

FACILITATION OF SEXUAL PLEASURE VIA HYPNOSIS: A CASE FOR THE COURT

Frank J. Vingoe

Cardiff

Abstract

The Defendant charged with the rape of his stepson's girlfriend (C), had been approached by C because of his interest in hypnosis. C wondered whether hypnosis could increase sexual pleasure. Following a party, C was apparently hypnotized and penetration occurred. Issues in the trial presented to the Court by the expert-witness included: the motivation of C, the influence of alcohol on hypnotic responsivity, awareness during hypnosis, coercion, controllability and simulation. Convinced that C was not hypnotized, the jury's verdict was Guilty of Unlawful Intercourse. Mitigation resulted in a sentence of nine months, suspended for two years.

Key words: hypnosis, misuse, sexual assault, expert witness, forensic issues

Case study

In the present case the Defendant was not a lay therapist, but was known for his interest in hypnosis, having read a number of books on hypnosis over a 16-year period. The alleged victim asked the defendant if hypnosis was useful in facilitating sexual pleasure.

The referral of the case to be discussed was first made on behalf of the Crown Prosecution Service (CPS). The author was asked to examine a videotape of an interview of the apparent victim of an alleged rape involving hypnosis. The interview of the alleged victim was carried out by a policewoman within a few hours of the alleged offence. There were also transcripts of the interviews conducted by police officers with the Defendant, who provided his account of events.

Various questions were posed for the author to answer, and in a somewhat modified form they were as follows:

1. Could hypnosis be (or was hypnosis) responsible for 'any apparent consent?'
2. Is the victim's recollection of events and reactions (whilst under hypnosis) consistent with what would be expected from a person while in a 'hypnotic trance?'
3. How would hypnosis alter the victim's mental and physical abilities? (This question did not seem to be particularly pertinent.)
- 4a. Would hypnosis override the victim's normal inhibitions?
- 4b. At what stage would the victim's 'self-consciousness' overcome the hypnotic trance?

The writer was also asked if there were case studies that would shed light on the above. Questions 1 – 4b were answered in an eight-page forensic hypnosis report, in which it was indicated that it was difficult for the writer to determine whether the Defendant's or the Claimant's (C) comments regarding the alleged rape were closer

to the truth. For example, the alleged rape had taken place late at night when C was admittedly tired and had drunk a significant amount of alcohol. Further, there was a possibility that C was simulating hypnosis. The Defendant's statement regarding the evening of the alleged offence was significantly inconsistent with that of C. A number of papers on hypnosis were also submitted to the CPS (Vingoe, 1991a, b, 1992).

C was a 15-year-old female who was fairly sexually experienced, more latterly with the Defendant's stepson, and she had raised the question with her boyfriend's stepfather as to whether hypnosis could help his stepson and herself achieve a better sexual relationship. The Defendant was an unemployed builder who had four stepchildren, two of whom lived with his wife and himself, and he also had a young son by his wife.

Unexpectedly, the author received a letter about six months later from a solicitor indicating that the CPS had forwarded the author's report to his firm, in part apparently because the report seemed to provide more support for the Defendant than the Claimant. The alleged offence took place in March 1995, and the trial initially commenced in March 1996. Unfortunately, the Judge became ill and the trial was delayed and did not recommence until September 1996, at which point the author attended the complete trial with the exception of the last day of summing-up. When the case came to Court for the second time there were actually three charges: one of rape, the second under-age sexual intercourse, and the third indecent assault.

Events leading up to the alleged rape

There was much consistency in the reports of the circumstances that led up to the alleged rape, although the reports diverged about events following the party on the evening of the offence.

Whilst giving C a lift one day, the Defendant was asked about hypnosis. The conversation involved the Defendant's knowledge of hypnosis, and C raised the question as to whether or not hypnosis could help facilitate the sexual pleasure she and the Defendant's stepson obtained from their sexual relationship. The Defendant's opinion was that hypnosis would help and, later on, the Defendant asked C to come into a bedroom during a particular afternoon where he hypnotized her. Following the hypnotic induction, the Defendant told C to imagine that her boyfriend was lying beside her, and then suggested that she start caressing her breasts and her genital area over her clothing. C did this quite willingly and the Defendant did not touch her in any way.

Later the same day C and a group of friends, including her boyfriend, had a party at the Defendant's home and drank two-litre bottles of cider. Apparently, the Defendant was providing cider for the group and was telling sexual jokes to them. It should be noted that the Defendant's wife had gone away for the weekend and, therefore, the only people sleeping in the house were the Defendant and the various younger people. The Defendant then apparently hypnotized C downstairs just before everyone retired for the night.

As the group of young people were going off to their respective bedrooms for the night, C approached the Defendant asking him to hypnotize her again. After agreement that C had been successfully hypnotized the Defendant asked C to go upstairs to his bedroom, where he asked her to lay on the bed.

When C started coming out of hypnosis and told the Defendant this, he hypnotized her again and turned the light out. He then told her to undress and get into bed, and C indicated that she noticed the Defendant had removed his clothing down to his

underpants. The Defendant then told C to touch herself on her breasts and in her genital area, and although she indicated that she felt embarrassed she did so, indicating that she could not help herself having no control over her actions.

The Defendant then got into bed with her and started caressing her. C indicated that she tried to resist but felt too weak and unable to do anything about it or to use any physical force in opposition to the Defendant's actions. C then noted that she was pulled on top of the Defendant and penetration occurred on three occasions in spite of her attempts to pull herself away from him and telling him to stop.

C finally screamed and the Defendant let her go. This, apparently, brought C out of hypnosis. When C got off the bed and put her nightgown back on, she found that the room had been blockaded with a chest of drawers across the door. According to C the Defendant then told her not to tell anyone about what had happened, since his marriage would otherwise not survive. C was eventually able to get away after partially dressing herself, and used a public telephone to ring a friend alleging she had been raped.

The details up to the point of the Defendant being arrested need not be related here, except to note that the Defendant denied raping C.

The Defendant's story was that he got undressed and then got into bed naked, whilst C talked to him. She then got into bed with him putting her head on his chest and, despite his trying to turn away, she herself got on top of him and penetration occurred on the three occasions. The Defendant stated that he never intended having intercourse with C.

There were thus two different views of what took place in the Defendant's home that evening, although much of it is consistent. As related by the Claimant and the Defendant: there was a party; hypnosis had been discussed on a number of occasions; four litres of cider were drunk altogether during the party; and the Defendant and Claimant were in the bedroom together.

It should be noted that the Defendant, whilst having a record of minor offences including theft and deception, had no record involving sexual offences. Following his arrest, the Defendant went to prison for a number of weeks, following which he spent 12 months in a hostel, away from his family.

The trial

The jury consisted of six males and six females. The videotape examination of C revealed that she had been friendly with her boyfriend for about four months prior to the alleged rape, and had been having a full sexual relationship. It also became clear that C had had sexual relationships with other males. C and the Defendant's stepson had got along quite well with the Defendant, and the Defendant and his stepson had discussed the use of hypnosis to enhance sexual pleasure. In fact, it was the Defendant's stepson who first broached the subject to his girlfriend.

Comments relating to the questions

1. Could hypnosis be (or was hypnosis) responsible for 'any apparent consent?'

It was pointed out that, in the author's opinion, following Hilgard (1965), a 'genuinely hypnotized' person is very reluctant to speak, move, or think, and experiences a feeling of compulsion to engage in behaviour suggested by the hypnotist. Obviously, a person who is not particularly hypnotically susceptible does not have these subjective experiences to any degree.

Orne and Hammer (1974) noted that ‘the central phenomenon of hypnosis is increased suggestibility, a state of greatly enhanced receptiveness, and responsiveness to suggestions or stimuli.’ This being generally known by the public, it follows that a person pretending to be hypnotized attempts to give the impression of high suggestibility by following the suggestions made by the hypnotist.

The author had provided the Court with several definitions of hypnosis (Orne and Hammer, 1974; Schifflin and Shapiro; Vingoe, 1991a) and had described the distribution of hypnotizability in the general population. He had also reviewed the subjective reports of subjects of different hypnotic responsibility. It was indicated that these subjective feelings, indicated above, occur most readily in the top 5% of the population in terms of their response to hypnosis (Vingoe, 1992). It had been indicated to the CPS as well as to the court that studying the videotape did not provide evidence as to whether C was, or was not, highly hypnotizable. It was further indicated that the motivation of C, the effect of alcohol in reducing inhibitions, and the possibility that C was simulating hypnosis were all factors to be considered in answering question 1. Introducing the research evidence regarding control during hypnosis, the opinion was expressed that it was highly doubtful that ‘hypnosis’ was responsible for ‘any apparent consent’ (Hilgard, 1965, Table 1, p. 12).

Motivation of claimant

The Claimant maintained that it was only because she was hypnotized that she did what she did. She reiterated that she was not in control, that the Defendant had the power, and she noted that she did not even notice that he got into bed with her. However, in addition to the potential effect of drowsiness and alcohol (see below), C may have been ambivalent with reference to engaging in sexual relations with the Defendant. The Defendant was a relatively young man in his early 30s who was not unattractive and seemed to enjoy mixing with the people of the Claimant’s age. It is not stretching credibility too much to consider the possibility that initially, on the evening of the offence, C wished to have sexual relations with the Defendant, but that as things progressed she may have realized she had gone too far in allowing to happen what had happened and, therefore, she withdrew herself from the situation making the allegation of rape.

Influence of alcohol

The Defendant had told C that hypnosis was more effective with alcohol. During the trial C admitted that she was drunk, and noted that ‘when you are drunk you don’t know what you are doing anyway?’ C indicated that she did not usually drink much alcohol, and said that ‘I couldn’t really take a drink very well.’

The author was asked to comment on the influence of alcohol on response to hypnosis. Whilst no specific research work has been done on this issue, Read, Yuille and Tollestrup (1992) have conducted studies on memory as influenced by alcohol consumption. They found greater impairment of recall, with increasing alcohol consumption, when general arousal was low, but not with high arousal. They concluded that ‘it appears that following alcohol consumption subjects failed to process further the information and cues that would normally have inhibited their behaviors’ (p. 443). In general, it was suggested to the Court that whereas minor amounts of alcohol might be relaxing, the amount taken by C, on her own admission, was enough to intoxicate her, and probably to reduce hypnotic responsiveness.

Simulation

The Defendant had pointed out that C reported that she had achieved orgasm by imagining that she had been with her boyfriend, following suggestions made by the Defendant after the induction of hypnosis. C reiterated that she was under the Defendant's power whilst she was hypnotized. However, the Defendant's view was that while C was responsive to hypnosis, she could have faked her responses.

Orne (1971) demonstrated that subjects are able to fake hypnosis. Vingoe also pointed out that a majority of experts in forensic hypnosis agreed that 'Even the most experienced hypnotist cannot tell for certain if a person is pretending to be hypnotized' (Vingoe, 1995). Fortunately, the recent development of the Hypnotic Simulation Index (HIS) (Martin and Lynn, 1996) may improve the professional's ability to detect simulation.

2. Is the victim's recollection of events and reactions (whilst under hypnosis) consistent with what would be expected from a person while in a 'hypnotic trance?'

On the basis of observing the videotape and listening to C's statements, it was pointed out that it would seem that her statements were not all consistent with what would be expected from a person who had been hypnotized. It was pointed out that 100% of a group of experts in the field of hypnosis noted that a person while hypnotized is quite aware of what is going on (Vingoe, 1995). It should be noted that C denied being consistently aware.

Awareness and control during hypnosis

A discussion of the involuntary nature of hypnosis had been provided to the Court, referring to Weitzenhoffer's (1974) Classic Suggestion Effect, but drawing largely from Lynn and Rhue (1991) who noted, in part, that the concept of 'involuntary' has decreased in its popularity, so that most theorists do not subscribe to the concept. Many theorists maintain that the hypnotic subject is able to retain control of his or her ability to either respond or resist suggestions. The issue of the involuntary nature of some hypnotic responses is related, to some extent, to the concept of awareness. One of the important considerations in this case was the degree to which responses were involuntary (to the extent that they were not under the control of C) and may have taken place without C's awareness.

Interestingly, Vingoe (1995) found that 100% of an Expert Criterion Group agreed that a person is aware of what he or she is doing while in hypnosis. Further, 100% of the same group disagreed that 'the control a person normally has over him or herself is in the hands of the hypnotist' (Table 2, p. 180). Further, in Vingoe's work (1997) it was pointed out that potential expert criterion subjects who were *not* selected for the Criterion Group did not differ on these two questionnaire items from the Criterion Group.

Coercion under hypnosis

Perry (1979) among others, has suggested that clients who attribute their criminal/immoral behaviour to being under hypnosis and thus allegedly not in control of their behaviour, may simply be using hypnosis as an excuse. However, hypnosis may have no relevance to the behaviour in question. Hoencamp (1990) indicated that if the relationship in treatment 'is defined in a way that provides a sexual rationale, whether hypnosis is involved or not, an avenue for abuse may be open.' Further, McConkey and Sheehan (1995) note in reference to Claimants who have allegedly been coerced to engage in sexual behaviour with a hypnotist, that there has, unfortu-

nately, 'been a lack of an analysis of the motivation of the coerced subject [i.e.] the degree to which hypnosis is either a necessary to sufficient condition for coercion remains problematic.'

Inconsistencies

There were a number of inconsistencies in the Claimant's comments with reference to hypnosis. On the one hand C noted that she was relaxed, but on the other hand indicated that she knew what was going on but also, at the same time, denied that she did. C noted that she did not know what she was doing because she was hypnotized, but had also said that at the time she was drunk, and had agreed that 'when one is drunk one doesn't know what one is doing.' C also admitted that she was drowsy.

3. How would hypnosis alter the victim's mental and physical abilities?

It was pointed out that hypnosis was not able to improve one's physical abilities beyond one's capabilities (Sheehan and Perry, 1976). However, it was noted that the use of hypnosis could provide the best frame of mind or attitude for good physical performance, i.e. hypnotic training can facilitate good performance. Likewise, hypnosis can facilitate one's cognitive or psychological performance, but not beyond one's capabilities.

4a. Would hypnosis override the victim's normal inhibitions?

It was pointed out that if a person was highly hypnotizable, i.e. in the top 5% of the general population, the response to the hypnotic induction and various suggestions made during hypnosis *might* override the victim's normal inhibitions. However, it was pointed out that one had to consider non-hypnotic factors in terms of a person engaging in sexual behaviour and, more especially, with a hypnotist apparently trusted by the individual undergoing hypnosis.

4b. At what stage would the victim's 'self-consciousness' overcome the hypnotic trance?

It was pointed out that this would very much depend on the individual's motivation in terms of desiring sexual behaviour. If, for example, C was not at all interested in sexual behaviour with the defendant, unless she were deeply hypnotized, based on a high level of hypnotizability, it seems she would be able to overcome the 'hypnotic trance.'

Court verdict

The expert witness in his testimony and the judge in his summing-up stressed the difficulty in determining whether a person is really hypnotized. Also, the research evidence indicated that 100% of a Criterion Group of Experts in the field of forensic hypnosis agreed that control is in the hands of the subject rather than the hypnotist. On the basis of all the evidence, the jury were convinced that C was not hypnotized.

The verdict reached by the jury was Not Guilty of Rape, but guilty of Unlawful Sexual Intercourse, i.e. intercourse with an under-age person. Mitigation resulted in a sentence of nine months suspended for two years with a supervision order.

References

- Gibson HB. A recent British case of a man charged with using hypnosis for rape and other sexual offences. *Contemporary Hypnosis* 1992; 9: 139–148.
- Heap M. Another case of indecent assault by a lay hypnotherapist. *Contemporary hypnosis* 1995; 12(2): 92–98.
- Hilgard ER. *The Experience of Hypnosis*. New York: Harcourt, Brace and World, 1965.
- Hoencamp E. Sexual abuse and the abuse of hypnosis in the therapeutic relationship. *International Journal of Clinical and Experimental Hypnosis*, 1990; 38: 283–297.
- Lynn SJ, Rhue JW. (Eds) *Theories of Hypnosis: Current Models and Perspectives*. London: Guildford, 1991.
- Martin DJ, Lynn SJ. The Hypnotic Simulation Index: Successful discrimination of real versus simulating participants. *International Journal of Clinical and Experimental Hypnosis* 1996; 44(4): 338–353.
- McConkey KM, Sheehan PW. *Hypnosis, Memory, and Behavior in Criminal Investigation*. London: Guildford, 1995.
- Orne MT. The simulation of hypnosis: Why, how and what it means. *International Journal of Clinical and Experimental Hypnosis* 1971; 19: 183–210.
- Orne MT, Hammer AG. Hypnosis: In *Encyclopedia Britannica* (15th edn), 1974; 203–204.
- Perry C. Hypnotic coercion and compliance to it: A review of the evidence presented in a legal case. *International Journal of Clinical and Experimental Hypnosis* 1979; 27(3): 187–218.
- Read JD, Yuille JC, Tollestrup P. Recollections of a robbery: Effects of arousal and alcohol upon recall and person identification. *Law and Human Behaviour* 1992; 16(4): 425–446.
- Schifflin AW, Shapiro JL. *Trance on Trial*. London: Guildford, 1989.
- Sheehan PW, Perry CW. *Methodologies of Hypnosis: A Critical Appraisal of Contemporary Paradigms of Hypnosis*. Hillsdale, NJ: Laurence Erlbaum, 1976.
- Vingoe FJ. The truth and nothing but the truth about forensic hypnosis. *The Psychologist* 1991a; 4: 354–357.
- Vingoe FJ. *Hipnosis Y Conducta Anti-Social*. Paper presented at the First Joint Spanish-British Conference on 'Psychology and the Law'. Pamplona, Navarra, Spain, 1991b.
- Vingoe FJ. Hypnosis and the control of behaviour. *Contemporary Hypnosis* 1992; 9(3): 154–157.
- Vingoe FJ. Beliefs of British law and medical students compared to expert criterion group on forensic hypnosis. *Contemporary Hypnosis* 1995; 12(3): 173–187.
- Vingoe FJ. Lay therapy again: When is sexual involvement legitimate as treatment for non-sexual disorders? *Contemporary Hypnosis* 1996; 13(2): 137–142.
- Vingoe FJ. A note on 'experts' in forensic hypnosis. *Contemporary Hypnosis* 1997; 14(1): 48–52.
- Weitzenhoffer AM. When is an 'instruction' an 'instruction'? *International Journal of Clinical and Experimental Hypnosis* 1974; 22(3): 258–269.

Address for correspondence:

Frank J. Vingoe,
87 Blackoak Road,
Cyncoed,
Cardiff CF2 6QW, UK

Revised version accepted 14 April 1998