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Suggested Guidelines for the Use of Forensic Hypnosis Techniques in Police Investigations

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ABSTRACT: This article suggests standards and guidelines for the use of forensic hypnosis techniques in police investigations. Topics addressed include the type of procedures that should be used, intervention milieu considerations that need to be taken into account, the types of cases in which hypnosis should be avoided, and recommended qualifications for those performing the intervention. Each of these topics is discussed separately, commencing with a summary of the applicable policies established by selected law enforcement, professional, judicial, and governmental entities; a brief review of the pertinent theoretical and empirical literature; and commentary on the extent to which that information supports those policies. After laying this foundation, additional guidelines derived from the literature are presented for each section.

KEYWORDS: criminalistics, hypnosis, police, memory

The use of hypnosis to increase eyewitness recall has grown dramatically in the last five years. Law enforcement administrators are frequently faced with requests from their officers to send them to be trained in the use of forensic hypnosis or to bring in outside "experts" to administer those procedures. Consequently, those possessing some degree of knowledge about hypnosis are in increasing demand to assist or train police officers.

The purpose of this article is to provide certain standards and guidelines for the use of forensic hypnosis techniques in police investigations. The following topics are addressed: the type of procedures that should be used, intervention milieu considerations that need to be taken into account, the types of cases in which hypnosis should be avoided, and recommended qualifications for those performing the intervention. Each of these topics is discussed separately, commencing with a summary of the applicable policies established by selected law enforcement, professional, judicial, and governmental entities; a brief review of the pertinent theoretical and empirical literature; and commentary on the extent to which that information supports those policies. After laying this foundation, additional guidelines are presented for each section. It is hoped that this information will help law enforcement officials and practitioners who use hypnosis to better understand the potential uses and limitations of forensic hypnosis, as well as to establish a set of model policies for dealing with this highly controversial and complex procedure.

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Forensic Hypnosis Procedures

Current Policies

Despite the existence of numerous written accounts of specific forensic hypnosis procedures [1-3] a review of current policies indicates that relatively few formal positions have been taken regarding the type of procedures that should be employed. The most common procedural policy is the requirement to have the sessions recorded, preferably with videotaping equipment [4-7]. Other suggested requirements associated with forensic hypnosis include warning witnesses about the potential dangers of hypnosis [7], keeping precise records of all information conveyed to those conducting the sessions that relates in some fashion to the case [6], questioning witnesses in detail about the incident immediately before questioning them under hypnosis [6], and permitting only the forensic hypnotist to be present during the sessions [6]. In addition, an FBI policy suggests that written permission to conduct the taped interviews be obtained from witnesses, and that they be given a proper explanation of the techniques before being hypnotized.

Comment

The preceding positions serve to illustrate that most current procedural policies deal with peripheral issues, as opposed to the more substantive questions addressing how the sessions should actually be conducted. Fortunately, there is a quantity of pertinent literature available that indicates the major considerations that should be taken into account when constructing policies that delineate specific memory assistance procedures. For example, there is empirical and conceptual evidence that indicates recall of an incident might be enhanced when people:

- Enter an emotional/physical state similar to the one they were in when they originally took in the information [8-10].
- Recall certain cues that were present in the environment when the incident occurred or actually reexperience those cues [10-13].
- Recall specific information and use logic to attempt to reconstruct the general parameters of the situations, then use those cues and pertinent generalizations to deduce and recall additional information (see Ref 14 for a general discussion of memory reconstruction).
- Focus on what they can remember, as opposed to giving undue attention to their memory gaps and uncertainties [10, 15].

The literature also indicates that it is reasonable to assume that people will be more likely to provide responses about incidents if there is increased psychological pressure placed on them to provide those responses, or decreased psychological pressure about being correct or accusing others of misconduct [16, 17], or both. Thus the more conducive it is for subjects to offer statements and guess, the more likely it appears that they will speculate. Unfortunately, there is also strong empirical evidence that suggests that after people have been compelled to guess, they will frequently inaccurately "recall" that information as part of their original memories of the incident and be significantly more confident about the validity of those guesses [18, 19].

Overall, the policies previously noted appear consistent with the factors affecting the amount and quality of information provided by witnesses. However, the policy stipulating that only the forensic hypnotist be present during the session could be tempered to state that no unnecessary personnel be present, especially those individuals who might decrease the witnesses' willingness to supply information (friends, family, acquaintances, and so on). That change would make it permissible to use team approaches, in the event one person was not optimally qualified to handle all facets of the forensic hypnosis procedure. As previously noted, the chief problem with the existing guidelines is not what they require, it is that they do not go far enough in delineating how the sessions should be conducted.

Additional Suggested Guidelines

To help trigger memories, witnesses should be asked to carefully retrace the incident, beginning at a point before its occurrence. In addition, the witnesses should be encouraged to continuously report their sensory recollections and anything else they can recall about the incident, regardless of how trivial it appears to them.

Those administering the technique should first use a free narrative style of questioning (asking, for example, what can you tell me about the incident?) and avoid questions that imply answers or place the subjects under undue pressure to respond. After carefully recording those initial statements on video tape, those administering the technique may wish to attempt to secure additional information by asking more direct questions (with the knowledge that the more psychological pressure is placed on the subjects to respond, the more answers they will provide, but that the ratio of correct to incorrect responses will diminish).

Finally, it is important to estimate the degree of forced guessing that took place before the forensic hypnosis session. Tapes from prior police interviews might be helpful in determining the extent of forced guessing and the nature of any cues/information filtered to the witnesses, and also in indicating witnesses' prior conceptions, which might have been the basis of their guesses. Therefore, it is recommended that in all serious cases the police routinely record interviews with potentially important witnesses and victims, preferably on videotape.

Intervention Milieu Considerations

Current Policies

Very few guidelines have been written regarding the setting in which forensic hypnosis sessions should take place. One of the few places it is discussed is in an informal checklist prepared for FBI special agents who serve as hypnosis coordinators. That document suggests that the location be a spot free from excess noise, be large enough that those present will not crowd the individual being hypnotized, contain a comfortable chair for the witness, and have adequate temperature control and proper lighting [1].

Comment

The setting should be conducive to obtaining as much factual information as possible. The extent of privacy, freedom from distraction, and the nature of the demand characteristics associated with the setting should be taken into account. Demand characteristics can be defined as the totality of cues that suggest what type of behavior would be considered appropriate, expected, and helpful. The demand characteristics associated with an interrogation room at a police station might be considerably different than those emanating from a psychiatrist's or psychologist's office in a professional building, for example. Therefore, it is possible that the type and extent of information secured from witnesses will vary, depending on where the sessions take place. In addition, it is important to provide a setting free from distractions and interruptions, such as having objects present that might overly capture the interest of the witness, people barging in or making noise, various video-taping disturbances, or telephone calls, as well as those distractions stemming from the witnesses' physical discomfort.

Additional Guidelines

In addition to the considerations mentioned in the FBI checklist, it is suggested that the location be away from or designed to reduce distractions that occur outdoors or in other parts of the building, have at least a fair degree of soundproofing, contain no telephone or have the capability to hold calls, contain a comfortable chair in which the subject can lean back and relax,

be decorated in a nondistracting but pleasant fashion, have no physical barriers separating the hypnotist from the witness, and have an unobstrusive one-way mirror, if possible, so the videotaping equipment and personnel can be housed behind it.

Situations When Forensic Hypnosis Should Be Avoided

Current Policies

The decision as to whether or not forensic hypnosis should be used in a given case will be regulated to a large extent by departmental policy and applicable legal determinations. Guidelines issued by the U.S. Department of Justice stipulate that the following conditions must be met before hypnosis can be used by the FBI:

Hypnosis is legally permissible when used as an investigative aid for lead purposes in Bureau cases where witnesses or victims are willing to undergo such an interview. The use of hypnosis should be confined to selective Bureau cases. Upon finding a willing witness or victim, Bureau authority must be obtained from the appropriate Assistant Director . . . Upon receipt of Bureau authority, the matter must be thoroughly discussed with the United States Attorney, including the fact that a specially trained Agent (Hypnosis Coordinator) will participate in the hypnotic sessions. The United States Attorney is to be advised that he must obtain written authorization of the Assistant Attorney General of the Criminal Division in each case . . . You [FBI Agents] are also cautioned that under no circumstances will Bureau personnel participate in hypnotic interviews in non-Bureau cases. [4, p. 149]

As previously noted, the use of hypnosis in police investigation is regulated to a large extent by legal decisions. Recently, state supreme courts in Arizona [20], California [21], Indiana [22], Minnesota [23], Nebraska [24], and Pennsylvania [25] have excluded or severely restricted testimony resulting from those procedures; and the Supreme Court in New Jersey [6] has imposed certain procedural requirements that must be met before it is admissible. Therefore, it is important to be aware of the technique's legal status, especially if there is a fair chance the witness might be asked later to testify in court.

Comment

There is sound reason to be skeptical of eyewitness accounts that stem from forensic hypnosis sessions, [10, 26-29]. Witnesses appear to be able to lie under hypnosis and can both avoid becoming hypnotized and simulate the conditions well enough to fool even experts [27]. What is even more problematic is that hypnotized witnesses attempting to be truthful appear more likely to confabulate details (replacing a gap in memory with a fabrication that is later accepted as true) when they are exposed to conditions that make it conducive to guess and are given incorrect information [28, 29]. However, it is important to note that if similar conditions exist, these difficulties also arise when witnesses have not been hypnotized [14].

Additional Suggested Guidelines

The use of forensic hypnosis techniques and other related procedures should be *avoided* when:

- The witness has a medical or psychological history that indicates that the technique could exacerbate that condition.
- There is a possibility that the witness might become a suspect in the case.
- The courts having jurisdiction in the matter have ruled that the testimony might be tainted or inadmissible.
- The seriousness of the case does not warrant expending the additional resources that might or will be necessary.

- The prosecuting attorney for that jurisdiction does not endorse its use.
- The use of the technique is not considered by law enforcement officials to be a last resort, until the controversies surrounding the procedure have been resolved.

When the technique is used, it should be used solely as an investigate aid and corroborating evidence should be deemed absolutely necessary.

Recommended Qualifications for Those Performing the Technique

Existing Policies

One of the most controversial aspects associated with forensic hypnosis relates to the determination of who is qualified to administer the procedure. Both the Society for Clinical and Experimental Hypnosis and the International Society of Hypnosis, whose members consists almost exclusively of psychologists, physicians, and dentists, have passed identical resolutions which include the following statement:

Police officers typically have had limited technical training and lack the broad understanding of psychology and psychopathology. Their orientation is to obtain the information needed to solve a crime rather than a concern focusing on protecting the health of the subject who was either witness to, or victim of, a crime. Finally, police officers understandably have strong views as to who is likely to be guilty of a crime and may easily inadvertently bias the hypnotized subject's memories even without themselves being aware of their actions.

For these and related reasons, the [Society for Clinical and Experimental Hypnosis/International Society of Hypnosis] is strongly opposed to the training of police officers as hypnotechicians and the use of hypnosis by the police officer. In those instances when hypnosis is appropriately used in law enforcement, trained psychiatrists or psychologists with experience in the forensic use of hypnosis should be employed, care must be taken to control the amount of information wittingly and unwittingly provided to the subject, and all interactions with the subject before, during, and after hypnosis must be videotaped.

The [Society for Clinical and Experimental Hypnosis/International Society of Hypnosis] views it as unethical to train individuals in the use of hypnosis, to collaborate with laymen in the use of hypnosis, or to serve as a consultant for laymen who are utilizing hypnosis. [5]

After examining this issue, the FBI adopted a team forensic hypnosis approach involving specially trained agents who serve as hypnosis coordinators. Their role is to "bridge that gap which exists between the professional, who does not always understand our [the FBI's] legal needs, and the FBI, which does not always understand medical needs" [1, p. 6]. The U.S. Department of Justice's forensic hypnosis guidelines for the FBI describe the roles of the team members as follows:

The hypnosis session should be attended by the hypnotist [a psychiatrist, psychologist, physician, or dentist who is qualified as a hypnotist] and the specially trained Bureau Agent (hypnosis coordinator) who will act as the liaison with the hypnotist. It must be clearly understood that the hypnotist is charged with the responsibility of supervising the hypnotic session and must remain physically present throughout the proceedings. The hypnosis coordinator is qualified to question the witness or victim while under hypnosis, but will not conduct the hypnotic induction or terminate the hypnotic state. The request for authorization to utilize hypnosis will include the name of the Bureau hypnosis coordinator who is acting as liaison. The Agent assigned to the case may also be present at the interview if there are not objections by the hypnotist; however, the number of persons actually present at the hypnotic session should be held to a minimum. [4, p. 450]

Numerous local law enforcement officers have also received training in forensic hypnosis. Many of them take the position that law enforcement officers are the best qualified to administer the technique since they have the most experience questioning witnesses, understand which issues need to be addressed, have an understanding of the legal technicalities, and have the primary responsibility for investigating criminal offenses. Those advocating the use of forensic hypnosis by law enforcement personnel further argue that the officers are not using

hypnosis in a therapeutic context and that fears related to their precipitation of adverse mental and physical reactions are without basis [1,30,31].

Comment

The forensic hypnosis resolutions passed by the International Society of Hypnosis and the Society for Clinical and Experimental Hypnosis assume that the basic orientation of police officers who administer the technique is to obtain the information needed to solve crimes, while the orientation of professionals in the healing arts that administer it is to protect and improve the health of the witness. As previously noted, however, it appears reasonable to assume that the actions of people in novel situations will be affected to a large extent by what they feel is expected, desired, or helpful. Consequently, it is quite possible that physicians, psychologists, and dentists who have little or no experience in this area or in working with the police will feel great pressure to help solve those cases in which they are brought in to administer the technique. Instead of treating the offense as a relatively common occurrence, inexperienced professionals might try so hard to "break" that particular case that they inadvertently pressure the witness into confabulations or ignore their other professional duties. However, the probability of that type of behavior occurring appears greatly diminished under the FBI approach, since the primary role of the hypnotist is clearly defined as protecting and serving the witness/victim.

The extent of risk actually faced by those undergoing forensic hypnosis techniques is open to considerable debate. It appears reasonable to assume that the level of risk will depend on the emotional/mental stability of those receiving the procedure, how traumatic recalling the incident will be for them, and how competent the person administering the procedure is in handling the types of difficulties that might arise. While hypnosis in standard experimental situations appears to involve very little risk [32], several anecdotal reports of negative sequelae have been reported in clinical settings, including the precipitation of mental illness, the worsening of mental/emotional conditions, and the development of excessive dependencies [33-36]. It should be noted, however, that several authorities have suggested that individuals in similar clinical populations are likely to demonstrate the same kinds of responses regardless of whether hypnosis is used [17,32,27].

Another type of risk associated with forensic hypnosis is that it might result in innocent parties being convicted of serious offenses or the authorities being misled while the actual offenders remain free to continue harming others. Consequently, it is also crucial to select people to administer the procedure who have the greatest probability of both solving the case and identifying the correct offender. As previously noted, people undergoing forensic hypnosis or other related procedures appear more susceptible to confabulation, particularly if they are pressured to make responses and are given misleading information/cues. Therefore, it is important to keep witnesses from interacting with people, either during the forensic hypnosis technique or before it, who might convey their suspicions regarding the identity of the offender. One way to help prevent that contamination is to have people conduct the various questioning sessions whom are less likely to have formed an opinion; however, almost everyone will have some prior conceptions regarding the type of individual who commits the type of offense under investigation.

Recommended Qualifications

1. It is recommended that only individuals who could testify about forensic hypnosis in court as expert witnesses be involved in performing that procedure, even when it is solely intended to gain leads for further investigation. Those administering the procedure should have qualifications beyond reproach and have extensive knowledge of matters pertaining to hyp-

nosis, forensic hypnosis, memory, and cognitive psychology. Equally important, they should be able to demonstrate that knowledge and competence on the witness stand.

2. The person selected to perform the hypnotic induction should have extensive training and experience in hypnosis and possess an advanced degree in either one of the healing art professions or in one of the behavioral science disciplines.

3. The person selected to perform the hypnotic induction should be either a registered/licensed psychiatrist or clinical psychologist, or a behavioral scientist with sufficient training on how to handle psychological problems that might occur. In the latter case, a well-qualified clinician should be on call in close proximity who could provide additional assistance should it be necessary.

4. The person asking the questions should be keenly aware of the limitations and pitfalls associated with the technique. It is recommended that the person have extensive training with forensic hypnosis techniques, including participation in videotaped practice sessions that are later reviewed to detect the leading statements and cues conveyed to the witnesses. It is also strongly recommended that the person engage in experimental or demonstration sessions to learn firsthand about the extent of confabulation and other related difficulties associated with the technique.

5. It is recommended that the person asking the questions be aware of the major legal and investigative aspects germane to the offense under investigation, as well as the relevant constitutional and statutory safeguards and restrictions.

6. All parties coming into official contact with the witnesses should be careful to avoid contaminating them with suggestive statements/cues about the possible identity of the offender or pressuring them to speculate widely about the offender's identity. It should be kept in mind that the witnesses will interact with people other than police officers, who will also probably cause some contamination. Therefore, the person asking the questions should not only be void of any strong prior conceptions regarding the identity of the offender, but be available within a reasonable amount of time after the request to perform the technique is made.

7. It is preferable to have only one person administering the forensic hypnosis procedure. However, if one person cannot be located that is optimally qualified in all necessary respects, two people should be used who have practiced the technique together and who, combined, possess the necessary skills.

Conclusion

The purpose of this paper was to provide certain standards and guidelines for the use of forensic hypnosis techniques in police investigations. It is hoped that the guidelines presented here will help law enforcement officials and healing art practitioners to better understand the potential uses and limitations of forensic hypnosis, as well as to realize that those benefits and pitfalls also are applicable to nonhypnotized witnesses undergoing similar questioning tactics. Note that even under the best of conditions, eyewitness recall (with or without the use of forensic hypnosis) might be in error and that even under the worst conditions it might be flawless. If the proposed guidelines are followed, however, the likelihood of serious problems occurring should be reduced by some extent.

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