Hypnotist as Suspect, Hypnotist as Sleuth

Jean-Roch Laurence and
Campbell Perry
Hypnosis, Will, and Memory: Psycho-Legal History
New York: Guilford Press, 1988.
432 pp. ISBN 0-89862-339-1 (hardcover); 0-89862-504-1 (paperback). $45.00 hardcover; $25.00 paperback

Review by
John F. Kihlstrom *and* Betsy A. Tobias

Jean-Roch Laurence, university research fellow at Concordia University (Montreal, Quebec, Canada), is coauthor, with C. Perry, of the chapter "Mental Processing Outside of Awareness: The Contributions of Freud and Janet" in K. S. Bowers and D. Meichenbaum (Eds.) The Unconscious Reconsidered. ■ *Campbell Perry, professor of psychology at Concordia University, is coauthor, with P. W. Sheehan, of* Methodologies of Hypnosis: A Critical Appraisal of Contemporary Paradigms of Hypnosis. ■ *John F. Kihlstrom, professor of psychology at the University of Arizona (Tucson) and recipient of the American Psychological Association's Early Career Award in Personality, is author of* Functional Disorders of Memory. ■ *Betsy A. Tobias, an attorney and a graduate student in clinical psychology at the University of Arizona, is coauthor, with J. F. Kihlstrom and D. L. Schacter, of the chapter "Implicit and Explicit Aspects of Emotion and Memory" in S. A. Christianson's (Ed.) forthcoming* Handbook of Emotion and Memory.

In 1784, a royal commission of inquiry, headed by Benjamin Franklin, sent a secret report to Louis XVI advising him that Mesmer's "animal magnetism" posed a danger to public morality because individuals (mostly women) suffering magnetic crises were neither aware of what was happening nor able to control themselves. (A second commission, composed of members of the Royal Society of Medicine, issued a report the same year but focused on the purported therapeutic effects of the technique.) In the same year, Amand-Marie Jacques de Puységur, the Marquis de Chastenet, a sometime follower of Mesmer, reported that a peasant subjected to Mesmer's procedures fell into a state of "artificial somnambulism" in which he showed superior intelligence and memory (and even clairvoyance) and heightened suggestibility.

Thus, the stage was set for a psycholegal controversy that has dogged hypnosis since it evolved from Mesmer's and de Puységur's procedures during the latter half of the 19th century and that continues to this day. Parties in both criminal and civil cases still occasionally claim that they were unwitting and unwilling victims or accomplices of the coercive power of a Svengali-like evil hypnotist. Far more frequently, police agencies and attorneys have hypnotized eyewitnesses, victims, and even suspects and defendants in an attempt to recover forgotten details that are pertinent to criminal cases—for purposes of investigation or refreshing testimony. In this wonderful book, Laurence and Perry, colleagues at Concordia University in Montreal, have taken these two ostensible phenomena—the subjugation of the will and the enhancement of memory—as the springboard for a wide-ranging historical survey of clinical and experimental work on hypnosis.

Hypnotic coercion is rarely raised as an issue in criminal trials, but the question has been a persistent one. Indeed, with all the attention given to the mere *possibility* of abuse, it is remarkable that Moll's classic text of 1889 reported only one such case. Laurence and Perry have found references to others, but it is clear that, for a very long time, the issue was more abstract than concrete. The problem did crop up frequently, however, in the "golden years" of hypnosis (1878–1905) and thereafter. In 1884, Jules Liégeois, a lawyer and amateur hypnotist, presented a paper at the French Academy of Moral and Political Sciences, in which he reported some apparent real-life cases of abuse, as well as some formal experiments on the topic to support his claim that hypnotized individuals became moral and physical automata. Liégeois discovered what investigators continue to find today: There is hardly anything that hypnotic subjects won't do when asked to do so by a hypnotist. Interpretation of this fact, however, is a matter of some controversy. It was pointed out to Liégeois, for example, that these tests occurred under circumstances where the subjects could reasonably assume that they were protected from the adverse consequences of their behavior.

If this criticism of Liégeois is correct, then laboratory tests of hypnotic coercion lack ecological validity and cannot be generalized to real-world situations where such safeguards are not in place. In response to this criticism, investigators since Liégeois have exercised consider-

able ingenuity in devising deceptions to hide the true purpose of their experiments. Laurence and Perry review most of these attempts, involving such behaviors as stealing exams, selling heroin, and burning flags and Bibles, and conclude that it is very likely impossible to construct an adequate test of the coercive power of hypnosis.

What, then, of the real-life cases? Consider the classic Denmark case in which one person hypnotized another who then went on a spree of bank robberies that ended in murder. At the trial, the accomplice defended himself by claiming that he was the victim of hypnotic coercion, but the court rejected the defense and convicted both hypnotist and subject. Laurence and Perry conclude that in most such instances, it is the close interpersonal relationship between the subject and the hypnotist that permits behavioral control, rather than anything about hypnosis per se. Their arguments are extremely persuasive and support the reluctance of courts to accept hypnotic coercion as a defense for accomplices.

But what about cases where the hypnotic subject is a victim rather than an accomplice? In the famous "Mr. Magic" case of sexual seduction in Sydney, the perpetrator actually defended himself on the grounds that hypnosis cannot coerce behavior and, thus, that the victims consented and there was no crime. The court rejected this ploy and convicted the defendant (a decision later overturned on a technicality). But if the accomplice was culpable in the Denmark case, why weren't the victims of Mr. Magic also responsible for their behavior? Laurence and Perry imply that the operative factor was the victims' *belief* in the coercive power of hypnosis, which created a self-fulfilling prophecy by which they *felt* incapable of resisting his advances and, so, succumbed. Although it is obviously difficult to equate the two situations, such considerations could also logically apply to the Denmark case. In the final analysis, arguments about self-deception and misattribution raise troubling questions about the doctrine of legal responsibility—whether hypnosis is involved or not.

More salient than hypnotic coercion has been the recent spate of civil and criminal cases involving hypnotically enhanced memory for investigation or testimony. For Laurence and Perry, the two issues are closely related. They argue that the same self-deception processes that make people responsive to hypnotic coercion also lead to a variety of problems with hypnotically enhanced memories.

The first known case in which hypnosis was used to enhance memory was tried in 1846. Since the end of World War II, hypnosis has been used in the Brinks robbery, the Boston Strangler murders, the Metropolitan Opera murder, and the Chowchilla kidnapping, in addition to literally hundreds of less famous cases. The Law Enforcement Hypnosis Institute, based in Los Angeles, has trained attorneys, police officers, and even judges in hypnotic technique for these purposes. Still, considerable controversy swirls around this application of hypnosis. Although its proponents assert that hypnosis may well be beneficial, or, in any event, that the advantages outweigh the risks, especially when safeguards are employed, some opponents argue that hypnotically refreshed testimony is inherently unreliable and should never be introduced into the courtroom.

There are actually several different issues here: (a) Does the mind function as an organic recording device, making an indelible impression of all that passes before its sensors—an impression that is retrievable if only the right buttons are pushed? (b) Regardless of whether memory proves to be more reconstructive than reproductive, does hypnotic suggestion produce significant increments in accurate recollection? (c) Does hypnotic suggestion increase the tendency to confabulate? And, if so, can anything be done to eliminate or reduce this tendency? (d) Does hypnosis—or the subject's unwarranted *beliefs* about hypnosis—lead to a decrease in critical judgment and a corresponding increase in confidence attached to one's memories, independent of their truth value? (e) Are hypnotized (or hypnotizable) individuals more susceptible to the biasing effects of leading questions and other postevent information? (f) Do juries and officers of the court share inappropriate beliefs about the powers of hypnosis, rendering them more likely to give special credence to information elicited by hypnosis? (g) What are the roles played by hypnosis per se, hypnotizability, and the context in which hypnosis is administered? These are all empirical issues, and all of them have received some attention in recent years. All the research needed is not yet in, so many questions still need to be addressed definitively, but the overall thrust of the available data, as reviewed by Laurence and Perry, is not favorable to forensic hypnosis. So far as we can tell, the technique does not reliably improve memory and may well introduce distortions and increases in confidence that are difficult or impossible to correct subsequently. (Of course, these are questions that could, and should, be raised about *non*hypnotic techniques of memory enhancement as well.)

For this reason, such organizations as the American Medical Association and the Society for Clinical and Experimental Hypnosis have urged extreme caution in the forensic use of hypnotic techniques. Nonetheless, forensic hypnosis is still widely practiced, resulting in a large number of courtroom battles between expert witnesses. In the United States, the response of the state legislatures and courts to this scientific controversy has been extremely variable. Some states exclude testimony that is based solely on hypnotically elicited memories, and some have gone so far as to exclude all the testimony of witnesses who have been hypnotized. Others accept such testimony but leave it to the jury to weigh the credibility of the evidence offered. Still other states permit hypnotically refreshed memories as evidence, so long as certain procedural safeguards have been used, or adopt an ad hoc "balancing" approach that addresses the issue on a case-by-case basis. Furthermore, the states have arrived at their positions by various routes—some considering constitutional issues and others considering evidentiary ones.

The varied practices make it extremely likely that the Supreme Court will have to step in at some point and resolve the issue. Already, in *Rock v. Arkansas* (1987), it issued a decision permitting testimony by hypnotized defendants, but that narrow ruling (by a hairline majority) was based on concerns for the civil rights of the accused. When the testimony of witnesses and victims is at issue, the Court will have to confront the scientific evidence directly in determining whether the constitutional rights of the accused may have been violated.

Given the Supreme Court's concern for precedent, Laurence and Perry's book is certain to play a major role in that decision. Nobody else has dug so deeply into the history of forensic hypnosis. At the same time, the authors' approach sometimes verges on the sensationalistic, as they recount details that make for good reading but that are not necessarily germane to the legal and scientific issues at stake. Moreover, the chronological organization, so desirable in a history, may not have been the best way of presenting a coherent account of the relationship between legal questions and empirical evidence. Finally, Laurence and Perry

rely heavily on the "Frye Rule" pertaining to the admissability of scientific principles—a standard that may soon be superseded by the newer Federal Rules of Evidence.

The focus of this book, as the title states, is also on issues of will and memory. But the authors take the opportunity to delve into a wide range of other issues in the early history of hypnosis, particularly in the 19th century. Laurence and Perry offer detailed accounts of the historical backdrop for the rise of mesmerism, the transformation of animal magnetism to artificial somnambulism, the conflicts between the Nancy and Salpêtrière schools of hypnosis, and the decline of popular and professional interest in hypnosis after its "golden years." In this way, *Hypnosis, Will, and Memory* is a useful adjunct to Ellenberger's (1970) monumental volume, *The Discovery of the Unconscious: The History and Evolution of Dynamic Psychiatry*. The book suffers from the lack of an author index, which makes scholarly reference somewhat difficult. Nevertheless, it is a wide-ranging book that belongs on the shelf of anyone who has even a passing interest in hypnosis, in the relationship between psychology and the law, or in the history of psychology. It is sure to be read and reread with pleasure and profit.

References

Ellenberger, H. F. (1970). *The discovery of the unconscious: The history and evolution of dynamic psychiatry*. New York: Basic Books.

Moll, A. (1889). *Hypnotism*. New York: DA Capo Press. (From a reprint dated 1982)