is started. While the person is in hypnosis with eyes closed mentally reviewing the events, they can verbally respond to the police hypnotist as to what is occurring or to questions by the hypnotist.

The witness/victim knows they are not in a theater while in hypnosis or after they are dehypnotized; however, this technique allows them to isolate some of the emotions attached to the event while they are mentally reviewing what occurred.

The calendar procedure is another regression technique, which would not be used with a witness or victim who has been traumatized. The witness/victim is instructed to imagine a calendar on the wall. The person is then instructed to look at the calendar and see that it is _____ (month) _____ (date) _____ (year) which is a _____ (day of the week). You should always start with the current date. The police hypnotist then starts regressing the witness/victim backwards by each day (seeing the previous day on the calendar) for recently occurred events. If it has been some time since the crime event occurred, one may want to regress the individual by months or even years. It may be necessary to regress the witness/victim back to the day prior to the crime event and have them seeing themselves go to bed that night and getting up the next morning, if that is what the person advised happened, continuing the mental review and verbalizing the sequence of events as they are occurring. The

structure of the interview will depend on the circumstances surrounding the event as reported by the witness/victim.

An artist composite sketch can be developed while the person is in hypnosis or afterwards. The police hypnotist conducts the induction, has the witness/victim mentally review the events and then, while in hypnosis, asks the witness/victim to describe the physical characteristics of the perpetrator. The artist may be present and start the artist composite sketch of the perpetrator based on the description provided. The witness/victim should then be instructed to remain in hypnosis and open their eyes and compare it to the mental picture in their mind. It is permissible for the artist to discuss any changes which may need to be made with the witness as long as they are trained in forensic interviewing techniques. The police hypnotist may occasionally need to use deepening techniques between viewing of the sketch. Upon completion the subject is told to close their eyes and then dehypnotize.

These techniques or a variation of these procedures are used by many practitioners for memory refreshment as reported throughout the literature.

Being an expert in the clinical use of hypnosis does not qualify the hypnotist to conduct the information eliciting phase of an investigative hypnosis session with a witness/victim to a crime event for the purpose of refreshing recall unless he/she is also trained in the use of investigative hypnosis and forensic interviewing techniques.

It is imperative that the hypnotist use neutral non-leading questions, allowing the person to report in free narrative recall, and use compound or zeroing-in questions for specific details. An example would be if the witness/victim tells the hypnotist the suspect has a mustache while mentally recalling the characteristics of the perpetrator's face; the hypnotist may then ask the witness to describe the mustache, and then if it is thin, medium, or thick.

DE-HYPNOTIZE

One of the most common techniques used to de-hypnotize a person is for the hypnotist to tell the subject that, "In a moment I'm going to count from one to ten and when I reach the number ten you will become alert, feeling refreshed and relaxed, opening your eyes on the count of ten."

The police hypnotist then counts from one to ten slowly while giving positive suggestions to the individual of feeling refreshed, relaxed, clear headed, and having all of the normal sensations return to all parts of the body. Upon reaching number ten, the hypnotist tells the individual to open his/her eyes feeling refreshed and relaxed.

It is important that the hypnotist makes certain that the person is fully de-hypnotized and reoriented before terminating the post-hypnosis interview, especially with individuals who achieve a deep level of hypnosis. In most instances, this takes only a short time.

POST-HYPNOSIS INTERVIEW

The post-hypnosis interview may include questions, comments, or additional information.

Whether or not the investigator uses standard interview techniques or hypnotic interview techniques, a witness/victim often will think of something else at a later time which may be important to the investigation. The police hypnotist should tell the witness/victim that if he/she recalls any additional information in the future, it should be reported to the investigator assigned to the case.

The audio or video recording documenting the entire contact between the police hypnotist and witness/victim may be terminated only when the hypnotist and witness/victim separate.

Chain of custody of the original recording should be maintained by the police hypnotist until all appeals have been exhausted in cases where an offender was arrested and convicted or until the statute of limitations has run out.

For a more detailed accounting of the various aspects of hypnosis and its use for investigative purposes, refer to the Handbook of Investigative Hypnosis by Dr. Martin Reiser (LEHI Publishing Company) and Clinical and Experimental Hypnosis by Dr. Williams S. Kroger (J. B. Lippincott Publishing Company).

While this is a basic outline of the hypnotic interview, it is not intended to oversimplify the investigative hypnosis process, because all aspects cannot be covered in a condensed article on this topic.

It should also be understood that the law enforcement officer with years of prior experience, who receives training in hypnotic interviewing techniques, brings a wealth of interviewing skills and experiences in dealing with both traumatized witnesses and victims to crime on a fairly routine basis.

There are currently 24 commissioned officers within DPS who are trained, certified in compliance with state law, and authorized by the Director to conduct Investigative Hypnosis Interviews. Texas is the only state in the U.S.A. which requires, by statute, mandatory training, testing, and certification for police officers who use hypnotic interviewing techniques.

DPS-authorized hypnotists are prohibited from using hypnosis for therapeutic or public entertainment purposes. Although there is a considerable difference of

opinion as to what constitutes therapeutic use of hypnosis, DPS policy includes weight reduction, stop smoking, and similar applications of hypnosis as prohibited activity.

On June 29, 1988 the Texas Court of Criminal Appeals issued an opinion in Zani v. State addressing the use of hypnotically enhanced testimony and establishing ten procedural safeguards.

In a case of first impression, the Texas Court of Criminal Appeals has approved the admissibility of hypnotically enhanced testimony under certain circumstances. This case involved the hypnosis of a witness thirteen years after the murder of a convenience store clerk for which defendant Robert Zani was subsequently convicted and sentenced to 99 years in the Texas State Prison. The Court of Criminal Appeals, the highest appellate court in Texas for criminal cases, held that in considering the admissibility of hypnotically enhanced testimony, a trial court should consider the four-prong dangers of hypnosis:

1. hypersuggestibility
2. loss of critical judgment
3. confabulation, and
4. memory cementing

The court listed several factors relevant to the trustworthiness of hypnotic recall, including:

1. The level of training in the clinical uses and forensic applications of hypnosis by the person performing the hypnosis.
2. The hypnotist's independence from law enforcement investigators, prosecution, and defense.
3. The existence of a record of any information given or known by the hypnotist concerning the case prior to the hypnosis session.
4. The existence of a written or recorded account of the facts as the hypnosis subject remembers them prior to undergoing hypnosis.
5. The creation of recordings of all contacts between the hypnotist and the subject.
6. The presence of persons other than the hypnotist and the subject during any phase of the hypnosis session, as well as the location of the session.
7. The appropriateness of the induction and memory retrieval techniques used.
8. The appropriateness of using hypnosis for the kind of memory loss involved.
9. The existence of any kind of evidence to corroborate the hypnotically enhanced testimony.
10. The presence or absence of overt or subtle cuing or suggestion of answers during the hypnotic session.

Upon consideration of the totality of the circumstances, if the trial court should find by clear and convincing evidence that hypnosis neither rendered the witness post-hypnotic memory untrustworthy nor substantially impaired the ability of the opponent fairly to test the witness recall by cross-examination, the testimony may be admitted.

Of significant importance are the following statements contained in the concurring opinion by Judge White with Judges Davis and McCormick concurring.

There are several factors which satisfy the test and support the conclusion that Magonye's testimony was admissible. The hypnotist, Ranger Carl Weathers, was independent of the law enforcement personnel who investigated the case, as well as the attorneys for the State and the defense. At trial, Weathers testified that he knew nothing of the details of this case prior to the hypnosis session. There was a record in the instant case, by interview with Jerry Magonye, Jr., of what Magonye recalled prior to hypnosis. The hypnosis session was tape-recorded. The majority concluded that the questioning was not overtly suggestive. Although two other persons were present during the session, they did not exert an influence on the subject during hypnosis. Lastly, there was sufficient corroboration, both direct and circumstantial, of the hypnotically refreshed testimony.

The court rejected the Per Se exclusion of hypnotically enhanced testimony based upon the opinion of the U.S. Supreme Court in Rock v. Arkansas. 107 S.Ct. 2704 (1987), which held that a trial court may not automatically exclude the testimony of a criminal defendant who has been hypnotized for memory enhancement prior to trial. The Court of Criminal Appeals also held that Zani was not entitled to the presence of counsel at the hypnosis session conducted prior to indictment. Finally, the court determined that a jury charge cautioning against excessive reliance on hypnotically enhanced testimony should not be given, since the requested charge would constitute a comment on the weight of the evidence unauthorized by Texas Law.

Prior to considering the use of hypnosis for the purpose of enhancing recall with a witness/victim to a crime, it is recommended that the case investigator check with the prosecutor to determine the legal status of hypnosis in his respective jurisdiction.