

## The Effect of Hypnotically Elicited Testimony on Jurors' Judgments of Guilt and Innocence

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**ABSTRACT.** Survey data from several countries indicate that many people believe that hypnosis may increase the accuracy of an eyewitness's memory; most experimental research, however, suggests that this belief is inaccurate. This study examined whether the belief could influence judgments of guilt and innocence in a simulated criminal trial. The results indicated that British undergraduates were more likely to find a male defendant guilty when told that the testimony against him had been elicited under hypnosis. Results concerning a nonhypnotic memory facilitation technique were found to be inconclusive, and the salience of hypnotically elicited testimony was ruled out as a contributory element.

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**RESEARCH FROM COUNTRIES SUCH AS** the United States, the United Kingdom, and Australia suggests, fairly overwhelmingly, that hypnosis does not reliably increase the accuracy of eyewitness recall and recognition; rather, such research tends to indicate that when effects do occur, hypnotic memory facilitation procedures can produce an increase in false-positive responses (Smith, 1983; Wagstaff, 1984, 1989a). The problems associated with the use of hypnosis as a memory aid in forensic investigations have even led to a controversy regarding whether nonhypnotic memory facilitation techniques, (e.g., "guided memory"; Malpass & Devine, 1981), which often use similar techniques to hypnotic procedures but without a formal induction procedure, may suffer similar difficulties (Perry & Nograd, 1985; Wagstaff, 1985).

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Despite these negative results, in some studies conducted in the United States, the United Kingdom, and Australia, the majority of the general public surveyed, including university students, apparently believed that hypnosis improves the accuracy of memory and may therefore serve as a valuable tool in forensic investigations (McConkey & Jupp, 1986; Wagstaff, 1989b; Wilson, Greene, & Loftus, 1986). As yet, however, no research has been conducted on the effects this apparently inaccurate belief in the efficacy of hypnotically elicited testimony may have on the judgments of jurors.

This study was designed to address this issue. We hypothesized that, in a simulated trial situation, jurors would be more likely to find a defendant guilty if they were told that the evidence given by the prosecution witness was elicited under hypnosis, rather than with guided memory or no memory aid procedures. Also, in accordance with the social cognition literature (Nisbett & Ross, 1980), we hypothesized that jurors would show more detailed memory for the hypnotically elicited testimony, as such testimony might be deemed more salient.

### Method

Ninety British undergraduate students from various departments in the University of Liverpool, England, were assigned to three conditions ( $n = 30$  in each case)—hypnosis, guided memory, and no memory aid. All subjects were requested to listen to a 7-min tape-recorded transcript of a criminal trial and to act as jurors (the recording was identical for all three conditions).

The transcript was based on cases reported in several English law journals, but subjects were not told that it was fictitious. It describes the questioning of a Mrs. Smith, a witness for the prosecution in a burglary case, who has picked out the defendant as the burglar. The witness answers some detailed questions concerning facts such as the height, face, and clothing of the burglar and the color and model of his car.

Before hearing the transcript, subjects in the hypnosis group were told that the witness, when questioned initially by the police, was unable to provide any information; consequently, 2 weeks before the trial, the police had called in a professional hypnotist to help the witness to remember. The witness had responded to hypnosis and now was apparently able to remember much more information and could identify the burglar as the defendant. Subjects were also given details of the hypnosis procedures used on the witness; that is, the hypnotic induction procedure was described to them, and they were told details of the hypnotic suggestions, which involved asking the witness to imagine events taking place, controllably, on a television screen. These procedures were based on accounts in the forensic hypnosis literature (e.g., see Hibbard & Worring, 1981).

Subjects in the guided-memory group were also told that, initially, the witness had been unable to recall anything. They were also told that, 2 weeks before the trial, the police had brought in a psychologist to help the witness remember, and the psychologist had used a guided memory procedure; as a result, the witness was now apparently able to remember much more information and could identify the burglar as the defendant. Subjects were given details of the guided memory procedures, based on the report by Malpass and Devine (1981); these involved procedures to reinstate the context by asking the witness to recall feelings, sounds and smells, and peripheral details.

Subjects in the no-memory-aid group received no details of pretrial questioning of the witness.

After the subjects were informed according to group about pretrial questioning, they answered the following question: "On the basis of what the witness has said, I believe that the accused is guilty/not guilty." As in a court of law, they were explicitly asked to make a definite decision. Subjects also received an identical 22-item recall test (maximum score, 29) for details of the trial (example items: "What day of the week was the 19th of April?" "How tall did Mrs. Smith say the burglar was?" "What was the burglar wearing?") To avoid the possibility of experimenter bias, the guilty/not guilty decisions and memory test items were presented in questionnaire form (i.e., they were identical for all three groups).

## Results

In the hypnosis group, 19 subjects found the defendant guilty and 11 found him not guilty; in the guided-memory group, 13 found him guilty and 17 found him not guilty; and in the no-memory-aid group, 10 found him guilty, and 20 found him not guilty. Chi-square tests among the three groups revealed one significant result: More subjects found the defendant guilty in the hypnosis group than in the no-memory-aid group,  $\chi^2(1) = 5.41, p < .025$ .

The memory test yielded two scores: the number of correct answers (hits), and the number of definite answers that were incorrect (false alarms). For the hypnosis, guided-memory, and no-memory-aid conditions, the means for hits were 19.78 ( $SD = 5.89$ ), 20.72 ( $SD = 6.05$ ), and 19.48 ( $SD = 4.40$ ), respectively; a  $3 \times 2$  (Condition  $\times$  Guilty/Not Guilty Decision) two-way analysis of variance (ANOVA) on the hits data yielded no significant effects. For false alarms, the means were 4.37 ( $SD = 3.23$ ), 2.93 ( $SD = 1.89$ ), and 2.90 ( $SD = 2.55$ ) for the hypnosis, guided-memory, and no-memory-aid groups, respectively; a  $3 \times 2$  (Condition  $\times$  Decision) two-way ANOVA on the false alarms also yielded no significant effects.

## Discussion

In this simulation, the British students were more likely to convict a defendant on the basis of testimony elicited through hypnosis than on the basis of testimony elicited with no memory aid. The defendant was not significantly more or less likely to be found guilty in the guided-memory condition than in the no-memory-aid and hypnosis conditions; what trends there were, however, suggest that guided memory was between the other conditions in this respect. The failure of the memory data to yield any significant effects suggests that simple salience was not the mechanism involved in influencing the judgments of guilt; instead, the most obvious factor is that of credulity concerning the efficacy of hypnosis as a memory facilitation procedure.

Of course, extreme caution must be exercised in generalizing these results to real situations, but the results at least tentatively support the view that the belief in the efficacy of hypnosis to improve eyewitness memory may actually influence the jury in courtroom decisions; given the strong cross-cultural generalizability of other results in forensic hypnosis, one would expect similar results from studies in the United States and Australia.

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