

Forensic Application of Hypnosis - Police Use

**TESTIMONY**

**By Dr. Martin Reiser, Ed.D**

For the prosecution:

North Dakota v. Brown 337 N.W. 2nd 138 (1983)

Hypnotically refreshed recall used by Law Enforcement  
in a criminal case ruled admissible

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***QUESTIONS By Prosecuting and Defense Attorneys***

Q: Would you state your full name for the record, please?

A: Dr. Martin Reiser

Q: What is your occupation?

A: I am Director of Behavioral Science Services with the Los Angeles Police Department.

Q: How long have you been in that position?

A: It will be 14 years in December.

Q: How large a department is the Los Angeles Police Department?

A: Currently, we have about 6,900 sworn personnel and about 2800 civilian personnel- it's close to 10,000.

Q: Could you briefly describe the department that you direct here and what purposes it has in the police department?

A: Yes, Behavioral Science Services is a psychological services unit. We have approximately 24 full and part time staff within this unit- this section- and we provide therapy, counseling. We do research, consultation. We work with detectives in major crime cases for purposes of psychological profiling, hostage negotiation, and investigative hypnosis.

Q: How long have you been working in the field of investigative hypnosis?

A: Since we started our demonstration project in June of 1975 I was with the project and I had begun as an individual doing it on my own in about 1972 before the project was established.

Q: Would you describe your education- previous education and experience?

A: Yes, may I briefly run through on a brief vita that I have. I think it would be easier to do that, if that `s all right.

Q: Yes, you may.

A: I received a Bachelor of Arts degree in 1950 in English and Science, a Master of Education degree in Clinical Psychology in 1956, and a Doctor of Education & Psychology in 1961-all from Temple University in Philadelphia. I was an Assistant Professor of Psychology at Pennsylvania State University from 1961 to 1964, a Clinical Psychologist at Camirio State Hospital in California- 1964-1965. I was a Senior Clinical Psychologist at the Sanferando Valley Child Guidance Clinic- 1965-68 and became Director of Behavioral Science Services with the Los Angeles Police Department in 1968 to present time. In 1976, I became the Director of the Law Enforcement Hypnosis Institute which is a non-police department organization set up to train other law enforcement criminal justice professionals in investigative hypnosis. I am a diplomat in Clinical Psychology and an examiner and member of the Board of Directors of the Western Region of the American Board of Professional Psychology. I am a Past President of the Los Angeles County Psychological Association- 1971-72. I am also a Past President of the Los Angeles County Society of Clinical Psychologists, 1970-71. I am a faculty consultant with the California School of Professional Psychology and have been since 1973. I am a faculty member of the Hypnosis Institute, which is accredited by the California State University of Los Angeles. I am also a faculty member and training analyst of the Los Angeles Institute for Psychoanalytic Studies and was the President of that institute in 1970. I am a licensed psychologist in the State of California. In terms of hypnosis connections and memberships, I am a member of the American Society of Clinical Hypnosis; I am a member of Division 30, which is the hypnosis division of the American Psychological Association. I am a member of the Southern California Society of Clinical Hypnosis, and I am also one of the founding members and a board member of the International Society of Investigative and Forensic Hypnosis which is the largest international society in the specialty of investigative hypnosis.

Overall, I have published over 60 professional papers and four books. Ten of those, approximately, have been in the area of hypnosis- primarily investigative hypnosis including one book, Handbook of Investigative Hypnosis, which is used as a text by different training organizations and police agencies and other individuals. When we began our Los Angeles Police Department investigative hypnosis project in 1975, I began supervising and conducting additional investigative hypnosis cases personally and since that time, have personally done over 70 investigative hypnosis cases with victims and witnesses in major crime cases and have consulted in several hundred others with the practitioners of this agency and other agencies around the country. Through the Law

Enforcement Hypnosis Institute, I have taught and supervised over a thousand criminal justice professionals and behavioral science professionals, I might add- at seminars that we put on around the country in this area. In December of 1977, I was awarded the American Express International Association of Chiefs of Police Award for having the outstanding program- the investigative hypnosis project in criminal justice of that year for contributing to police science and technology in the country.

Q: Dr. Reiser, what is hypnosis? Can you give a definition to lay people such as myself and other could understand?

A: Yes, there are many definitions- the one that I like and some other people prefer, is that hypnosis is an altered state of consciousness which is characterized by an increased focus of attention, a heightened state of mental concentration, and a decrease of focus and concern about peripheral or surrounding noises and stimuli.

Q: Is there an innate capability for hypnosis?

A: Yes. There is a lot of misunderstanding on that particular point. Hypnosis is not something that is imposed on a person by a Svengali-like hypnotist.

Q: What do you mean by that? A Svengali-like hypnotist?

A: The typical image that is perpetuated by the media and frequently in movies and TV shows and books, and also by some of my fellow professionals, incidentally, is that the hypnotist has some power, some secret magical knowledge that he uses to impose himself and his will on the subject of hypnosis and thereby taking over control of the person making the person think in a certain way or do things in a certain way kinda like a Svengali Trilby story that goes back to DuMaurier in the late 1800's. That is absolutely untrue because hypnosis is a natural innate capability that every individual possess to some degree, and all the hypnotist is, is a guide or a teacher to show the person how to tap into that potential ability that exists.

Q: Is this innate ability demonstrated in my daily life or anyone's daily life that you can describe?

A: Yes, As Dr. Herbert Spiegel points out, people spontaneously go into hypnotic trance states every day without even being aware of it or labeling it as such---when they are daydreaming; when they are completely absorbed in a TV show or a novel and forget their surroundings; when they are staring into a fire on a cold winter evening and their thoughts are a thousand miles away; when they are driving down the highway on a warm, summer day and the heat rises from the white line and they are automatically driving and don't remember how they got to their destination, those are all indicators of everyday spontaneous hypnotic like state.

Q: What is the difference between that and somebody who is a hypnotist inducing somebody into the state of hypnosis?

A: The difference is that the hypnotist as a guide and the subject agree to use this procedure for a particular purpose such as the possibility of enhancing recall, improving memory which has been interfered with because of the trauma of a rape situation or kidnap or a murder or some such thing as that. So the difference is that there is a stated purpose for doing the hypnosis like in any interview situation.

Q: You've touched on some of the myths and misinformation about hypnosis. What are some of the other myths? Specifically myths about the harmful effects of hypnosis?

A: Yes, unfortunately some of my colleagues in the health sciences would have people believe that only they who have certain licenses and credentials are capable of using this dangerous tool of hypnosis because it is magical and dangerous and bad things can happen, which is absolutely untrue, and those of us who are knowledgeable in the area and have used it in the investigative hypnosis context, and in the therapeutic context, have been trying to dispel that myth for the last 50 years. Dr. Jacob Conn wrote a very incisive paper on the myth or dangerousness of hypnosis. It points out that searching all of the history of hypnosis, which goes back thousands of years when it was used by priests and by rulers and by all kinds of religious figures. There are no instances of harm coming to people from hypnosis, really. And so the data in the areas of harmfulness in hypnosis does not hold up. What we find is that when hypnosis is used for psychotherapeutic purposes, there are things that can go wrong because of the psychotherapeutic techniques or the ineptness of the therapist which have to do with therapy and not really with the hypnosis state itself.

Q: That more or less relates to the individual subject's own psychological makeup and not the hypnotic state?

A: Yes, obviously if you attempt to use hypnosis with an individual who has underlying psychotic level problems and is seriously emotionally disturbed, as was done for example, in some situations with defendants like Sirhan, Sirhan and other people where you do that then the likelihood of getting negative results is enhanced tremendously and the same thing could occur without hypnosis, of course.

Q: How about mind control, is there a myth about mind control that the hypnotist can take over and make somebody to anything he wants or make somebody say anything he wants?

A: Yes, all hypnosis is basically self-hypnosis. And all a hypnotist is, is a guide- someone who shows the person how to, who is motivated and cooperative, how to tap into that capability. The person in hypnosis is not asleep, is not unconscious, is aware of everything that is happening, can hear the telephone ring in the next room, the typewriter going, knows what is being said, knows that he or she can come out of hypnosis anytime he or she wants to- so this notion about the hypnotized person being a different kind of individual or not knowing what's happening is absolutely a myth.

Q: How about the type of hypnosis that perhaps most people would be familiar with-and that is the stage hypnotist. Is there some kind of mind control that the stage hypnotist, for example, has over the subject? Does this also relate to what you are talking about?

A: Yes, it does. No, there is no mind control. People who volunteer to go up on the stage to entertain are really motivated to entertain or else they would not volunteer. And so the issue there is entertainment and not hypnosis. The hypnosis process, or seeming process, gives the individual an excuse to behave in a more uninhibited way if he or she is so inclined so that they don't have to assume responsibility for the things that they would agree to do at the suggestion of the stage hypnotist. It is essentially entertainment in that context.

Q: I note that in my experience I saw a stage hypnotist I think once or twice in past years, and he always in the description of this process to his audience indicates introducing them to come up on the stage that there will be nothing immoral or nothing against their will or anything like that- is that typical then?

A: Yes, that's accurate. In studies done by people like Dr. Orne and others have pretty clearly indicated that the hypnotized subject will not do things that are basically contrary to their moral code.

Q: How about loss of critical judgment. Is a person who is a subject of hypnosis, a person who uses the ability to discriminate between facts and - do they use critical judgment, in other words. Is that also a myth in the area of hypnosis?

A: The issue of critical judgment is not really a hypnosis issue. It's kind of a smoke screen, I think, that's been injected into the hypnosis arena. Critical judgment is a function of the basic cognitive abilities of any individual.

Q: Cognitive meaning the---

A: Thought processes, the ability to remember, use recall, thinking and so on. For example, if there is an individual who is normally very forgetful and confused and rarely remembers where he parked his car in the parking lot--- that person would behave in the same in a hypnosis situation as without hypnosis. The individual who has good critical thinking and good recall will maintain that ability in a hypnosis session. The hypnosis itself does not change the person's critical ability, that's a function of the individual's thought processes and mental structure.

Q: How about the term, hypersuggestibility- would you define the term, please?

A: Hypersuggestibility in this context really goes back to a 1930 concept in hypnosis that was popularized by a psychologist named Clark Hull, and he wrote a book about it in 1933, that hypnosis is almost the same, he said, as suggestibility and the deeper someone goes into hypnosis the more suggestible they become. Well, that has been disproved by recent research and current theorists like Hilgard, of Stanford University, and Edmonston and a variety of other people. In my own experience I have found that a person is no

more or less suggestible under hypnosis than they would be ordinarily. The issue of suggestibility or hypersuggestibility is much more demonstrable by advertising commercials on television- a multibillion dollar industry which sells people who are not hypnotized an awful lot of stuff that they may or may not need costing an awful lot of money because suggestions that are made during these commercials. Suggestibility is an innate natural potential that everybody has and it is not a hypnosis illicited capability.

Q: That's an interesting point. Isn't there a term called subliminal suggestion that advertising media know about and have practiced its purpose in recent years?

A: Yes, it's been practiced for probably the last 30 or 40 years quite consciously and perhaps unconsciously by advertisers before that. One of the more obvious techniques of using what is called subliminal or below the level of conscious awareness suggestion to sell things is the linking of sex with a product. For example, if you want to sell a car you drape an attractive looking female across the hood of the car and suggest to the person- male buyers primarily who by most of the cars that if they buy this particular car they will be more likely to come into contact with that kind of attractive female. And this is, as you know, a very common advertising technique that use suggestion and no hypnosis is required for that.

Q: Could you explain confabulation, define the term and explain its significance?

A: Yes, confabulation means filling in the gaps of memory by making up things to tell a seemingly coherent story so that it seems like it's a logical sequence of events. Some of the opponents to police using investigative hypnosis continuously make the assertion without supporting data, I might add, that invariably there will be confabulation, made up things, appearing in hypnosis sessions when used by investigators. This is absolutely not true. There is no greater propensity to confabulate in my experience by witnesses and victims of major crimes in hypnosis than there is by other eyewitnesses without hypnosis. And, if anything, the literature on eyewitness testimony without hypnosis suggest to me that there is a lot more confabulation and misidentification of people that has occurred without hypnosis entering the picture that people have been able to point out when hypnosis has been used as a recall technique.

Q: You stated that you studied the subject of investigative hypnosis, would it also be fair to say that you were one of the principal founders of this technique in the United States?

A: I believe that's probably so yes.

Q: Going on from there, you say that you have utilized this process I believe beginning in 1975 at the Los Angeles Police Department?

A: Yes, and before that as an individual person when I began using it here on request, it was about 1972.

Q: Did you formally begin doing subjective research in this area, that is did you begin

studies with the implementation of this process with the LA Police Department?

A: When I first started out in 1972, I was under the impression that all hypnosis was the same and I had been trained primarily in therapeutic hypnosis- I had used hypnosis for psychological problems and psychosomatic difficulties and so on. And I was under the impression that because I knew hypnosis, I could use hypnosis in crime cases and a request came through from a couple of detectives about a particular homicide case and one of the key witnesses who could not remember things that she admitted she had seen and experienced during the crime case and they wondered if hypnosis might be useful in aiding recall. And I said, "Well, I don't know but there's nothing to lose here, let's see.". We did, through this hypnosis process, get a lot of additional information. I also learned over a time as more and more request came through there were specific things about investigative hypnosis that were different from therapeutic hypnosis- how one is questioned, neutral non-leading questioning, and not suggesting things to the subject, which is a lot different than the way therapists use hypnosis- with patients to get unconscious fantasies and conflicts and unconscious material. So, I gradually began to see the use of hypnosis for helping someone refresh memory, for example, is not the same as using it in therapy. And so I began thinking about the desirability of developing a research project, a curriculum, an outside panel of experts in hypnosis from the local universities and community, and then setting up a training program to test the feasibility of training detectives in specific investigative hypnosis procedures because, based on my own experience, I could see no reason why a therapist had to do this - it just wasn't the same business. And so we finally did that. We got approval from the Police Commission and from the city attorney's office after checking out that there were no special liabilities attached to this research project. We assembled a group of foremost experts in the community including Dr. William Kroger, who is a well-known authority in clinical hypnosis (who subsequently has worked with the FBI in their program of investigative hypnosis), and people from UCLA and UFC, private practice. We then put on our training on a feasibility study basis and we began collecting data at that point and we've been collecting it since that time.

Q: Are you able to describe today, Dr. Reiser, what some of the results of that data is in the use of investigative hypnosis in the LA Police Department?

A: Yes, we've been gathering data and we have compiled it from time to time. If I can refer to the latest data sheet that I have?

Q: O.K.

A: The information that I have available is from the beginning of our hypnosis project here at the police department beginning in June 1975 and going through the end of 1981. During that time we conducted a total of 654 investigative hypnosis sessions. We found that in 81.6% of those sessions, additional information was elicited and was available prior to hypnosis on routine interview by detectives. We also found that of that information that was elicited, that 81.6% additional information, that on checking with the detectives (the case detectives) as to their estimate of its value in the investigation,

66.2% was considered of investigative value of that additional information. Of the new information obtained from hypnosis, we try to check to determine accuracy to see whether this is all confabulation and nonsense or is this information that has some validity. And what we found is that all the information that was obtained through hypnosis in 260 of our cases- these were the only cases where we could follow up because of additional leads and corroboration and so on- which is roughly half of our total cases. 89.3% was considered to be from somewhat, to extremely accurate information. That's almost 90%, which tells us that the information we are getting in the cases at the Los Angeles Police Department are not fantasies or made up things or confabulations that people are just telling us to please us but rather that we can find corroboration for in some case. In terms of cases that were solved wherein we used hypnosis, 180 of these cases we attribute the solution to during the time the survey was done primarily. 180 cases were solved of those cases that we had, and those cases that were solved 64.4%, hypnosis was considered from very valuable to "the case would not have been solved without it," so that the case detectives have attributed considerable value to the hypnosis information in the solution of these 180 cases during this particular time. These are the essential details that I think are worth mentioning at this point.

Q: That study was structured by yourself personally, Dr. Reiser?

A: That questionnaire format that we used with our hypnotist and with our case detectives was developed by me and by some of our investigative personnel, Captain Nielson (who was our investigative hypnosis project director). It was reviewed by Dr. Richard Docter, who was a professor of psychology at California State University who were checking against the so-called scientific criteria of information and data gathering and he approved the format that we were using.

Q: Dr., did you personally compile these statistics?

A: No, these statistics are the responsibility of Captain Nielsen as project director.

Q: Captain Nielson is a member of the Los Angeles Police Department?

A: Yes, he is the commanding officer currently of forgery division at LA Police Department and as an added duty is project director of investigative hypnosis project.

Q: In the area of hypnosis and so forth, has he acted under your direction or supervision?

A: Yes, I am consultant to the project and we collaborate very closely on these things. Captain Nielsen is also an instructor of investigative hypnosis and has taught hundreds of individuals in this area himself.

Q: I believe you touched on this before; but I will ask the question directly, and that is: Are police officers qualified to conduct investigative hypnosis?

A: I think that investigative hypnosis falls within the purview of investigations and

criminal justice and police science and technology and that officers who receive investigative hypnosis training and through the institute that I mentioned previously, we provide the basic, and in some instances advanced training in investigative hypnosis and with that training, in my opinion, they are the most qualified individuals along with those few behavioral science people who take the trouble to get themselves trained in investigative hypnosis in addition to therapeutic hypnosis are the best qualified to conduct these sessions with witnesses and victims because it is their responsibility to work with the victims and witness in crimes cases without hypnosis- and they routinely interview traumatized witnesses every day who are raped, who have witnessed murders, who have been kidnapped, without using hypnosis. And that's their job and they are considered by the community, by the citizens of the State of California and other places-- - qualified to do that - and as a matter of fact that's what they get paid to do. So, with the addition of this training to their police investigative argumentarium I see them as most qualified. And let me just add one more thing, if I may - and that is, the horror stories that some of the opponents to the police use of investigative hypnosis use to illustrate the bad things that can happen in investigative hypnosis, most of their stories that I have read involve either a psychiatrist or a psychologist who have misused or have bungled the hypnosis session - not the police practitioner.

Q: So you are making two points, an investigative hypnotist has to be well-trained in the areas of investigation and criminal justice - that's one point, Is that correct?

A: Yes. I think on that point that's really important because whether one is a psychiatrist, psychologist, dentist, or physician or detective - each of those professionals bring to their investigative hypnosis training a preexisting background in their special area of expertise - whether it's medicine, dentistry, psychology, or investigation and they add to this preexisting knowledge a tool which helps them to function better in their area of expertise. And, of course, investigative hypnosis that area is in the police science area.

Q: The second point you tried to make I believe, Dr. Reiser, is that the investigative hypnotist, police officer or not - maybe even a psychiatrist, must be trained in investigative hypnosis.

A: Yes, merely knowing therapeutic hypnosis does not automatically qualify someone as an expert in the investigative hypnosis area. And this is not only my point of view --there are others like Dr. Herb Spiegel, whose name I mentioned previously.

Q: What does he do?

A: Dr. Spiegel is a Professor of Psychiatry at Columbia University Medical School in New York City who is a nationally know expert in clinical hypnosis and has written many books and articles on the subject and more recently has been involved in the investigative hypnosis area as well in doing investigative hypnosis cases.

Q: Have you read books of his or papers of his that confirm your assessment of his position?

A: Oh, yes, as a matter of fact if you like I can quote from Dr. Spiegel.

Q: Dr. Reiser, does anybody really know how memory works?

A: Unfortunately, no. And the experts in the area of memory acknowledge unanimously that in spite of a hundred years of laboratory studies using nonsense syllables, poetry, and other verbal kinds of material to try to discover how memory works we do not yet know how memory works. There are a couple of dozen different theories and models of memory, but the bottom line-do we know how memory works? - The answer is "NO".

Q: Does hypnosis, in your opinion, affect memory prevent cross-examination of that witness?

A: No, absolutely not. As I said before, hypnosis does not change the hypnotized person into someone different. It does not change the mind of the individual. It does not interfere with the person any differently than any other interview technique would. Now, of course it's possible to intimidate, to coerce, to queue, to lead and attorneys and other people some of them are very experienced at doing that without hypnosis. And in the old days, you know that the rubber hose and the spotlight was almost a kind of joke about police interrogation to get confessions from people, and so on. So, sure it's possible to shape people's responses if you want to use coercion or force. But, assuming that professionals are conducting themselves properly and professionally and ethical, the answer to the question is "No, hypnosis doesn't change memory."

Q: Does the hypnotic subject ever forget the source of his or her memory?

A: It's possible. Again, as I mentioned earlier if the individual's cognitive functions are confused, hazy, if the person has a poor memory on a day-to-day basis- for whatever reason- then, that person's memory will likely indicate and show those same kinds of processes with or without hypnosis.

Q: Does the very process of hypnosis itself cause memory distortions or confabulations, in your opinion?

A: No. Quite the contrary, in spite of these very dogmatic assertions by certain supposed authorities and experts in the area of investigative hypnosis, in my personal work over a ten year period of working with it witnesses and victims and supervising and consulting with hundreds of other practitioners in their cases, by and large we are not getting confabulation and fantasies and made-up information because as our own study at LA Police Department indicates we are able to corroborate a significant amount of information on follow-up.

Q: Does the hypnotic subject become unshakably confident in his or her memory or memories of events?

A: Again, I don't think this is a basic hypnosis issue. I think it's an issue of a particular individual's functions and how a person's mental processes work. Specifically, I have not found that people merely because of being hypnotized invariably become unshakable in their post-hypnotic view of what happened during a situation or what their memory is. No, I don't think that's the case; however, an individual - with or without hypnosis- may become more sure of recall. And I think the literature is quite clear on eyewitness testimony generally that after a certain number of reviews, without hypnosis or going through a crime event, a person may become more sure of the recall at the end of that multi-review process than before. So I don't see that as a hypnosis issue at all.

Q: Can the hypnotist himself, wittingly or unwittingly, influence the subject as to memory?

A: There is less likelihood of influencing the subject in hypnosis than there is in a routine non-hypnotic interview essentially because the witness's eyes are closed and, therefore, 80% (approximately) of input that the person gets, which is through the visual senses, is blocked off because of closed eyes. So, body language doesn't matter when a person's eyes are closed, and so on, so if anything there is less likelihood of influencing the person, assuming that the interview was conducted in the correct neutral, non-leading fashion.

Q: Have you heard of the Kelly Frye test?

A: Yes.

Q: What is that test, Dr. Reiser?

A: Essentially, as I understand it, Kelly Frye suggest that hypnosis, or any new scientific instrument, like a polygraph or voice prints, has to meet a test of scientific acceptability in the so-called scientific community. That's my understanding of that.

Q: Is hypnosis that kind of test or instrument or device that, in your estimation, should come within the Kelly Frye parameter?

A: No. It's absolutely not comparable to a truth detection instrument such as a polygraph or an objective instrument such as a voice print or voice stress analyzer, any of that, which attempt to measure discreet, specific objective data. All hypnosis is, is an interview technique that hopefully in some three- quarter of the cases will enhance memory by allowing the person to relax more. It is not a truth-detection instrument. No one who knows anything about hypnosis claims that it gets at the truth at all. A person can lie, can make up things, can distort - can do all of those things under hypnosis if he or she is motivated to do that. So, to try to compare an interview process with an instrument that is supposedly designed to get at the truth, in my view, is absolutely inept as a comparison.

Q: Do you think that the opponents of investigative hypnosis have assumed that it is a truth detection process that police officers are using and that is why they are against this

process?

A: Well, I think that what they have done is injected confusion into some of the courts by talking out of both sides at the same time. On the one hand, they claim that police think hypnosis is a truth detection device which of course is untrue and in their next breath, they say, well, hypnosis is not a truth detection technique but it should still meet the Kelly Frye test as a truth detector instrument- which to me is illogical and doesn't make any sense at all.

Q: Have you heard of Dr. Orne- I believe he is from Pennsylvania, is that correct?

A: Yes, I have.

Q: Dr. Orne is a renowned psychiatrist, is that right?

A: Yes, Dr. Orne is a well-known psychiatrist who has done a lot of laboratory research in hypnosis and has published a lot of experimental papers on hypnosis, primarily and I'm familiar with much of his work.

Q: Has Dr. Orne been involved at all in your estimation in investigative hypnosis on the scale that we've been talking about here?

A: I would have to answer "yes" and "no" to that. And let me explain that. On the one hand, Dr. Orne has acknowledged on the record, for example, in a homicide case in Stockton, California, in which both he and I testified as expert witnesses, he acknowledged in that case that he was not an expert in investigative hypnosis. As a matter of fact, he said, "There's no such thing as investigative hypnosis." (in that case.) I have a page of the record here, if you would like me to cite that.

A: The second part of that, although Dr. Orne on the one hand has said that he is not an expert in investigative hypnosis and has not conducted an investigative hypnosis case himself, he is nevertheless going into court and claiming to be an expert in investigative hypnosis and publishing articles on investigative hypnosis without any substantiating data to support his assertion, which is a basic requirement of any scientific endeavor and any scientifically trained and oriented person knows that it is really improper to make assertions without having data to back it up. But, apparently, Dr. Orne until recently - because he has recently, I have read, received a grant from the National Institute of Justice to the tune of 120- some thousand dollars to do research in this area - a grant that he applied for. So now he is perhaps acknowledging that it's time for him to do the research that he's been making assertions about without the research up until now.

Q: Are you familiar with the safeguards that Dr. Orne recommends in the use of investigative hypnosis?

A: Yes, I am.

Q: I believe that one of the safeguards, and we'll start with the first one, is that a

psychologist or a psychiatrist or a mental health professional should be the only one to deal with hypnosis. Do you agree with that?

A: No, I don't. I think it's kind of amusing in a sense, that the first court that adopted these guidelines was a New Jersey court in the case called Hurd. It's kind of amusing to me that the court accepted these guidelines and at the same time pointed out that the psychiatrist who had done the hypnosis in the Hurd case - psychiatrist, not law enforcement person - had questioned this person in a way that the court felt was undesirable, asking leading questions and shaping responses, and so on. So, to me it's kind of ludicrous that on the one hand the court is saying that the psychiatrist really didn't conduct the investigative hypnosis session according to certain standards and yet turns around and says, "Yes, we agree with Dr. Orne that only a psychiatrist or psychologist should conduct investigative hypnosis sessions." Again, to me, that defies logic as I see it.

Q: And you described before why you believe that law enforcement officers are the proper ones to conduct, we've had that discussion?

A: Yes.

Q: Do you agree with the certain restrictions that no one else should be present besides the subject and the hypnotist?

A: I think that's unworkable. It's also naïve. I think it shows an unfamiliarity with the investigative hypnosis process. In a significant number of cases, particularly rape cases, we use a police artist to do a composite drawing during the hypnosis session. The artist needs to be present in order to get that composite drawing done, if it's going to get done. We also have other cases where we have child victims of sexual assault whom we cannot use hypnosis with unless a parent is sitting out of the way in the back of the room for security.

Q: Do you believe that there is any damage outside of the cases that you've mentioned that could occur as a result of somebody else being.

A: I have seen no evidence of that in the ten years of work in this field.

Q: All right. Do you believe that these sessions should be videotaped or recorded?

A: Yes. As a matter of fact, this is part of our training. We train people that each session should be recorded either on audio or video tape; if they can afford video - fine. It's nicer to be able to look at the session. However, many agencies including, incidentally, our agency at LA Police Department as big as it is, we cannot afford videotapes and so we still audio tape our sessions and put them on video.

Q: Do you believe that information should be given to the hypnotist in writing about the case as the fourth safeguard that Dr. Orne recommends?

A: No, I don't believe so. I don't think because this is merely an interview, it would be like saying that every police contact with a witness has to be recorded because we don't trust the police person to be honest and ethical and professional in communicating. I think that my interpretation of the suggestion is an attempt by Dr. Orne to impose sterile laboratory conditions into the real world of crimes and police work, which obviously can't be done - it's just not feasible to do that.

Q: Should the hypnotist be a neutral party, in other words what I'm getting at is that law enforcement offices are more identified with the state and adverse to the interests of the defendant. Do you believe that a police officer is improper for that reason hypnotist should be neutral as Dr. Orne" fifth recommendation for a safeguard?

A: Well, I think that's naïve and unworkable. As soon as someone becomes employed in a function- in a criminal justice action or process - he or she is no longer neutral. As soon as an expert witness is employed by the defense or by the prosecution, that person is in that sense no longer neutral. However, I think what we are really talking about here is professional and ethical behavior. And it should not matter whether one is employed by the prosecution or the defense - who pays the person. That person has an obligation to be ethical and professional in his or her behavior and statements and so on. I think that our whole criminal justice system is set up as an adversary type of system. So that through that push - pull conflict out of that will come some semblance of the truth or what is likely to be reasonable and then the jury can make decisions about that. So, again this naïve assumption that you can label somebody neutral merely because he is not directly employed by either side doesn't change the fact that a person becomes and advocate, in a sense, on being paid by somebody.

Q: Lastly inferred by Dr. Orne is to have the hypnotist get the story from the subject prior to the hypnosis session. What are your comments on that?

A: I disagree with that. I think that this allows an extra opportunity for the hypnotist to have more details than are necessary to conduct a neutral, non-leading questioning of the individual. It also enables the witness to come up with yet another version of the event prior to hypnosis so that depending upon how many versions there are, this adds another version to it. I think that the crime reports and the statements given to the police prior to hypnosis, assuming that those statements are fairly complete and accurate, constitute a very acceptable baseline measure from which the hypnosis-elicited testimony can be measured.

Q: Do you believe that the witness, then, will come to believe the police version as Dr. Orne suggests?

A: I'm not sure that I know what you mean by the police version?

Q: Well, if the police have a version of what occurred and the person is placed under hypnosis, is hypnosis itself an inducement for the subject to believe the police version of

what happened?

A: Well I think it can be - depending upon what is communicated and if strong hues are given in an interview situation with or without hypnosis that a certain individual is likely the guilty person, that can have an impact on a witness, obviously. So, I don't know that that's really a hypnosis issue. I think that's an interviewing, professional-ethical one of how would an interview be conducted.

Q: And with the safeguards that you teach you believe that adequately prevents that from happening as long as you are instructing the officers not to use suggestions or improper cues?

A: I don't think it prevents it from happening. I think what it does is reinforce the ethical and professional responsibility of the investigative hypnotist and it also permits others (since each session is taped) to microscopically review the proceedings, what was done, what has happened, in a way that is much more detailed than any other kind of witness testimony that I'm familiar with.

Q: Dr. Reiser, you and I have discussed this case before. In fact, you were sent a copy of the police file on this case -State vs. Brown. Is that correct?

A: Yes, I have.

Q: Also, I believe we sent you a copy of the videotape of the two sessions that were conducted in this case by Richard Hildy who's the chief agent of the North Dakota Crime Bureau. Have you studied those tapes?

A: Yes, I reviewed that tape two times.

Q: When was the most recent?

A: Yesterday.

Q: And the first time was when?

A: The first review was July 2nd, just after I got the tape.

Q: Do you have an opinion as to how the sessions were conducted in those instances?

A: Yes, I do. I think that Mr. Hildy conducted the hypnosis sessions in an excellent fashion and with extreme sensitivity toward the subject that he was working with and I could find no major problems with the way the session was conducted.

Q: There was an induction technique. Do you recall what that induction technique was?

A: The induction technique involved a series of procedures and processes and the

induction itself started with what is sometimes know as a Chaisson technique in which a subject focuses attention with the arm raised on a fingernail. It's actually one of the many so-called eye fixation techniques that are available to begin induction with someone and then moved as it did, typically to deep breathing and muscle relaxation exercises of the subject. There was an arm levitation which is sometimes used as a deepening technique in hypnosis. There was a counting down technique that was used also.

Q: Were those techniques that were used by Mr. Hildy acceptable with your instruction?

A: These are standard induction techniques that are used by most hypnotist, with some variations.

Q: Could you determine from observing those interview sessions whether or not there was any improper cueing or improper suggestions made by Agent Hildy?

A: Not really. No. There were, during what I would call the second part of the session after the tapes were changed, I saw this as one session with a break in between the changed tapes, the second part of this session Mr. Hildy did ask some specific questions but I didn't consider those improper questions.

Q: So were any leading questions or impermissible procedures used?

A: There were some leading questions, I would not consider them impermissible. Leading questions are a matter of degree - there can be mildly leading questions to severely leading questions. And Mr. Hildy did not, as I reviewed this two times, ask any severely leading questions to this witness.

Q: Is there any evidence, in your opinion, as to any hypersuggestibility in the witness?

A: Not really. As a matter of fact, the second part of the session after the tape was changed, which is about 19 minutes long as I timed it, there were specific instances where questions were asked of the subject where she said "No" in answer to a mildly leading question. For example, "Did the suspect have sideburns," was the question. The answer was "no." That could be considered a mildly leading question. It really a zeroing in kind of question when you are trying to get facial structure of somebody. But the answer was "no." If she were completely suggestible, at the question " Did he have sideburns, " she would have said, " Oh, yes, yes, he had sideburns," wanting to - as our opponents would say - please the hypnotist and confabulate this material (make it up in order to fill in that gap). Obviously, that did not happen. "Did he wear glasses?" "No." Again, another "No," indicating that this witness was discriminating, she was using her critical judgment, she was not hypersuggestible. In another mildly leading question, "Does this person remind you of somebody?" She said, "Well, he's as tall as Larry (the coach of the softball team), " and then she went on to say, "about 5' 9" or 5' 10"." Then she added spontaneously, "he had a mustache which was not well kept." So, this was not specifically part of that question but she spontaneously added that information from her own volition; then she mentioned that he had a round face and dirty work boots, and so

on. So, taking this whole session in sequence in terms of the way it went, the first approximately 56 minutes before the tapes were changed, this was essentially a free narrative by the subject (by the witness we have) with essentially no questions being asked by the hypnotist. So there couldn't have been any cuing, no suggestion during that first 56 minutes. And she, very clearly, from my way of interpreting it, went through that event and she experienced abreacting or showing emotion at the proper places and at that point where she was talking about being choked by this person and re-experiencing not being able to breathe, anybody viewing that tape I think will get the impression pretty clearly that this was a reliving of that experience in more detail in this review hypnotically than she was able to give the detectives prior to hypnosis.

Q: That leads me to the question about the technique that Agent Hildy used in having her go through this testimony - or go through this chain of events while under hypnosis. He suggested to her that she imagine that she's a newspaper reporter, I believe, sitting in the back seat of the car and then to describe the events that took place between herself, obviously, and the perpetrator. Is there any improper suggestibility or any improper procedure along those lines in that process that Agent Hildy used?

A: No. Not at all. As a matter of fact it's one of the standard what we call information-eliciting techniques that are taught to investigative hypnotists. The reporter technique - the TV technique of having someone review or imagine the events being replayed on a television, a documentary, are standard techniques and there is a two-fold purpose; one is to allow the witness (the individual) to gain as much distance as possible, as much objectivity as possible from that event as they choose to. Secondly, it allows them to experience as much or as little emotion as they would choose to. It gives them the chance to not necessarily re-experience every sensation of a violent rape situation or being physically assaulted or seeing a loved-one shot down in front of them - that kind of thing. So, it's kind of a technique that may enhance the objectivity of the witness and also offer some protection to them emotionally if they wish to take advantage of that. It's their choice.

Q: I noticed that (victim), as I recall reviewing the tapes, often confused herself in the situation she was faced - she is doing this then the next time would say, "I am doing this." Did you notice that?

A: Yes.

Q: Kind of interchanging. What significance does that have, Dr. Reiser, on the hypnotic state of the witness?

A: This is a very common reaction. I think it clearly shows that she (victim) is very much aware of the fact that suggesting that this is a recorder is kind of procedure that being used and she's yet aware that she was the person who was there and experiencing these things and in very emotional moments her identification; that is, knowing that it is she who is doing the feeling and the experiencing - having the anxiety and the fear comes out. And that's quite common. That happens very, very commonly with witnesses and

victims in this process.

Q: Do you think hypnosis contributed to anything in this case, in your opinion?

A: Clearly, I think that, as I read the reports, (I did not have access to her prior testimony if there was any about it) but reading the police reports and so on and then looking at the tapes and the information that came out during the investigative hypnosis session there's no question that she was able to remember a lot more detail - street signs, left turns, turn signals, baseball gloves dropping on the floor, turning around to pick it up, a man coming in the driver's side - details that dovetailed with what she had told police originally and did not in any way contradict that and yet seemed to me to be (as she was recalling this) a genuine perception and recall on her part. That's just my impression.

Q: What is the effect of corroborating evidence in a case involving hypnosis?

A: Corroboration is extremely important. Particularly in a case where there may be a suspect in mind prior to the hypnosis session as there was in this case. I think that corroboration says that "Yes, in spite of the possibility that there may have been some cuing going on because there was a suspect in custody and the witness may have known about it, there are objective data and fact that substantiate the hypnosis-elicited and pre-hypnosis-elicited testimony of this witness so that a reasonable group of people looking at the whole situation and so on would agree that this was not made up, confabulated, coerced, cued - but that this story and the recall about what happened during this crime event is a believable one.

Q: Is there any test for reliability or credibility of a witness that is giving information while in a hypnotic state?

A: I think the same criteria apply to any witness with or without hypnosis and that is, the more corroboration, the greater the reliability of that testimony. And I think that's not a hypnosis question.

Q: Do you believe that the information that is given by a witness whether it's under hypnosis or not under hypnosis is essentially a credibility question for a jury.

A: Absolutely. And I think the attempt of certain of my colleagues to want to preempt the jury's hearing all the testimony and then weighting how much credibility to give that testimony which is the jury's stated function in our criminal justice process, I think it is really undesirable and cannot agree with that.

Q: Dr. Bernard Diamond, who I'm sure you're familiar with, are you not?

A: Yes.

Q: Suggested that when a witness is placed under hypnosis there is a suspension of critical judgement. Would you agree with that?

A: No, I would not. And I think I've mentioned that in my experience over a ten-year period in doing many cases personally and supervising others, I have not found this to be the case. I think that Dr. Diamond really had the obligation of presenting scientific data to back up that assertion. I think this is an area that Dr. Diamond and Dr. Orne both have been deficient in.

Q: Do you believe that there is any truth (professional truth I'm talking about now) to the assertion by Dr. Diamond and/or others that the hypnotic state itself, whether or not there is cuing by the hypnotist, is conducive to hypersuggestibility? In other words, in this particular case, (victim) was hypnotized and suggested that she remember these events. Do you agree with that assertion? (confabulation) (victim/witness- suggested to come up with a story)

A: I'm going to object to that. I don't believe that was Dr., Diamond's assertion. I don't think that's a hypnosis issue at all. I think any interview that is done with a subject for a particular purpose it becomes apparent very quickly that there is a reason for the two people getting together whether it's to do dental work in the dental office or to get a physical examination or to be interviewed about a crime event. So, the fact that the subject knows the purpose of the interview I think is irrelevant.

Q: Dr. Diamond has also said that there is no trained hypnotist that can decipher whether or not somebody is actually in the state of hypnosis; in other words, somebody could be feigning a simulated state of hypnosis. Do you agree with that?

A: Well, I think that's the case; however, as far as investigative hypnosis is concerned it doesn't really matter whether the person is in hypnosis or indeed if the person is in hypnosis at all. Assuming the person is not in hypnosis, then this is a non-hypnotic interview - which is perfectly fine.

Q: Dr. Diamond also states that there should be a mental evaluation done of the subject before hypnosis is conducted. Do you agree with that assertion?

A: Not really, no. I think that what we do is inquire about any unusual medical or psychiatric or psychological problems as we would with any person to be interviewed about a crime event. However, this is not a medical procedure. It's an investigative procedure and we are not doing mental status evaluations of witnesses, we are doing memory refreshment, hopefully. So I don't think that's necessary.

Q: Dr. Diamond points out that there are some posthypnotic suggestions that took place in these interviews (after the second interview) that she was told that she would remember these events that she remembered during the hypnotic state after she was awakened. Is that improper in your estimation, Dr. Reiser?

A: No. These are standard techniques that are used by most hypnosis practitioners.

Q: Dr. Diamond also claims that the fact that Mr. Hildy told (victim) that she had done

very well. Do you, in your estimation, determine that that might be improper or that might reinforce confabulation or any of the things that Dr. Diamond is concerned about?

A: No, I don't. Again, it's a routine comment that's made by most interviewers whether it's for therapeutic or investigative purposes.

Q: Another item that Dr. Diamond was concerned about was the agent's comment that "You're going to feel better and your memory will be refreshed," in that context, Dr. Reiser, is that an improper thing for the hypnotist to say?

A: No, I think not. I think it's a routine kind of comment that's made.

Q: The other suggestion that Dr. Diamond was concerned about was that, I think the agent told (victim) that after hypnosis that if she remembered something more that she should contact the police officer, Bill Yett. Do you believe that has any suggestibility or improper cuing of this particular witness?

A: No, I think it's a comment to any witness who's interviewed with or without hypnosis because the reality is that sometimes people do remember additional things and they don't know whom to contact and so that merely tells them what to do about it, if they should.

Q: I believe Agent Hildy also said to (victim) that she would feel better after the hypnosis session. Is that improper, in your estimation?

A: No, not at all. I think that as a good friend would, the hypnotist or interviewer wants to have the traumatized person calmer and feeling better and I think that's a comment that a good friend would make.

Q: That would not have any impact upon this victim's memory or anything like that?

A: I don't think so, no.

Q: Thank you, Dr. Reiser. I have no further questions. Your witness.

Q: Dr. Reiser, you are not a police officer are you?

A: No, I'm not.

Q: But in your job capacity you deal more or less exclusively with police agencies, is that right?

A: I wouldn't say exclusively, no. I deal with police people because I work 40 hours a week for the police department but there are other activities where I have interactions with other psychologists and psychiatrists not in the police area.

Q: But you work for the police, isn't that right?

A: Yes.

Q: Now, Doctor, I believe that you stated that you are one of the founders of the use of investigative hypnosis in this country, is that right?

A: Well, I think that what I agreed to was a suggestion that I had been identified as one of the principals in the popularization or the growing use of investigative hypnosis by police, yes.

Q: So, as a matter of prestige you have a personal stake in the outcome of the controversy concerning the use of hypnosis in investigative purposes?

A: I think that's a misstatement. I think that as an ethical and professional psychologist and practitioner, my stake in the outcome is that the statements made about investigative hypnosis and the practices used be accurate and reflect the real world and not distortions and misstatements that are being made by the opponents of investigative hypnosis.

Q: Dr. Reiser, I believe that you made a number of statements during the course of your testimony that hypnosis is not a hyper state or does not involve a hyper state of suggestibility. Is that right?

A: What I said was that hypnosis is not equated with hypersuggestibility; that suggestibility is a larger, more generic issue that exists outside of hypnosis and I used advertising as an example of that.

Q: Is it not a fact that hypnosis is an altered state of consciousness which, by definition, is a heightened state of suggestibility?

A: No, I think not. I think that that's the 1930 definition of hypnosis that I indicated is no longer held by most knowledgeable people in this area.

Q: If hypnosis does not involve suggestibility, Doctor, why is it used?

A: No, I said it does not involve hypersuggestibility.

Q: Well, how about heightened suggestibility?

A: I think that's an interview issue and not necessarily hypnosis issue, and if you go to be interviewed by a detective as a witness in a crime case and you're cooperative and motivated then you will cooperate in that process, it doesn't mean you're going to be more suggestible, necessarily.

Q: Hypnosis is not the state I say it is? The person who is being interviewed under hypnosis is in an abnormal state of consciousness, isn't he or she not?

A: I don't agree that it is abnormal at all. As I mentioned earlier, hypnosis is an innate, natural capability that people spontaneously can go into every day. It's not abnormal. That's a misunderstanding about it.

Q: Are you saying people in their daily lives, are in a state of hypnosis more than they are not?

A: No, I didn't say that. I said they may go into a state of hypnosis spontaneously without being aware of it. I didn't say that they are in hypnosis all the time.

Q: In your estimation, how much during the course of an average person's life are they actually in a state of hypnosis?

A: That would be like asking me how much does a person daydream during the course of a day and the answer to that is, it depends on the person.

Q: Less often than when they are not daydreaming, wouldn't you say?

A: I don't quite understand your question.

Q: I'm saying that people are generally in a non-hypnotized state through most of their lives, are they not?

A: People are in a relatively conscious state of awareness during waking hours much of the time; however, we go in and out of altered states quite regularly when we are daydreaming, when we are not concentrating our attention, when our mind is a thousand miles away thinking about vacation - that's a quite common experience for many, many people.

Q: You've stated that no one is sure how memory is acquired, is that right?

A: Nobody really knows the bottom line on how memory works yet.

Q: And you can, therefore, categorically state that a person's memory which has been affected by hypnosis cannot produce anything that is not proved?

A: No. I did not say that.

Q: What did you say?

A: I said that we don't know how memory works.

Q: So, it is possible then for a person's memory to be composed of things that are not true.

A: I believe that I acknowledged that in and out of hypnosis, depending on the cognitive

functioning of a particular individual a person may have a lousy memory and not remember where he parked his car in the parking lot. And I don't think that's a hypnosis question.

Q: And you are of the opinion that there's no such thing as confabulation?

A: No, I didn't say that. What I said was in my experience I have not observed confabulation routinely occurring during investigative hypnosis as the opponents to our techniques claim.

Q: But you cannot say then that confabulation does not exist in hypnosis?

A: Of course I can't. As I said, people can lie, fantasize, confabulate if they are so motivated in hypnosis or out of hypnosis. Of course, they do that, yes.

Q: Now as far as the effects of hypnosis. Is it not a fact that one of the products of hypnosis is the production of a person who is sure of their memory?

A: No. Not at all. I don't think that's true at all.

Q: Is it not a fact that in this case there were posthypnotic suggestions which were maybe not consciously given but could produce a person who is now confident that they really know what happened?

A: I did not observe such posthypnotic suggestions in that context on the video tape of this particular witness's session.

Q: Doctor, are you familiar with a technique in hypnosis known as age regression?

A: Oh, yes.

Q: And that is when a person is asked, put under hypnosis and asked to retreat to a prior date in life and describe certain things that happened then?

A: That's right.

Q: Are you also familiar with a phenomenon known as age progression?

A: Yes.

Q: Is it not a fact a person can be hypnotized and asked to describe a period in their lives that has not happened yet and they will be able to describe as much detail as age regression - things that have not happened?

A: That's not a hypnosis question, however, because you can do that without hypnosis and science fiction writers have been doing that for years in terms of stories about the

future of 1984: because people can imagine the future doesn't imply that there's any hypnotic involvement in that.

Q: A person under the influence of hypnosis and progressed in age will be able to very vividly and give a very detailed accounting of an event in the future, will they not?

A: Possibly so, if that's the purpose of the hypnosis session. You can do that probably much better with children without hypnosis because they have very vivid imaginations and they are prone to doing that routinely all the time.

Q: Doctor, is it possible for a person who is placed under hypnosis and asked to describe an event that happened before to introduce faces or other events that are totally independent of the actual event. They can't remember, say, a face and they bring in another face or bring in another identity and delve back into the memory that they are describing.

A: I'm really not sure I'm clear on the specifics of your question.

Q: I'm saying when a person is placed under hypnosis and is given a suggestion that they are to describe a prior event. Can that person, if the memory is not there, can they bring in an independent memory and back the other with the event they are describing to produce a complete story?

A: That's what is called confabulation and I think as I responded earlier that's possible with or without hypnosis depending on the kinds of cues that are given, the kinds of suggestions that are made to the person and the person's own motivation.

Q: So you say that is possible under hypnosis?

A: It's possible with or without hypnosis, certainly.

Q: My question is, it is possible under hypnosis?

A: Sure.

Q: Now, when the