Evidence for Hypnotically Refreshed Testimony

The View from the Laboratory*

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The evidence for differences in recall accuracy for hypnotized vs. nonhypnotized eyewitnesses in forensically relevant settings was examined through a meta-analytic review of 24 research studies. Recall accuracy for nonleading questions after a 1- to 2-day delay favored the hypnotized subjects ($d = .46$); however, less accurate recall was evidenced for hypnotized subjects following a delay of less than 24 hours ($d = -.29$) or a one-week delay ($d = -.24$). The recall of hypnotized subjects also displayed more intrusion of uncued errors and higher levels of pseudomemory. Hypnotized subjects also expressed higher levels of confidence in recall accuracy compared to nonhypnotized subjects. Caution is urged regarding use of hypnotically refreshed memory.

During the past two decades, the use of hypnosis as an aid to eyewitness recall has met with both praise and disapproval. Police investigators, research psychologists, and the courts have each provided perspective on the accuracy and appropriate use of forensic hypnosis. To date, a clear consensus has not emerged.

Police use of hypnosis as a tool for the investigation of crime grew rapidly in the 1970s, with police interest in hypnosis encouraged by the open-admissibility rule (Harding v. State, 1968) that was being followed in most states at that time. Martin Reiser, a police psychologist, established the Law Enforcement Hypnosis Institute in 1976 in order to train police officers and others, through a 32-hour

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course, to become what he called "hypnotechnicians" (Scheflin & Shapiro, 1989, p. 67). By 1984, over 1,000 police officers had received training at the Law Enforcement Hypnosis Institute. In 1985, Reiser reported data from "over 600 major crime cases at the Los Angeles Police Department." Reiser claimed that hypnosis interviews had enhanced "investigatively useful recall in approximately three-fourths of the cases" and that "accuracy levels of the hypnotically elicited information were around 90%" (p. 515).

The entrance of hypnotically refreshed memories into courtroom testimony generated apprehension about the validity of such memories. Hypnosis researcher Martin Orne urged courts to apply caution in their consideration of hypnotically refreshed testimony (Scheflin & Shapiro, 1989) and suggested that the probative value of such testimony is less than the inherent risks of distorted recollection and false confidence (Orne, Soskis, Dinges, & Orne, 1984). Orne (1979) argued that the use of hypnosis can "profoundly affect the individual's subsequent testimony" and "since these changes are not reversible, if individuals are to be allowed to testify after having undergone hypnosis to aid their memory, a minimum number of safeguards are absolutely essential" (p. 335).

The New Jersey Supreme Court upheld the necessity for safeguards against possible memory contamination in *State v. Hurd* (1981), stating that the hypnotic session, including prehypnotic testing and posthypnotic interview, should be recorded and privately conducted by a licensed psychiatrist or psychologist trained in the use of hypnosis. This hypnotist, furthermore, should be independent of the investigator, prosecution, and the defense (Scheflin & Shapiro, 1989).

Following *State v. Hurd*, courts began to require adherence to safeguards as a precondition to the admissibility of hypnotically refreshed recollection in the courtroom. In the early eighties, about 15 states specifically barred or limited the testimony of previously hypnotized witnesses (Grisham, 1987). For courts that adopted a total-exclusion rule (*People v. Shirley*, 1982), safeguards did not prevent serious dangers that the witness "(1) would lose his or her critical judgment and begin to credit 'memories' that were formerly viewed as unreliable; (2) would confuse actual recall with confabulation and would be unable to distinguish between the two; and (3) would exhibit an unwarranted confidence in the validity of his or her ensuing recollection" (Scheflin & Shapiro, 1989, p. 92–93).

The U.S. Supreme Court ruled on the admissibility of hypnotically refreshed testimony in *Rock v. Arkansas* (1987). In a 5–4 split decision, the court ruled that Arkansas's total-exclusion rule was unconstitutional because it prohibited a defendant from engaging in her constitutionally guaranteed right to testify in her own behalf. The opinion of Chief Justice Rehnquist, writing for the dissenting justices, reflected earlier findings from laboratory studies of hypnotically refreshed memory: "A hypnotized individual becomes subject to suggestion, is likely to confabulate, and experiences artificially increased confidence in both true and false memories following hypnosis. No known set of procedures...can insure against the inherently unreliable nature of such testimony" (p. 2715).

In a 1983 review of available research, Smith noted the paradox of forensic hypnosis: Anecdotal evidence from real-life crime situations indicates stunning improvement in witness recall when the witness undergoes hypnosis, while there