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THE PSYCHOLOGIST'S INFLUENCE IN LEGISLATIVE DECISION MAKING: A CASE STUDY

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THE PSYCHOLOGIST'S INFLUENCE IN LEGISLATIVE DECISION MAKING: A CASE STUDY

by

April Wursten

A Thesis Submitted to the Faculty of the

DEPARTMENT OF PSYCHOLOGY

In Partial Fulfillment of the Requirements
For the Degree of

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THE UNIVERSITY OF ARIZONA

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STATEMENT BY AUTHOR

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This thesis has been approved on the date shown below.

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11/14/84

Date

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ABSTRACT

This investigation examines the role of the psychologist imparting information on public interest matters to a state legislature. A House Bill was followed through the legislature from its introduction in committee to the final ruling. Arizona State Legislators (N=50) were interviewed regarding the sources of information, evaluation of sources and information, and use of information. Findings were that legislators obtained information almost exclusively through staff researchers who reflected the biases of the committee and who, by controlling access to the legislators, influenced quality, quantity, and political bias of the information legislators received. Sources, and attributions made about sources also influenced how information was evaluated and used.

The impartial psychological witness was considered credible and influenced the actions of individual decision makers. Nevertheless, political considerations had more impact on the final outcome of the legislation. Theoretical issues are discussed and recommendations made for future research.

INTRODUCTION

Psychologists have traditionally remained uninvolved in the legislative system. They perform research as though they believe it has an impact on public policy (Weiss and Weiss, 1981), but may not participate in the legislative process for a number of reasons. These include an overidealistic trust that legislative success can occur without active participation (Dorken, 1977), insufficient knowledge of the political process (Deleon, 1983) and how it impacts on the psychological profession (Kempler & Norman, 1981), differing problem-solving approaches between policy analysts and politicians (DeLeon & VandenBos, 1980), and inadequate liaison mechanisms to facilitate communication flow between psychologists and policymakers (Pacquin, 1977).

During the last decade, harsh political and social realities have forced psychologists to recognize that psychology is a business and that in order not to be engulfed by competing interests in the business world, they need to define their legitimate province. Dorken (1981a) for instance, notes that the conduct and scope of the business of psychology is determined by law "mostly not of our doing" and that to survive, we need to be united as a profession in our willingness to become involved in the political system. Consistent with this notion, he has been active in assisting the California State Psychological

Association in their legislative policy intervention and in taking proactive positions on professional interest matters.

The importance of legislative involvement is apparent in public interest matters as well. Saks (1977) notes that policy making bodies do not usually include behavioral scientists, but that frequently psychological knowledge is called for in issues considered by lawmakers that are not related to guild interests. For example, he cites a study by Felner and Marshall demonstrating that organ donors make their decisions impulsively, without information, immediately upon hearing of the need. Given that such decisions must be made, psychologists can help by informing legislators of ways to insure that when donors give consent, it is truly informed, thus increasing the probability that these protections are made into requirements in any relevant legislation.

For the purpose of this study, it is important to distinguish between professional and public interest matters. Professional interest matters consist of issues where the law influences the practice of psychology, and include such topics as licensure and certification laws (Stigall, 1983) and malpractice laws (Gable, 1983). Public interest matters, on the other hand, include issues where psychology has information which could affect society as a whole. One example of a public interest matter is the issue of informed consent previously discussed. Another example is the giving of the Miranda warning to juveniles. It is assumed that when the minor is informed of his or her rights, he or she will be able to act in his or her own best interests. Psychological research (Grisso & Manoogian, 1981) has demonstrated that

many minors neither understand the warnings, nor are able to apply such warnings rationally to the situation. Consequently, this research has demonstrated a need to reevaluate this legal procedure in order to insure that the intention of the law--protecting the rights of the minor, is actually carried out.

The goals of the psychologist acting in professional or public interests are somewhat different. When psychologists act in professional interest matters, they are presumably aware of the full implications carried by their suggestions, and have the goal of implementing the changes they have decided upon. For this reason, legislators are likely to attribute specific motives to psychologists acting in professional interest matters. In matters of public interest, however, the psychologist's goal is simply to provide objective information to insure that legislators make decisions wisely. The psychologist's motivations, therefore, are less clear to legislators.

There are a number of articles addressing the efforts of psychologists to obtain legislation in their professional interests (DeLeon, 1983; Dorken, 1977, 1981b; Eismann, 1982; Friedland, 1981; Zapf, 1981). These articles describe the process of legislative involvement and outline effective strategies for meeting the goal of advancing the interests of psychology. There are also a number of conceptual articles, examining some of the obstacles faced by psychologists in becoming politically involved and emphasizing the need to better understand and work within the political system (e.g. Kempler & Norman, 1981; Portnoy 1981).

Given the importance of the scientific research base of psychology, it is ironic that there are only three manuscripts addressing the psychologist's imparting of public interest information to a legislature. In one article mentioned above, Saks (1978) considers the issue only at the level of subcommittee participation rather than addressing the broader legislative process. In the others, Massad, Sales and Acosta (1983a) and Massad, Sales and Sabatier (1983b) have focused conceptually on the problem of determining the kinds of information which will be of interest to government decision makers, how it can best be presented, and biases likely to affect how it is received. To date, however, there are no empirical studies addressing the actual impact of the psychologist as an expert in the legislature with the goal of imparting public interest information, nor is there literature examining how the psychologist is actually perceived by legislative participants or how psychological information is acquired and processed. The purpose of this study is to explore these issues.

Because this is the first empirical investigation of what occurs when a psychologist attempts to impart public interest information to a state legislature, a case study approach with a broad sampling of legislative behaviors was selected. A case study approach is particularly valuable when the investigator does not have an empirical data base on which to base predictions, and though conceptual guidelines are available (Massad et al., 1983a,b) they could serve to limit the investigation to specific issues, thus preventing new, unforseen factors from emerging.

This is a case study of one state legislature, Arizona, processing one bill, House Bill 2224 which dealt with admissibility of testimony of previously hypnotized witnesses (See Appendix A). This bill was introduced following the murder of a man which was witnessed only by his wife and daughter. Because the wife and daughter were unable to provide much information about the murderer, they were hypnotized to assist them in recalling details. Afterward, the accused was arrested. However, before their case could be brought to trial, the Arizona Supreme Court ruled against admitting testimony from previously hypnotized witnesses. Because there had been no other witnesses, the case could not be brought to trial. The wife (hereinafter victim witness or VW) subsequently contacted her state legislator and asked that a bill be introduced to rectify this situation in order that witnesses such as herself would be able to testify.

This bill was selected for this study because it involves a technique, hypnosis, on which the psychological literature contains most of the scientific research. Thus, there was little doubt that the psychological literature contained information relevant to the policy decision. The specific content of the bill authorized the admission of testimony of previously hypnotized witnesses in the courtroom provided the hypnotic session was recorded and the recording was made available to the opposing party. Psychological research has demonstrated conclusively that there are potential risks involved in using hypnosis in this manner (Orne, 1979; Putnam, 1979). Therefore input by psychologists specifying the nature of the risks and possible remedial actions could help insure responsible legislation.

METHOD

Subjects

Arizona's 90 legislators, 30 Senators and 60 Representatives were the subjects for this study. Fifty five percent (31 members of the House of Representatives and 19 members of the Senate) agreed to participate. Of the 32 nonrespondents, two were unavailable due to illness, while three indicated they were too busy and completing the interview would be a waste of time.

Likelihood of participation was unrelated to party affiliation; 55% of the Democrats and 56% of the Republicans participated. Occupation of the legislators outside of the legislative session, however, did apparently influence the likelihood of responding; 100% of those in rural occupations (ranching, farming) responded, while only 43% of those in professional occupations (attorneys, teachers, etc.) responded. Because only three respondents in rural professions participated on committees considering the bill, this should not bias the results.

Legislative respondents and nonrespondents belonged to essentially the same number of committees, though some committees were quantitatively better represented among respondents. Because the three committees that heard testimony on the bill were represented, this would not bias the results.

In addition to contacting legislators, investigators contacted the seven legislative staff members mentioned by respondents as gathering and providing technical information for them. Six participated in the study.

Materials

For the purpose of this investigation, a structured interview was developed (see Appendix B) to gather information about the sources (internal and external to the legislature) who provided technical information, attitudes of the legislators toward sources, particularly witnesses, the basis of each legislator's decisions, and whether legislators perceived the issue as one where scientific information would be useful and if that perception would influence their vote.

Procedure

In order to determine the path of HB 2224 through the legislature, contact was established with staff researchers who explained that the bill would proceed through two committees in the House of Representatives: the Judiciary Committee and the Environmental Affairs Committee. Provided it passed both committees and was approved by the House of Representatives, it would proceed to the Senate where it would be heard by the Judiciary Committee. The investigator would observe and keep a record of each of these meetings (see Appendix C). Additionally, since the investigator was concerned that professional activity in the area of investigative hypnosis would create a conflict of interest situation in which a psychologist witness might fail to report relevant scientific findings, she was to be prepared to testify

regarding the scientific evidence on hypnotism.

Because of an abrupt scheduling change in the House Judiciary Committee meeting, the investigator was unable to be present. She was available at subsequent meetings in both the House Environmental Affairs Committee and the Senate Judiciary Committee.

In the House Environmental Affairs Committee, the psychologist retained by the Attorney General's Office was present but did not testify. Since no other psychologists were present, the investigator testified revealing only the credentials she possessed (a graduate student in clinical psychology) rather than referring to those of her research adviser in order to explore the influence of source credibility. There was a recognized expert available in the Senate committee who presented comprehensive testimony including the information the investigator would have presented, so the investigator did not testify before that committee.

Following the committee hearings, telephone contact was maintained with the legislature to follow the progress of the bill. Immediately following the final vote in the House and in the Senate, attempts were made to contact each legislator by telephone and interview him or her according to the previously mentioned structured interview. Staff members mentioned by legislators were also contacted and asked the following questions: Who requested their research? To whom was their information provided? What sources were used in compiling their information? How is information usually obtained? What other staff members were relied upon? Copies of information provided to legislators by staff members were also requested.

Two interviewers, the investigator and a female student in the same graduate program, completed the interviews. Because the investigator testified in one committee hearing, the other interviewer contacted those committee members who heard her testify. The investigator interviewed all other House members. In the Senate, interviews were evenly divided. The investigator pursued all staff contacts. Anonymity was guaranteed to each respondent, and when clarification of questions was requested by legislators, it was provided.

RESULTS

Sources of Information

Because the legislature is a political organization with specific rules and functions, political processes provide a context for these data affecting source selection and presentation of information. Expert sources who will testify in committee are recruited by staff researchers, who are responsible to the various committees. For this reason, the selection of experts closely reflects the values of the committee staff who in turn reflect the values of the committee to which they are responsible. One staff researcher reflected on his or her position in this way: "If you take their money, you do what they say. If you can't live with it, you're in the wrong business". In the House committees, where the bill's sponsor had requested the research, there was a demonstrable bias in source selection since there were no opposing experts.

Source selection need not be overt. It may involve very subtle behaviors by staff members who are responsible for screening incoming calls, and imparting background information (e.g. schedules of hearings; topics to be considered) to interested potential witnesses. The investigator's attempts to be present to testify at all relevant House committee meetings presents a good example. On the Thursday evening preceding the scheduled House Judiciary Committee meeting, a House staff member contacted the investigator (as a prospective opposing

witness) and told her the meeting had been cancelled. She was instructed to contact Mr. Jones of the Attorney General's Office (a proponent of the bill) to learn when the meeting would be rescheduled. Subsequently, on Friday, Saturday, and Sunday, the author attempted to reach Mr. Jones, but was unsuccessful. On Monday morning, when the author reached him at 8:30 a.m., he informed her that the meeting had been scheduled for 9:00 a.m. that same day. Because the meeting was in Phoenix, and the investigator was in Tucson, she was unable to provide opposing testimony that day.

A second political factor, time constraints, can also have direct impact on sources. The legislative session is brief, normally lasting 100 days. In the 1982 legislative session which is the focus of this bill, 918 bills were introduced. Each legislator participated on at least four committees in which each of these bills was considered. Not only were legislators responsible for making informed decisions on each bill passed out of his or her committee, they were expected to vote on all bills passed by his or her and other committees. There were 354 such bills.

Some committees cope with these time limits by imposing time limits on testimony and stopping testimony at the moment they feel their decisions have been made. This occurred in the House Environmental Affairs Committee where a five minute time limit was imposed on the testimony of each witness and witnesses were asked not to testify unless they had important information which had not been previously offered. In the interest of saving time, one committee member moved to preempt further testimony immediately following the bill's introduction by the

Attorney General's Office (AGO). Had the investigator been less assertive, no opposing testimony would have been heard there.

Now that we have provided a political context within which to consider the obtained data, we can examine the specific data obtained, from the five interview questions that were devised to gather information about the sources who provided technical information to the legislators or their staff. They included: How did you become aware of the issue before the bill was introduced? From what sources did you or your staff receive information? From what sources did you or your staff solicit information? Were you contacted by anyone about the bill? From whom did you hear testimony?

Responses revealed that the most commonly used source of information was fellow legislators. Twenty-four respondents (48%) indicated that legislative contacts had been an important source of information. Significantly, 14 of those respondents (28%) indicated legislative contacts were their only source of information. These respondents were alone, however, in listing only one information source. The victim witness testified before the three committees which consisted of 18 respondents (36%) as did the staff of the AGO. Newspaper articles made up the next source of information with 15 respondents (30%) indicating they had read at least one. Constituent letters (eight of which were attributed to the VW) were received by 12 respondents (24%).

The investigator provided information to nine respondents by testifying and providing copies of her testimony (see Appendix D). The Senate research staff, headed by an attorney, provided information to seven Senate respondents. The House research staff (also headed by

an attorney) provided information to five House respondents. Bernard Barber, a Ph.D. certified psychologist and forensic hypnotist, testified before five House respondents. Jeffrey Zeig, (hereinafter primary psychological witness or PPW), a Ph.D. certified psychologist and head of the Milton Erickson Foundation; Martin Sloane, Ph.D., a certified psychologist and Director of Psychological Services in Maricopa County; Eleanor Miller, a defense attorney with a criminal law practice; and Representative James Sossaman, Chairman of the House Judiciary Committee each testified before five Senate Judiciary Committee respondents. News magazines were an information source for three respondents. Constituent phone calls were a source for two. Other sources (used by one respondent each) included attorney friends, professional contacts (the respondent would not disclose their names or professions), books in a law firm, radio, and a UCLA professor. Only three legislators (previously mentioned) solicited information from outside sources by contacting a professor, asking attorneys outside of the legislature, and looking up information in a law firm's library.

Source Content Interaction

Because each source had a particular interest in the matter, and therefore selected and presented information appropriate to that interest, it is evident that information content is largely dependent on the source. Thus, the next logical step is to examine what information could have been accessed by the legislators, and how sources affected selection and presentation of that information.

As already noted, the bill under consideration was intended to create a law permitting admission of testimony of hypnotized witnesses in the courtroom (See Appendix A). This subject matter therefore includes scientific (the process of hypnosis) and legal (regulating the rules of evidence in the courtroom) information.

Information relevant to the scientific aspect of the issue, which the legislators could potentially have accessed, includes an extensive body of literature addressing eyewitness testimony, the state of hypnosis, and its effects on memory (a critical issue in determining the appropriateness of its employment as an investigative or courtroom tool). Since most of this literature consists of write-ups of experiments assessing whether a person can conceal information under hypnosis (Field & Dworkin, 1967) or whether a person's memory is altered in a specific way by hypnosis (Orne, 1979), a knowledge both of research design and of related research would be useful and sometimes necessary in order to evaluate its content. An additional type of available scientific information is derived from professional experience in using hypnosis. This information consists of descriptions of the process of hypnotic induction, i.e. procedures employed, response of the client and information obtained from the client.

There is also a substantial body of literature addressing the legal aspects of hypnosis. The process is addressed in court cases (e.g. Silva Vs. Arizona 1981), law review articles (e.g. McLaughlin, Jr., 1981) and in legal journals (e.g. Levitt, 1981). These articles provide brief summaries of scientific findings, drawing their conclusions about hypnosis from reputed experts in the area (e.g. Martin

E. Orne, Ph.D.), but not evaluating the content of the expert information. The authors then relate their conclusions to legal issues such as whether the 6th Amendment right of cross-examination is violated by using testimony of previously hypnotized witnesses. Other legal information is comprised of facts of relevant cases in which hypnosis was used or attempted to be used.

A third body of information is contained in media reports (newspaper, radio and television) which summarize scientific and legal issues related to hypnosis and present sensationalistic reports of crimes that refer to the difficulties in bringing criminals to justice given the restrictions on certain kinds of evidence. Frequently, these articles are highly simplistic and tend to be somewhat biased both by the author's sympathies for the victims and by the author's misconceptions about the state of hypnosis (e.g., see Graham, 1981).

A final source of information was provided by constituent letters and phone calls, the content of which focused on personal experience with hypnosis and beliefs about it.

Given the available information, how did the sources modify what was actually presented to legislators? For the purpose of this discussion, source content interaction is defined as the extent to which original information content is selectively chosen and presented according to the personal and or professional interests of the presenting source. Accordingly, we will assume that scientific and legal articles are written to the standards of their respective professions and reflect as clearly and objectively as possible the knowledge of those fields, while the media's presentations reflect a

goal of maintaining readership through portraying interesting if not sensationalistic cases. Thus, a primary focus of the rest of this section is on how the personal/professional interests of the witnesses affect the content they presented. An additional reason for focusing on witness presentations is that of the legislators who indicated they had based their decisions solely on the opinions of other legislators, 80% indicated those other legislators had participated on at least one hearing committee and had based their opinions on that experience.

The witness with the strongest personal interest was the VW whose motivation was evident in her testimony. Her presentation focused on her experience during and after her husband's murder, emphasizing the emotional trauma involved. It was delivered emotionally. She was not tearful, though her voice broke several times as she described the painful situation. The VW testified that she and her daughter were the only witnesses to the murder of her husband but were so emotionally distraught they were unable to provide detailed information to the police. Consequently, they were hypnotized by investigators, but were unable to recall additional information. (This makes a stronger case for admission of her testimony since the possibility of suggestion can be precluded in this case.) Because the Supreme Court had disallowed testimony of previously hypnotized witnesses and because there were no other witnesses, the VW noted that her case could not be tried. In the House, she concluded her testimony with a plea for legislators to make a law which would admit her testimony, even though she had been hypnotized. In the Senate she concluded her testimony by describing her efforts to revive her husband.

The professional interests of the witnesses from the AGO also affected their presentation. Specifically, they were motivated by a number of cases which they found they could not prosecute because of the Arizona Supreme Court rule banning testimony of previously hypnotized witnesses. The rule had been imposed because the Court feared for the objectivity and accuracy of the testimony, which could not be reasonably assured since variable precautions had been taken at the time of hypnosis. (Some hypnotic sessions had been videotaped, and some only audiotaped). Consequently, the AGO was interested in creating a minimally restrictive ruling that would admit testimony of all previously hypnotized witnesses, regardless of precautions taken. To achieve their interests, these witnesses attempted to demystify the process of hypnosis by noting that eyewitness testimony is subject to the same distortions as testimony of previously hypnotized witnesses. For example, in normal interrogation procedures, eyewitnesses are very cooperative, substantially increasing the likelihood that suggestion will occur. In addition, the process of interrogation solidifies memory just as hypnosis does. On this basis, not only could they argue that safeguards were superfluous, they could assure committee members that use of testimony of previously hypnotized witnesses does not interfere with due process. They added emotional impact to their testimony by focusing on case information and pointing out that most of the crimes which could not be prosecuted were crimes of violence and suggested that failure to admit testimony was equivalent to "putting the victim on trial". To add more weight to their testimony, one witness suggested that they wanted to take a positive ruling on HB 2224 to the U.S.

Supreme Court. These witnesses presented as though they were in a courtroom attempting to sway the jury. They were articulate, organized and purposeful. (See Appendix C).

The professional interests of Eleanor Miller, an attorney with a criminal defense practice, were equally strong, particularly in view of the fact that she had defended an alleged criminal where admissibility of testimony from previously hypnotized witnesses had been an issue. Like the witnesses from the Attorney General's Office, her testimony was articulate and purposeful. Yet unlike their testimony, she stayed with the facts known about hypnosis and the legal process, avoiding case information to dramatize her position. She began by presenting new information, that hypnosis alters physiological states and decreases critical judgment. Then she endeavored to refute major aspects of the testimony by witnesses from the AGO. Specifically, she noted that if hypnosis did not differ from usual interrogation procedures, the state would not want to use it as an investigative tool and stressed that defense counsel had no say in determining whether such testimony could be admitted, for such decisions always rested with the judge. She concluded by raising the issue that the jury may believe that hypnosis is a magical tool. Consequently, wherever it is used, the defense will be required to pay for experts to refute such testimony which will not only lengthen the trial process, but will jeopardize the defendant's rights in the event that he or she cannot afford to pay for such experts. Additionally, she stated that admitting this type of testimony would result in an increase in the number of cases requiring court dates in an already overburdened judicial system.

One additional witness had strong personal-professional interest in the matter. This was Representative James Sossaman who sponsored the bill subsequent to being contacted by a constituent, the VW. His interest in the matter was increased because of his personal experience with hypnosis following being robbed. Despite his strong interest, his testimony was brief, on point, and objective. He merely reiterated the need for a tool to investigate crimes, affirmed the legitimacy of concerns over safeguards, and in his Senate testimony, indicated that the House of Representatives had decided against ruling on videotaping because the state of the art was not sufficiently developed to insure quality video recording. Finally, he suggested that regulation of hypnosis induction and testimony should be left up to the courts.

Two forensic hypnotists had been recruited by the AGO to testify for the bill. Bernard Barber, the Ph.D. who had hypnotized the VW, ostensibly had two motivations. First, elimination of testimony from previously hypnotized witnesses could jeopardize his practice as a forensic hypnotist. Beyond that, he did not want to jeopardize cases in which he had already used hypnosis. Consistent with these motives, he focused on the process of hypnotizing the victim and how he had not altered her memories, but had facilitated her recall of existing memories which led to the composite drawing that looked like the alleged murderer.

The second forensic hypnotist, Martin Sloane, Ph.D., walked a fine line between the interests of the AGO and his professional judgment. He began by noting that hypnosis is a state "experienced by all of us all the time", then substantiated that hypnosis does not

guarantee truth; that confabulation occurs both with and without hypnosis. He continued, however, by reiterating and recommending the safeguards proposed by the PPW, though he stated he wasn't sure they could be legislated. When he suggested that such safeguards could be effected by the County Attorney's Office, some committee members laughed.

Two additional representatives of the scientific field testified, neither of whom had a conflict of interest generated by involvement in forensic hypnosis. The investigator, a graduate student in clinical psychology at the University of Arizona and a student of hypnosis testified on the basis of her literature review that safeguards should be adopted. Her motives were not evident to the committee, though as will become apparent later, they were questioned. They included a sense of professional responsibility to make some effort to assure that legislators were aware of the ramifications of their decisions and a desire to learn about committee responses to expert testimony.

Only one witness testified without apparent personal-professional interest. Jeffrey Zeig, Ph.D., the PPW, a respected expert in hypnosis had been asked to testify by the staff of the Senate Judiciary Committee. Subsequently, he contributed his time as an expert in hypnosis to answer questions about it. He presented objectively, answered questions directly and clearly, used occasional colloquialisms and humor and fielded attempts to undermine his testimony adeptly. Facts drawn from the scientific literature comprised the basis of the testimony. Committee members learned that body language could be

suggestive; the form of a question can influence the answer given by the witness; people can lie under hypnosis; hypnosis may facilitate recall; hypnosis can be abused; hypnotists need good training to learn how to avoid planting suggestions; depth of hypnotic state is not important to the process of obtaining information; and the dangers of someone feigning hypnosis are far less salient than the possible misuse of the process. Committee members were exposed to 14 repetitions of the words "safeguards", "recommended procedures", or "guidelines", plus six suggestions for specific guidelines, and they learned why such safeguards as having a qualified unbiased hypnotist and videotaping hypnotic sessions are necessary to insure that the possibility of suggestion is minimized.

Although source content interactions are most clearly evident with respect to witnesses, they are not confined exclusively to them. The goal of the House staff researcher who responded to the request for information from a Democratic House Judiciary Committee member can be inferred by noting that the position paper he developed used legal information to reflect a bias that hypnosis is a process which jeopardizes the client's right to a fair trial and focused on case information to substantiate that position.

Bias was also clear in the presentations of the constituents who wrote letters or called on the phone. Those favoring the bill described personal experience with hypnosis and expressed their desire for its passage. The one constituent who opposed the bill did so on the basis of perceived Biblical prohibitions.

Respondents were somewhat protective of other sources, particularly other legislators and professional contacts. Consequently they would discuss neither the motives of those contacts nor the specific content of their conversations. Nevertheless, it is probable that goals and biases of those legislators and professional contacts influenced the information which they imparted.

Clearly, sources affect the types of information to which legislators are exposed. This occurs not only because sources may intentionally or inadvertently bias their presentation of the content, but also because of their different interests, expertises, and goals in testifying. For example, because the scientific witness in the House Judiciary Committee worked as a forensic hypnotist, he focused on the process of hypnotizing the VW. Consequently, the legislators on that committee were not exposed to the scientific evidence suggesting precautions are required to preclude implanting suggestions. Only the five members of the Senate Judiciary Committee would have received scientific research information on this bill in the course of the legislative session, had the investigator not provided such information to nine members of the House Environmental Affairs Committee and offered a written testimony transcript (See Appendix D).

For respondents outside of committees hearing the bill, exposure to scientific information through any source was almost nonexistent. Only one respondent possibly was exposed to scientific information through his or her contact with a UCLA professor. This respondent elected to preserve the confidentiality of his or her source and disclosed neither the name of the professor nor area of expertise, so

this legislator's exposure to scientific information is uncertain.

Although legal information was readily available (e.g.through the legislative library) only seven respondents, five of whom were sitting on the Senate Judiciary Committee, indicated they had received copies of court cases and law review articles. Per the request of the committee chair, these legislators each received a fairly comprehensive packet of relevant legal literature including one directly on point, (McLaughlin, Jr., 1981) and a copy of the recent Supreme Court case (State v. Silva, 1981) where it was ruled that previously hypnotized witnesses would not be allowed to testify. Written legal information in the form of a staff researcher's position paper was also imparted to five members of the House of Representatives, three of whom were on the House Judiciary Committee.

Source Evaluation and Information Use

Given an understanding of the sources of information that were accessed by the legislators, and how these sources influenced the content of the information, it is logical to question how the legislators evaluated and used this information. Interview questions designed to shed light on how witnesses and their testimony are evaluated included: Which witness did you find most influential? What did you like best about their testimony? What did you like least about their testimony? Use of information was assessed by the questions: Why did you vote either for or against HB 2224? Of all the information you received, including information not presented by witnesses, which did you find most useful? Which witness did you find most influential?

The VW impressed many of the respondents with her willingness to testify following her ordeal. Of the 18 respondents who heard her testify, 13 referred to her in the interview. Legislators responded to her presentation somewhat variably, but its emotionality was not lost on any of them. On the positive side, one Representative noted she was straightforward, articulate and not overdone. Others noted she was too emotional, and one Senator added that he or she had to be somewhat more critical than usual in order to compensate for the emotionality. On the whole, her testimony was better received by the House than the Senate; six of the 13 respondents who heard her in the House of Representatives noted she was most influential and voted for an unamended bill while none of the witnesses who heard her in the Senate felt she was most influential.

The witnesses from the AGO were not remembered individually. Of the 18 respondents who heard their testimony, 13 referred specifically to it, but only three of the respondents found them most influential. On the whole, legislative evaluations of their testimony were very mixed. Three Representatives liked their presentations for being factual and objective. Two Representatives and three Senators had difficulty with their presentation because they were biased. Comments ranged from "Their testimony didn't ring true" to "Every time the Attorney General's Office loses a case, they want to change the rules of the game". These respondents were particularly critical of their presentation style, perceiving them as advocates for one side trying to "win cases" in the legislature. One Senator discredited the expertise of two witnesses from the AGO who claimed to be hypnotists (as well as

lawyers) on the grounds that their training had been in weekend workshops on forensic hypnosis. Another discredited one of the witnesses for stating that she agreed with a colleague even though she had not been present to hear him testify.

Of the 13 Committee Members in the House of Representatives, 11 based their vote on law enforcement issues and the need to convict criminals. Not surprisingly, they found the information presented by the VW, the AGO and the bill's sponsor most influential. Since only five of the 18 remaining House respondents voted for that reason, it would appear that some composite of the testimony of the aforementioned witnesses provided the basis of their decision. By contrast, only six Senate respondents noted that law enforcement concerns were the basis of their decision. Of these, four indicated a letter from the VW had been the most useful source of information while two said they could not remember their sources.

Bernard Barber, Ph.D., impressed a Representative by providing a description of the hypnotic process. The Representative indicated that Barber's testimony had provided a "medical perspective". He did not comment on Barber's presentation style.

The evaluation of the investigator included noting she was apparently well informed on the subject, but legislators raised two questions. First, she did not claim to be a psychologist, and respondents questioned her expertise. Second, committee members didn't know how to evaluate her information because they were unsure of her motives. One legislator stated: "I didn't know her so I didn't know why she would drive up from Tucson...I didn't know what her interest in the

matter was". Only three of the nine respondents who heard her testimony remembered her. One of those three, mistaking her for a psychiatrist, noted she was most influential, but failed to note any information from her testimony and based his or her decision on law enforcement issues. Finally, only two of the nine expressed any concern that hypnosis could be abused, while seven stated without reservation that it was an effective tool for enhancing accurate recall, a clear misconception.

The PPW entered the Senate hearing committee with the unique advantage of having been asked by the staff and committee to testify as an unbiased expert on hypnosis. Four of the five respondents who heard his testimony noted he was most influential, including two who voted the way they did because they felt that using testimony of previously hypnotized witnesses would enhance law enforcement. These Senators reflected his influence by sharing their concerns to assure that misuse of the technique was prevented. The other two believed that possible abuse of the technique was the most important issue. The respondents who found his testimony most useful, perceived him as objective, unbiased, straightforward, sincere, professional and well-prepared with lots of information. All five respondents who heard him testify remembered him as the "hypnosis expert" and one specifically recalled that he was the Executive Director of the Milton Erickson Institute. No respondents found anything critical to say about his delivery. Significantly, every suggestion made by the PPW was added to the Senate version of HB 2224. (See Appendix E).

Outside of the committee, four Senate respondents based their decisions on the information that hypnosis could be used to enhance

recall and noted their information came from Senate discussion of the bill.

Eleanor Miller, the criminal defense attorney, was noted as most influential and referred to by only one Senate Judiciary Committee respondent who valued her experience in the courtroom. This was reflected in the member's use of her testimony that the critical issue was that the accused would not obtain a fair trial. This respondent, however, did not provide information on how he or she perceived her presentation style.

Respondents did not describe their responses to media information, but significantly, despite the number of legislators exposed to this source, none indicated he/she had based a decision on it. It is possible though that the media had a more subtle influence, such as predisposing the legislators to one or the other of the sides and the witnesses testifying with information that would support that position.

With the exception of two Senators who had acknowledged their decision was influenced by reading the VW's letter, legislators did not appear to use constituent information in making a decision on HB 2224, and, in fact, commented only that their feedback was interesting. However, since one legislator did express concern that he had not heard from his or her constituents and would have found their input useful, and since very few legislators received information from or commented about that source, the importance of constituent feedback on other legislative decisions cannot be ruled out.

Two House committee members used information imparted by the legal staff's position paper which raised concerns that admission of testimony of hypnotized witnesses might interfere with the criminal's right to a fair trial as the basis of their decisions. They indicated that they respected those staff members and trusted them to provide the best available information. Six House respondents who were not on relevant committees used legal concerns as the basis for their decisions and stated they had derived their information from debate on the House floor.

From the foregoing, it is clear that the source of information, the motivations attributed to that source, the credentials of the source, the content selected by that source, and the manner of his or her presentation all affect how a source is evaluated. This is poignantly illustrated by the six Representatives and two Senators who relied heavily on their respect for and relationships with other members of the legislature and legislative staff. As one legislator put it "You have to rely on people who have established credibility with you before".

At times, source is the sole basis for decisions. For example, one legislator indicated he/she voted because another legislator voted in the opposite way and he/she trusted that source to be wrong. Another example was when there was little deviation from party line vote in the final House vote on HB 2224 (Willey, 1982).

In a few cases, respondents acknowledged basing their decisions on neither information nor source. One Representative simply indicated he or she voted as a gut reaction. Two Senators indicated the issue was

one they neither knew nor cared about, didn't remember how they voted, and didn't remember any sources.

Because the purpose of this investigation is to determine not only if, but how social scientists can impact the legislative process, it is important to note whether legislators perceived the value of scientific literature in examining this topic. Two questions were included to address this issue: Did you perceive this bill as one where scientific information would be useful? If yes, did that perception influence how you approached gathering information? Fully 80 percent (40) of the respondents indicated they did feel scientific information would be useful, and thus did perceive the relevance of research to policy. Twenty percent (10), however, did not see research on hypnosis as relevant to the issue of whether it should be used in the courtroom. Of these, one saw the issue as strictly a legal one, seven indicated they voted as they did because they believe in the importance of convicting criminals, and two voted on the issue because they respected the bill's sponsor.

But, even when legislators do perceive scientific information to be of relevance, it does not necessarily influence how they go about obtaining information. Of the 40 respondents who perceived relevance, only 10 indicated that their positive perception had influenced their information gathering. Yet the facts belie their responses. Of those ten, six received information from exclusively legal sources within the legislature, three received no information, and one solicited information from a UCLA professor. Thus, even where relevance was perceived, with one possible exception, this perception did not lead to

soliciting scientific information.

Though perceiving scientific relevance did not influence information gathering, it may have had a role in determining which information would be used. For those respondents who were exposed to scientific information, there is some indication that it was employed in the decision making process. In responding to the question, "why did you decide to vote for or against HB 2224?", 88% of respondents exposed to scientific information in committee noted that scientific information was relevant to the issue, and half of these either included a scientific fact or noted a scientific source. Of those not exposed to scientific information in committee, only 61% stated that scientific information was relevant to the issue, while 23% quoted scientific facts, which presumably they gleaned through talking with informed legislators.

But even when legislators are favorably disposed to the scientific information to which they were exposed, it will not necessarily carry the day. Specifically, after a bill is favorably considered by hearing committees and the House and Senate, if the House and Senate versions differ, it may have to proceed to a Conference Committee to develop a compromise bill. House Bill 2224 entered this committee because of amendments made and passed by the Senate. According to a legislative respondent who was a member of this committee, when HB 2224 reached the Conference Committee, as per the House recommendations, certain precautions (e.g. audio and visual recording of the hypnosis session and use of a hypnotist with proper credentials who had no preconceptions about or vested interest in the

information obtained while the subject was under hypnosis) were deleted. Then,. the sponsors (AGO and Representative Sossaman) added an amendment which designated circumstances under which use of testimony of previously hypnotized witnesses must be allowed. Committee members, reluctant to dictate the operations of the court, tabled the bill. As a consequence, the PPW impacted the legislation significantly, but not sufficiently to get his specific suggestions implemented. Testimony of the PPW did lead, however, to the tabling of a possibly ill-considered piece of legislation.

DISCUSSION

The results of this study have clearly provided us with some observations that, if representative, give a fair amount of insight into legislative use of social scientific information. However, these data were based on naturalistic observation with followup interviews of legislators and staff working on one topic during one legislative session. Thus, any conclusions drawn are best seen as hypotheses, not generalizable laws. The rest of this paper will identify the hypotheses that logically flow from the data gathered in this study, use extant psychological theories to hypothesize on why the legislature operates as it does in terms of accessing and using social scientific information, and suggest needed research to test the validity of these hypotheses and the theoretical propositions. In order to facilitate this discussion, the rest of this section will be organized by the topical subheadings used in the results section.

Sources of Information

We have observed that legislators are capable of accessing scientific information. Though social scientific information is not readily accessed by speaking with other legislators or through the legislative library, it is available through the legislative staff researchers. Furthermore, staff researchers are conscientious about locating qualified expert social scientific witnesses. At least one

was available to testify at each meeting. The researchers' approaches to this assignment, however, were very different between the House and Senate. In the House, the only witnesses invited to speak were provided by the AGO and spoke in favor of the bill. In at least one committee, time limits were imposed, limiting quantity of information experts might present. The opposing self-invited witness (investigator) encountered obstacles both in being present to testify, and in getting permission to testify. What factors might account for the one-sided presentation in the House?

Recall that loyalty is prized in staff researchers, and that they act in accordance with the values of their respective committees. Thus, we must examine the committees themselves for notions about why opposing witnesses were not located. One idea, mentioned by Weiss (1978) is that these committees determine their position on the issue in advance of the hearings and then look for supportive social scientific evidence. Our data provide some support for this notion since 85% of the committee members in the House of Representatives voted for the issue on the basis of law enforcement issues, and one staff member suggested that the law and order faction in the House, which included several House Judiciary Committee members, would vote for anything that would facilitate conviction of criminals.

In order to have tested this hypothesis directly, however, we would have needed to attain clear evidence that the decision on how to vote on HB 2224 was made before the bill was heard. Unfortunately, our data did not do this. A future investigation might pretest initial decisions and reasons for those decisions among committee members and

among a randomly selected group of noncommittee legislators. Following expert testimony, a post test could be given to determine how they used information presented by experts. Of specific interest is whether the expert testimony altered their perception of the issues or influenced the decision.

A second explanation for the one-sided selection in the House might be that the committee wished to avoid utilizing contradictory information. On one hand this may have occurred because the bill was viewed as relatively simple, with six legislators (12%) commenting on the relative simplicity of the issue. This may have led to the perception that opposing experts would be unnecessary, if not a hindrance to decision making. When an issue is viewed as simple, and individuals believe they have sufficient knowledge to make a decision, an expert will have little impact (Sternthal, Phillips and Dholakia, 1978). In another setting (courtroom) when the issues seemed relatively simple, expert testimony about eyewitness testimony was demonstrated to increase the deliberation time of jurors, but not necessarily to facilitate better decisions (Hosch, Beck, & McIntyre, 1980; Loftus, 1980). Relatedly, legislators may have noted that experts sometimes disagree and felt that a battle of experts would serve to cloud, rather than clarify the issues (Feller, King, Menzel, O'Connor, Wissel, & Ingersol, 1979). In order to determine which of these factors was most influential, however, we need to know a good deal more about committee perceptions of the bill's complexity, their knowledge about the issues involved, and their beliefs about what an expert would be able to contribute to the process. An investigation similar to this one but

incorporating a pretest designed to specifically probe these issues would address these concerns.

A third hypothesis is related to the committee sizes in the House and Senate. House committees were composed of 15 members, while Senate committees consisted of only nine. Petty, Harkins, Williams, and Latane (1977) hypothesized that the more people responsible for some cognitive task, the less individual effort would be exerted. If that were true in the legislature, one would expect Senate, relative to House committee members to make more individual effort in reaching decisions, consider more information in greater depth and see their individual efforts as more important. Petty, Harkins and Williams (1980) obtained data supporting that when one person was responsible to make a decision, more individual cognitive effort was made than when a group made a decision. Evidence that this occurs in groups has been provided by Valenti and Downing (1975) who found that jury size affected decisions. To provide support for this in a legislative setting, these results need to be replicated in this non-courtroom setting.

A fourth possible explanation for the one-sidedness is that legislators have biased perceptions of social scientists as "naive, jargon ridden, oriented to esoteric academic concerns rather than to accomplishment, and irresponsible in their neglect of practical realities" (Weiss & Weiss, 1981 p. 839). As a consequence, they choose to avoid them altogether. Since stereotyped views can be maintained only when contradictory information is not available, i.e. when there is no contact between social scientists and legislators, as was the case in this session where there were no social scientists working as

legislators, we might have anticipated evidence of this bias. These data suggest, however, that if such biases do have an impact, they are insufficient to deter committees from seeking social scientific experts to present to committees. For at least one expert was available to testify in each committee meeting. Furthermore, comments made about the experts do not reflect these biases. However, since comments about social scientific witnesses were made by fewer than half of the committee members who heard testimony, specific questioning of legislators on their perceptions of these witnesses is recommended.

Yet another explanation is that legislators are sometimes unable to identify their research needs (Weiss, 1978), either because they do not recognize the complexities of the issue at hand or because they do not realize that applicable research is available. The former explanation receives some support from our data, since, as already noted, the issue was not viewed as complex by some and with 10 legislators (20%) not seeing that social science research was relevant to the issue at all. Further research to test the viability of this explanation would need to test legislators' knowledge of the issue under consideration prior to hearing testimony, and the legislators' knowledge of information sources.

Now that we have examined hypotheses related to biased source selection in the House, it is important to consider differences between the House and Senate which led to the Senate's more balanced consideration of information. Recall that in the Senate, the staff had invited witnesses opposing this legislation both from legal and social scientific standpoints. In the Senate, the testimony was well-balanced

in every respect, and members of the Judiciary Committee were actively involved in processing a great deal of expert information. Additionally, there were no time limits on testimony. Consequently, two sessions were devoted to presenting evidence on the bill.

One possible explanation for this difference is the relative power of the respective parties and the effects of party platforms in the legislature. The House of Representatives was 72% Republican, while the Senate was a better balanced 53% Republican. Committees in the House and Senate were of similar proportions. Since Republicans in the State of Arizona have recently gained increasing power in the legislature based on their support of law enforcement issues, the law enforcement aspect of the bill may have been more salient than the scientific aspects for Republicans. Since Democrats were truly a House minority, they may not have had sufficient power to make sure that opposing evidence would be heard. Since these data reveal that Democratic House members obtained their only opposing information from their staff attorney, this tends to support the notion that Democrats had less control over what was presented in the House. By contrast, in the Senate, where the Democrats had equal power with Republicans, there may have been a greater pull to consider all aspects of the issue. This is an issue which would be relatively easy to investigate provided there were other available samples with similar power imbalances. Research would involve observing witness selection and testimony in power unbalanced versus power balanced situations to determine whether such power imbalances result in one-sided presentations that are related to political agendas.

A second possibility for these differences is that the bill was presented in the Senate several weeks later than in the House and received media attention following its passage by the House. As a consequence, more constituents may have become aware of the issue, and more importantly, potential sources may have learned of the issue and recognized their need to protect their own interests by opposing the bill. This explanation is not directly supported by these data, since witnesses did not volunteer, but were recruited by the staff researcher for the Senate Judiciary Committee. Nevertheless, public awareness could conceivably have created pressure to provide opposing views as well as enlarged the pool of witnesses from which the researcher could draw.

Research on how time and media attention influence witness selection is also necessary since these factors may result in the number of witnesses increasing from the first hearing to the second whether a bill begins in the House or Senate. These differences need to be factored out in order to assess actual differences between operations of the House and Senate. This would also be relatively easy research to complete, as it would require only monitoring witness selection between committee meetings on randomly selected controversial bills, and noting if the numbers of witnesses or content of their testimony changes between the House and Senate or vice versa. This could be supplemented by witness interviews focusing on how they learned of the hearings, their motivations to testify, etc.

Not only did source selection differ between House and Senate, but how source selection was accomplished also varied. In the House,

responsibility for source selection was turned over to the authors of the bill--the AGO, while in the Senate, the staff maintained responsibility over selection. This difference may have occurred regularly between the two houses in this legislature, as was suggested by one Senate respondent. Alternatively, it may have been accounted for by the fact that the bill was sponsored by the House Judiciary Chairman, who initially requested the AGO to write the bill. In order to investigate this, we would have needed to observe other House and Senate Committees in their selection of witnesses to determine whether in the House witness recruitment is routinely assigned to a subsidiary group, and in the Senate selection is consistently handled by the staff.

An additional issue on source selection is that though Ph.D. certified psychologists were selected to testify in both the House and Senate, this may have been happenstance. Thus, it would be of interest to examine this issue further by interviewing staff members and committee chairpersons about what criteria they used to determine whether a source was expert and what source qualifications were required and/or desirable.

An important observation of this data with respect to expert source access is that despite the fact that hypnosis is a technique with serious limitations and that most research has been performed by psychologists who have the ethical obligation "to be alert to personal, social organizational, financial or political situations and pressures that might lead to the misuse of their information" (APA, 1981, p. 633), there was no self-initiated involvement by psychologists. Had the

Senate staff been less conscientious in locating opposing witnesses, this legislation, which included no provisions to assure the public that hypnosis would be done without implanting suggestions, could have become part of the law almost without response of the psychological community. Explanations for noninvolvement mentioned in the introduction included trust in the legislative process and insufficient knowledge of the political process. It may also be possible that most psychologists do not recognize the importance of participation in the political process. This is a field ripe for investigation, beginning perhaps with a national survey of psychologists about their awareness of the political system and its impact on psychology as well as their knowledge of the political process and their possible roles in it. This information could be used for designing graduate school courses to clarify the political process, making it more familiar and comfortable for psychologists.

A final issue to be considered under this heading is whether psychologists are perceived as an expert source. These data suggest that the title of psychologist does not inherently guarantee perceived expertise. Specifically, the scientific witness who testified for the bill in the Senate was viewed as a spokesperson for the AGO, and not one legislator spoke of him as an expert. House legislators who commented on hearing an expert testify on the process of hypnotizing the VW thought his information was helpful, but in at least one case it may have been because the legislator mistook the expert for a medical doctor. All respondents who listened to the PPW were impressed, but they put a good deal more emphasis on his being an expert on hypnosis

and the head of the Milton Erickson Foundation than on his degree. The effect of a medical degree or Ph.D. and experience in an area require further investigation. This could be accomplished in numerous settings, including the legislature, by randomly selecting subjects, having half of them take a pretest designed to assess initial attitudes toward the communication they were about to hear, then having all subjects view identical or written testimony from the same person identified differently as either a psychiatrist, psychologist, or other social scientist. Followup testing would assess opinion change and attitudes toward the communication source. Once the baseline effect of medical, Ph.D., or other degree has been established, further research investigating the effect of different kinds and amounts of experience would be useful.

Source Content Interaction

Recall that source content interaction concerns how content is selectively chosen and presented according to the personal and professional interests of the presenting source. Consistent with that definition, this section will examine issues related to selecting information. Issues of how information selection affected source evaluation will be treated in the following section.

Attorneys and members of the media are expected to bias their reporting of the issues. For attorneys, this reflects an intent to persuade others to their point of view, and for the media this reflects an intent to attain and maintain readership. Biased presentations are supported in the legislature which, like the courtroom, relies on an

adversarial presentation of materials. When a psychologist enters the political arena as a scientist-practitioner attempting to present public interest information, however, frequently a conflict between personal-professional (related to the practice of the individual psychologist) and public-professional (related to public image advanced by the American Psychological Association) interests result. "Ethical Principles of Psychologists" Principle 1, paragraph f, reads:

> As practitioners, psychologists know that they bear a heavy social responsibility because their recommendations and professional actions may alter the lives of others. They are alert to personal, social, organizational, financial or political situations and pressures that might lead to misuse of their influence. (APA, 1981)

Principle 1, paragraph a, states that "As scientists...In publishing reports of their work, they never suppress disconfirming data, and they acknowledge the existence of alternative hypotheses and explanations of their findings."

Ethically, a psychologist in the public domain is responsible to be objective, presenting both sides. In practice, however, that is very difficult, since psychologists are often recruited by proponents or opponents of legislation who are interested in having only one side presented. Since individual psychologists taking an objective role can compromise the position of their retainers (Slovenko, 1973), they are sometimes not given the opportunity to testify. This occurred when the AGO did not object to having expert testimony discontinued before their psychological witness could testify, even though he had new information.

Even when a psychologist presents issues in a manner consistent with the principles, he or she may be misinterpreted when retained by a

proponent or opponent of legislation, particularly when the psychologist makes specific suggestions consistent with the interests of his or her retainers. For communication recipients expect individuals to testify in behalf of their vested interests (Eagly, Wood, & Chaiken, 1978) and may therefore interpret the psychologist's testimony in the context of the vested interests of the side that retained him or her. This may account for the laughter when the psychologist recruited by the AGO suggested the AGO could be responsible for creating safeguards.

Whether a psychologist testifies in a one-sided manner or aligns with an adversarial position, he or she is not adhering to the intent of the position expounded by the APA. Why would this occur? Is it possible that some psychologists are unaware of their responsibility when presenting in a political or courtroom situation? This could be investigated by surveying psychologists about their knowledge of the Ethical Principles. Of course, it is possible that such a survey would not reveal a lack of knowledge--either because psychologists are aware, or because in filling out such a survey they would become aware of their responsibilities. Yet, at least one study, in a related area, has shown that psychologists often do not know the law that affects them and will report that they would not adhere to it once they learn of it if they disagree with its mandates (Swoboda, Elwork, Sales, & Levine, 1978). This study is particularly relevant since it dealt with confidentiality law--a law that has a counterpart in ethics.

Perhaps some psychologists who have found themselves providing testimony in political systems choose not to present both sides since they believe that it will not as effective when another expert will

present for the opposing side in a one-sided way. Poythress (1977) acknowledges the concern that unbiased testimony might be viewed as weak when opposed by biased testimony in court. Again, this could be researched by interviewing psychologists who have already testified in a one-sided way, focusing on their reasons and motives for so doing.

The possibility that some psychologists simply subordinate their public-professional to their personal-professional interests is perhaps the most disconcerting. The issues involved have been addressed most fully in the literature on expert witnesses in the another adversarial setting--the courtroom. Poythress (1977) summarizes the conflicting positions by noting the conflict between the role of the clinician as one who persuades (personal-professional), or one who informs (public-professional). Bernard Diamond, M.D. best represents the side of persuasion by proposing that mental health professionals should become advocates in the courtroom (1959/1975) since, "the expert witness, through his close operational identification with one side of the conflict, does become an advocate" (p. 218) for his or her opinion. Thus, for Diamond, the courtroom is a forum in which the professional can advocate his personal-professional beliefs. In a later work, (1973) he expresses his belief that by testifying as an advocate, an expert can educate people to his or her position and ultimately facilitate changes in the law. Other writers, including both psychiatrists and psychologists, advocate a public-professional stance, stating that the role of the expert is that of informing the jury and facilitating its reaching the best decision. They also caution against usurping the role of the jury (Bursten, 1982; Gutheil & Appelbaum, 1982; Loftus & Monahan,

1980; Pacht, Kuehn, Bassett, & Nash, 1973). Yet, few writers explicitly endorse the position taken by Lunde (Finney, 1982) that it is the "Duty of an expert witness to testify truthfully regardless of the consequences" (p. 41). Even the APA Task Force examining the role of psychology in the criminal justice system suggests that "Circumstances may arise that would justify exceptions from the general principles we offer" (1978, p. 1102). Finally, several writers suggest that psychologists and psychiatrists should not testify in an adversarial system, but should be retained by both sides or by the court (see Kubie, 1973).

The stance of the APA toward expert testimony in an adversarial setting has not been delineated, though the guiding principle seems to be adherence to a public-professional presentation. Moreover, since we do not know how psychologists would interpret and apply their knowledge of the Ethical Principles to specific circumstances involving legislative advising, research probing this issue and examining how they would cope with ethical dilemmas is needed.

Source Evaluation and Information Use

Now that we have examined issues related to source selection of information, it is important to consider how witnesses are evaluated as they present their selected content.

The quality most clearly associated with the VW was her emotionality, and you will recall that response to her was varied, with her overall evaluation being more favorable in the House. There are a number of alternative explanations for this difference. For example, as

already noted, the party composition of the House resulted in a predisposition to support witnesses who were concerned with legislation on law and order. Relatedly, Weiss and Bucuvalas (1980) found that policy makers report a preference for research that supports initial opinions. And, as already noted, these opinions may have been related to the agendas of the respective political parties.

Political agendas, however, may not account for all of the favorable responses to the VW, as it appears that fundamental properties of the cognitive apparatus create biases that could also explain such behavior (Massad et al., 1983a). A "confirmation bias" in which subjects select information that will confirm rather than refute a hypothesis was demonstrated by Mynatt, Doherty and Tweney (1977). Additionally, Giffin (1977) notes that advocates of positions consistent with personal values are viewed as more trustworthy than advocates of other positions. Investigations of the confirmation bias and source trustworthiness could be investigated in laboratory studies where initial attitudes toward controversial topics were matched with one side of an adversarial presentation and attitudes toward the source to be presenting were elicited. Following the presentation, if attitude measures showed a strengthening of the initial position, and the source was perceived to have become more trustworthy, this hypothesis would be supported.

Another political factor which may have facilitated differential receptiveness to the VW's testimony may have been that since Representatives are elected every two years and Senators every six, Representatives are generally more responsive than Senators to

constituent needs, particularly when those needs are given a great deal of publicity as they were in the case of the VW. This would result in political agendas being generally more apparent in the House of Representatives than in the Senate. Yet, this explanation seems somewhat less plausible than the preceding ones, because if this were true, both Republicans and Democrats should respond similarly to constituent needs. This did not seem to be the case in this legislature with respect to HB 2224.

Yet another hypothesis for the VW's differing receptions in House and Senate was that her testimony was somewhat different. In the House, her presentation was a fairly straightforward plea to remedy a personal injustice. In the Senate, her presentation was more graphic, evoking a painful image as she noted that her husband's last breaths were breathed by her as she attempted to resuscitate him. This change may have led to her being perceived as less effective in the Senate. Why?

One possible explanation is provided by Kelley's discounting principle (Kelley, 1972; Fiske and Taylor, 1984) which states that the role of any one potential cause of an event is discounted to the extent that other causal candidates are available. Consider, for example the different inferences which can be made when both dispositional and situational attributions are possible (Petty & Cacioppo, 1979). Particularly in the Senate, the VW's motivations to testify seemed to have been perceived as having two causes--personal beliefs developed in response to her recent tragedy, a dispositional attribution, and her being used as a tool of the AGO, a situational attribution. This issue

could have been addressed by probing respondents at length on their responses to the VW; how did they feel about her, what was her testimony like, why did she testify as she did, which aspects of her communication were the most effective, which were the least effective.

Relatedly, since the AGO provided a reference group for the VW, what were the specific effects of that association on her evaluation? Hass (1981) notes that "We may strive to dissociate ourselves from individuals or groups we consider offensive" (p. 146). Perhaps negative responses to the VW resulted from her being associated with a group that some legislators found offensive. Support of this hypothesis could be generated by probing respondents for the same kind of information about the AGO witnesses as for the VW, and noting covariation between the evaluations. Laboratory analog studies varying presentation of witness testimony and holding attributes of the witness' sponsors constant and varying attributions made about the sponsors while holding testimony constant could be used to provide additional tests of these issues.

Given the nature of the VW's testimony, an alternative explanation for negative response by some Senators must be considered, that is, psychological reactance, or the tendency to respond to threatened or actual loss of control by doing something to restore control. In this case, the persuasive message may have been perceived as so manipulative that the some legislators may have moved away from the advocated position. This may have occurred when one respondent commented "The use by people from the Attorney General's Office of the VW tended to make me more neutral than I would have been". In order to assess this factor, our research would have needed to probe legislators

for their opinions on each individual witness, according to the questions outlined above in the treatment of the VW. Additionally attitude pre and post tests would have needed to be incorporated to determine if attitude changed in a way consistent with initial opinions.

Like the VW, the witnesses from the AGO received mixed reviews. On the whole, their testimony was better received in the House than Senate, possibly explained by previously mentioned political factors. Since the three Representatives who found these witnesses to be factual and objective based their decision on law and order considerations, a second possibility may be that similarity of legislators' values to the advocated position predisposed these legislators to receive their testimony favorably (Giffin, 1967). To test for this, we would have needed to assess legislators' values regarding particular social issues. This could be accomplished through the use of legislator interviews, but because of likely socially desirable responses, these interviews would need to be supplemented by careful examination of each legislator's voting record.

A number of respondents found the testimony of the witnesses from the AGO to be biased, acknowledging not only that they were proponents of the bill, but that they had additional motivations, since their job was to facilitate conviction of criminals. Again Kelley's discounting principle may have explanatory value since to the extent that these witnesses were perceived as responding to situational determinants (job requirements), their personal conviction was undermined. Heider's (1958) balance theory may provide another framework through which we might better understand what happens. This

theory would place a communicator, a recipient, and the communication at three points of a triad, positing that there is a tendency to seek balance, but for balance to occur, the recipients attitude toward the communication and communicator should be the same. That is, if the recipient likes the communicator, he or she will respond favorably to the communicator's message and if the respondent does not like the communicator, he or she will respond unfavorably to the message. When a legislator feels negative about the issue and positive about the communicator, or vice versa, imbalance results and leaves the legislator feeling a need to restore balance. Balance can be attained either through changing feelings toward the communication or the communicator. In our data, balance may have been restored as legislators criticized the adversarial position of the AGO witnesses, their training, or their inconsistency (see below). Of course, to ascertain whether this criticalness represented a restoring of balance, we would have needed to conduct a pretest to ascertain if attitude change had occurred to make attitudes toward either the communicator or his/her message consistent.

These witnesses illustrate one point for which theoretical explanations are not necessary: It is important for witnesses to testify in accordance with obvious fact. The witness who testified that she agreed with the testimony of a colleague when she had not been present to hear that testimony, undermined her own trustworthiness/credibility. This became evident when one Senator noted that her stance toward videotaping was somewhat more positive than her colleague's.

The response to Bernard Barber, Ph.D., confusing him with a medical doctor, raises the previously addressed question of the importance of credentials in determining expertise and the possibility that under some circumstances legislators do not closely attend to credentials, except perhaps to make the initial determination of expertise. This could be easily tested by merely questioning legislators about the qualifications of the witnesses they had heard and determining what qualifications are necessary for them to believe the source to which they are exposed is expert. Responding by listing credible though inaccurate credentials would support that credibility had been established.

The response to this investigator sheds more light on the issue of credentials. There may have been a minimal credentialing requirement which she did not meet (except with the Representative who believed her to be a medical doctor). This labeling, in turn, may have led those legislators who listened to her testimony to consider her motivations more carefully. Since her motives were not apparent to them, the legislators' perceptions of her trustworthiness may have been undermined. In fact, because of the adversarial nature of the legislature, it is likely that attributions of motivations and determination of reference groups is more important here than in many other settings. As a consequence, ambiguity of credentials may have greater negative effects in legislatures than in, for example, lectures. Research to test this effect could be performed by varying credentials of witnesses imparting the same information in different settings, then probing recipients of the communication about their responses to the

witness and measuring attitude change.

Given the investigator's lack of credibility, it is interesting to note that during her testimony, more than during that of the VW or AGOl's testimony, legislators spoke among themselves, walked around and attended to papers in front of them. While in some settings, distraction has enhanced persuasiveness, (Osterhouse & Brock, 1970; Petty, Wells, & Brock 1976), this is an instance in which distraction probably resulted in lack of attention to the communication. As Hovland, Janis and Kelly (1953) suggested, attention is a necessary, though perhaps not sufficient precondition of persuasion.

Responses to the PPW were consistently favorable. He was commended for his professionalism, his unbiased presentation of both sides of the issue, and his knowledge of hypnosis. Alone of all the witnesses, he established himself as the hypnosis expert. What factors contributed to these responses? First of all, he was the only expert to come in outside of the adversarial guidelines. He was there to provide information, not to oppose or support the issue. Additionally, he appeared on his own time without pay and indicated he had done some research in the field of hypnosis. He had no involvement in forensic hypnosis, and therefore had no apparent personal interest in the outcome of the bill. For all of these reasons he was viewed as a trustworthy and expert source. His presentation style was different as well, and that may have enhanced his evaluations.

Unlike previous witnesses, the PPW limited his testimony to responding to questions. One consequence of the PPW's unique format was his involving Senate Judiciary Committee members in considering the

consequences of their decision, a strategy which was found to contribute to the likelihood of attitude change (Massad et al., 1983b; Saks & Hastie, 1978). A second attribute of this strategy was that it facilitated use of the conversational mode in his testimony. Massad et al. (1983b) note that this type of presentation which utilizes simpler and more familiar words can produce greater attitude change than testimony using technical jargon. The mediating factor may well be comprehensibility which Massad et al. (1983a) state is critical to information utilization. Finally, the question-answer strategy should also enhance perceived credibility of the source, since he is unable to anticipate either the specific questions which will be asked or the way in which they will be worded. Since (per Kelley's discounting effect) observers would be unable to attribute his performance to rehearsal, they would be more likely to see him as spontaneous and sincere. If, on the other hand, a communicator were excessively slow in responding (Addington, 1971), or seemed anxious as measured by asynchrony between nonverbal and verbal cues (Woodall & Burgoon, 1981), his or her credibility and influence could be undermined. Support for effectiveness of eliciting involvement could be generated by comparing the effects when other witnesses utilize a question and answer format vs. offering uninterrupted testimony. This would establish a baseline effect of involvement. Then, effects of using jargon could be investigated by incorporating it into the testimony and measuring changes in attitude toward the communication and source. Finally, research comparing what happens to source credibility and persuasion when a communicator adopts a question and answer format, thus involving

subjects in the considering consequences of the decision, but demonstrates nonverbal signs of discomfort, or speaks too slowly, will shed some light whether the advantages of this strategy outweigh the possible disadvantages.

The PPW's use of repetition also may have in part accounted for his effectiveness. Zajonc (1968) reviewed research about the effects of exposure frequency and concluded that mere exposure to foreign words, nonsense syllables, or photographs produced increased positive affect toward that object. These findings have been replicated, though some researchers have found an inverted U-curve relationship between exposure and affect (Cacioppo & Petty, 1979; Miller 1976). Cacioppo and Petty explain their results through cognitive response theory which notes that at a given time, a person will be engaged in a cognitive activity such as generating supportive or counter arguments, and the cognitive activity which is dominant when new information is presented will affect how it is processed. They state that when hearing an argument about something toward which the receiver feels negatively, that person's cognitive response will be counterargumentation. Conversely, when hearing an argument about something toward which the receiver feels positively, that person's cognitive response will be generating favorable thoughts. In their research, they determined that during exposure to information toward which a subject feels positive, favorable thoughts did not change significantly, while during exposure to information toward which a subject feels negative, counterarguing responses declined, and then increased. Thus, if legislators felt initially negative toward the testimony, repetition would initially

inhibit counterarguing, enhancing counterarguing again when the maximum amount of repetition was exceeded. There is no evidence in this data of how legislators felt about the suggestions imparted by the PPW before hearing him, which would have been necessary in order to ascertain the initial cognitive response. It would seem, however, that despite the amount of repetition in his testimony, the legislators maintained their favorable disposition toward the witness and his testimony.

Making a conclusive statement based on repetition in the PPW's testimony is impossible, however, because repetition also occurred when the psychological witness recruited by the AGO restated the PPW's recommendations. In order to ascertain the effectiveness of within-testimony repetition, we would need to be able to assess the effects of the PPW alone.

The PPW's use of colloquialisms such as "throw out the baby with the bath water" and humor also set him apart from the other witnesses, but their effects in such a formal environment would need to be examined more closely since some research has found that matching one's presentation to the formality of the environment enhances communicator effectiveness (Bradac, Konsky & Davies, 1976). Humor and colloquialisms may have facilitated the establishment of rapport with the committee. Alternatively, his testimony may have been more effective without them. This could be easily investigated by having witnesses testify in formal and informal settings, using humor and colloquialisms or speaking without them and measuring the recipients' responses.

The respondent who stated the criminal defense attorney had been his most influential source saw legal issues, not scientific ones, as

underlying the proposed legislation, again reflecting the tendency for recipients to trust communicators who propound similar values. Of course, the issue of use of testimony of hypnotized witnesses in the courtroom is more than a legal one, and that has implications for psychologists in their role of making sure that psychological information is considered.

Comments about Representative Sossaman and the staff researchers had a unifying theme--they included some reference to trust, history and/or previous performance. This is consistent with the prediction of Massad et al. (1983a) that confidence would be an important aspect of source selection and evlauation. Trust has been investigated in numerous settings, and been generally found to be an important aspect of credibility. Nevertheless, research probing the process of trust development between legislators and between legislators and staff would be a useful adjunct to consideration of persuasive communications in the legislature. Unfortunately, the most important source of information for legislators outside of committee was other legislators, and respondents, for the most part, were willing to share only positive evaluations of them. Obtaining information about this source may present an insurmountable difficulty for researchers outside of the legislative process.

Finally, reactions to media information were not disclosed by legislators may mean either that media was not an important source of information or that media was not perceived as a socially desirable source of information when discussing decision making with people from a university. Although care was taken to reduce socially desirable

responding (the investigator and her assistant did not share that their field of study was psychology or refer to the degrees of Professor Sales), affiliation with the University of Arizona was mentioned. One way to investigate media influence might be for investigators to represent themselves as students of journalism interested in learning about the usefulness of various publications for legislators and ask questions about the different kinds of media reports and specific sources.

We have now examined how sources and their selected content interact in their evaluation, but before moving on to the broader issues of information use, we must return to the exceptions--when content supposedly had nothing to do with the decision.

Recall that one respondent stated he or she voted because another legislator voted in the opposite way and he or she trusted that legislator to be wrong. Since source was the sole basis of this legislator's decision, it is important to examine under what circumstances this may occur. The concept that seems to have most explanatory value for this phenomenon is Kelly's (1952) notion that "Reference groups...influence us through our perception of their attractiveness and our desire to maintain them as part of our identities" (Hass, 1981, p.146). Cooper and Jones (1969) found that subjects would actually change their opinions to show themselves as different from an obnoxious person who was otherwise similar to themselves. Investigation of this phenomenon in the legislature would be extremely difficult, as few respondents are sufficiently candid to acknowledge such behaviors, but further studies showing under what

circumstances this will occur would be useful.

The Representative who stated he or she voted as a gut reaction probably used more information than was reported. While information initially forms the basis of attitudes, it is not necessary for maintaining them once established (Lingle and Ostrom, 1981). Thus, the Representative may have elected not to report the remembered basis of the attitude, or truly may not have remembered the basis for it.

The Senators who shared that the issue was one they neither knew nor cared about may have been more candid than some who struggled to answer questions. Alternatively, since most legislators do decide on most issues, it is equally likely that their decision was based on some heuristic or political value which they were unwilling to disclose. Because decision-makers may misrepresent their judgment processes as being more complex than they really are (Slovic & Lichtenstein, 1971), heuristic bases for decisions may be difficult to examine. It would be possible, however, to research the role of political concerns by employing a strategy of observation similar to that employed by Ryan, Ashman, and Sales, (1980) where selected subjects were observed for three to five days each in a wide variety of environmental and organizational settings. Based upon these findings, a survey of the entire population was conducted with responses interpreted in light of the observations of the sample's behaviors.

Now that we have reviewed the responses to the witnesses, it is important to examine how that information was used. There are four possibilities, each of which will be considered here. First is the possibility that information was used to substantiate previously

existing positions. This cannot be objectively demonstrated in these data because there was no pretest on initial beliefs about hypnosis. Nevertheless, through the course of reviewing these data and related research, it has become clear that to the extent that attitudes based on initial beliefs influence how thoughts are organized, legislators (like any other people) are inevitably going to utilize previously held beliefs in evaluating new information (Massad et al., 1983a). Cognitive/social psychology research is already addressing how this occurs and suggesting strategies for applying this knowledge (Lingle & Ostrom, 1981).

A second possibility is that information can be used directly. These data present an example of direct use of information in the Senate committee's incorporation of the PPW's suggestions, demonstrating that in some situations, legislators are able to process, organize, assimilate and utilize information when it is clearly by an expert source, and overriding political considerations do not interfere with effective presentation or use of information. Additional studies such as this one can assist psychologists in examining the factors in the political system which inhibit or enhance use of this type of information.

The third possibility is that information serves an enlightenment function (Weiss 1977). Even when not utilized directly in the decision at hand, legislators do consider the information to which they are exposed and use this information in future decisions. Weiss' research relied heavily on self report data, and did not examine whether information was indeed utilized later. Research to provide support for

the enlightenment notion might involve testing legislators on factual information from the testimony after a lapse of time of six months to a year. But failure to demonstrate factual memory may not preclude an enlightenment function if attitudes become independent of the beliefs upon which they were formed as suggested by Lingle and Ostrom (1981). So another way to approach this issue is to follow similar bills when they are considered in two or three consecutive years by most of the same legislators. Then legislators could be probed about the issues they see as relevant to the legislation. If they changed between years as a result of information imparted by social scientists, the enlightenment function would receive more support, though history and maturation effects would not be controlled.

A fourth consideration (and it would be naive to assume otherwise) is that information may be used only to the extent that it meets political ends (Weiss, 1978). This view may be overly cynical since we have not yet learned about the respective contributions of political variables vs. scientific information (Massad et al., 1983b). Yet, this study tends to support Weiss' hypothesis as it is an example of a situation in which political variables were far more decisive than informational ones. Even though social scientific information was presented numerous times and significantly altered the content of the bill, the legislation was ultimately defeated because of its inability to serve its initial political intent. To assess the relative contributions of politics and information, it would be necessary to examine this process with respect to other bills and in other legislatures.

Given these uses, the next relevant question is how legislators determine their knowledge needs. Again there are several possibilities. One possibility is that legislators may believe they know the issues, but may want to have expert information to confirm and add weight to their beliefs. This may in part explain why psychologists were recruited by the AGO which was putting together the bill for Representative Sossaman. That several legislators commented on the simplicity of the bill suggests that they believed they knew the issues, but that does not mean the witnesses were there to confirm their beliefs. In fact, their comments might reflect the hindsight bias in which retrospectively, they "knew it all along" (Massad et al., 1983a). Evidence in support of this hypothesis could be obtained by interviewing legislators about their attitudes toward and knowledge of a specific social scientific issue before and after exposure to expert testimony.

Alternatively, legislators may be aware that they do not have the requisite expertise to make informed decisions on particular matters. This occurs occasionally when legislation involves complex technological or economic issues. But our data suggest that in the case of the social scientific issue of hypnosis, most legislators did not feel a great need to obtain information. This is consistent with the findings of Feller et al. (1979). Additionally, because most people assume they know about people, it may be that legislators are less likely to perceive needs for social scientific information than other information. This is, of course an empirical question which could be addressed by interviewing legislators about their perceived need for social scientific information.

Another area to examine encompasses perceived relevance of research to policy. For those legislators who did not perceive scientific relevance or did not let relevance affect soliciting of information, some questions remain unanswered. First, do legislators perceive hypnosis as scientific? It may be that hypnosis is perceived as an occult practice by some. Second, do they know that research has been done on hypnosis? They may see that hypnosis is a scientific area, but be unaware that research has been performed, hence, failing to seek information. Finally, are legislators aware that psychologists are the scientists who have generated the literature on hypnosis? If not, that would explain why sources other than psychologists were consulted. These issues could be examined by interviewing legislators, and probing these specific themes.

Moreover, this investigation sheds some light on the recommendations of Massad et al. (1983a, 1983b). First, because the legislative decision making process is embedded in a complex structure, similar variables seem to operate differently in different settings resulting in greater use of social scientific information at some levels than others. For example, even though scientific information was ultimately incorporated into the bill, the conference committee operated directly from a political standpoint. For this reason, the use of information integration formulas or computer programs such as suggested by Massad et al. (1983b), which might shed light on individual decision makers, may not immediately facilitate an understanding of the overall legislative process.

Second, legislatures vary somewhat in their organization. The Arizona State legislature apparently functioned somewhat differently than the legislature discussed in Massad et al., (1983b); specifically legislators did not have personal staff to weed through research material, and frequently, each secretary handled information for two or three legislators. While this factor could enhance the likelihood that written information will find its way to the legislator's desk--a precondition of use, it could also enhance the likelihood that information will be buried there. Therefore, future investigators will need to carefully investigate the impact of, and/or delineate and control, the differing structures of legislatures at the outset of any new research.

Finally, the conclusion reached in Massad et al. (1983a), that the optimum use of social science knowledge in policy-making will never be realized without understanding how policy-makers gather information and the factors affecting its use finds support in these pages. This study represents a step in that direction.

APPENDIX A

REFERENCE TITLE; hypnotized witness; admissibility of testimony

H.B. 2224

Introduced by Sossaman, Jordan, Kunasek, Thomas

AN ACT

RELATING TO CRIMES; PROVIDING FOR ADMISSIBILITY OF TESTIMONY OF HYPNOTIZED WITNESS, AND AMENDING TITLE 13, CHAPTER 38, ARTICLE 20, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4065.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 13, chapter 38, article 20, Arizona Revised Statutes, is amended by adding section 13-4065, to read:

13-4065. Hypnotized witness; testimony; prerequisites

A. EXCEPT AS PROVIDED IN SUBSECTION B, THE COURT SHALL NOT DISQUALIFY A PERSON FROM TESTIFYING IN ANY CRIMINAL ACTION OR PROCEEDING BECAUSE THE PERSON HAS PARTICIPATED IN HYPNOSIS, MESMERISM, PROGRESSIVE RELAXATION TECHNIQUES OR ANY OTHER TECHNIQUE OR EXERCISE TO ALTER THE PERSON'S STATE OF CONSCIOUSNESS IN ORDER TO RETRIEVE OR ENHANCE THE PERSON'S MEMORY.

B. A PARTY TO A CRIMINAL ACTION OR PROCEEDING WHO OFFERS THE TESTIMONY OF ANY PERSON, INCLUDING THE DEFENDANT, WHO HAS PARTICIPATED IN ANY TECHNIQUE OR EXERCISE DESCRIBED IN SUBSECTION A SHALL RECORD THE ENTIRE TECHNIQUE OR EXERCISE WITH A MECHANICAL OR ELECTRONIC RECORDING DEVICE. THE COURT SHALL REQUIRE THE PARTY TO MAKE THE ENTIRE RECORDING AVAILABLE TO THE OPPOSING PARTY IN ACCORDANCE WITH RULE 15, RULES OF CRIMINAL PROCEDURE, BEFORE ALLOWING THE PERSON TO TESTIFY.

APPENDIX B

Name: Committee:

Senator Representative S-Staff R-Staff

House Bill 2224 Hypnotized witness: Admissibility of Testimony

1. Why did you decide to vote either for or against HB 2224?

2. Did you have any knowledge of the bill or issues prior to its introduction in the legislature?

Source(s) Yes No

3. Did you receive any special information from any source regarding HB 2224?

Yes No

Source(s)_____ Form: letter
paper
other _____
specify

Did your staff receive any such information?

Staff
Name: Phone_____

4. Were you contacted re. HB 2224 by

Lobbyist Staff Other_____
specify

5. Did you solicit any information re. HB 2224? Yes No

Who did you contact:_____ _____
name phone

_____ _____
name phone

6. Did you hear testimony on the bill?

__Bernard Barber, Ph.D.
__VW
__PPW
__AGO
__Investigator
__Eleanor Miller, Attorney
__Representative Sossaman
__Other _____
__Other _____
__Other _____

7. Which witness influenced you the most?

What did you like best about their presentation?

What did you like least about their presentation?

8. Of all the information you received, including information not presented by witnesses, which did you find the most useful?

Why?

Which did you find least useful?

Why?

9. Did you perceive this bill as one where scientific information would be applicable?

Yes No

If yes, did that influence how you approached gathering information?

Yes No

APPENDIX C

Paraphrased Testimony Based on Notes

House Environmental Affairs Committee. 9 February 1982

AGO1: I'd like to tell you a little about the history of Janet Buell. On December 17, 1980, a burglar broke into Mrs. Buell's home. She and her daughter saw her husband killed. They could not remember. Bernard Barber, Ph.D. was called in to calm them and get them over the trauma of remembering.

Before the case could be tried, the Arizona Supreme Court handed down a decision making previously hypnotized witnesses "forever incompetent to testify".

VW: My name is Janet Buell and I'm from Apache Junction. In December 1980, my husband was murdered. After the gunman shot my husband he held me and my year old baby at gunpoint. I tried to convince him to let us go. He wasn't wearing a mask so we got a good picture of him...

One half hour later, when the police came, I gave a general physical description of the man; height, weight, age, hair and eye coloring, facial hair. The next day, I could not answer further questions. The only way to deal with the incident was to blank it out. Someone had to stay with me.

It seemed like a good idea to be hypnotized to describe the man. The session was tape recorded. They were able to make a composite drawing, and a murder warrant was issued. Following the Supreme Court order, the charges were dropped.

My eight year old daughter was also hypnotized to make a composite drawing. The drawings were similar.

I have difficulty understanding a judicial system that can let a man get killed and the suspect roam free in society. I felt truth and justice would prevail. I got a petition of 1500 names to get this situation changed and change this travesty of justice.

Rep H: Why did the Supreme Court make this ruling?

AGO1: The rationale of the Supreme Court was based on two reasons. First, the 6th Amendment rights of the defendant to a fair trial might be jeopardized. Second, there was a lack of required safeguards. They were concerned about its reliability.

AGO1 contd.: Yesterday, Bernard Barber, Ph.D., the forensic psychologist who interviewed the VW, testified and recommended safeguards like those in subsection B.

Rep H: Will this bill help the VW?

AGO: Yes and no. There is an issue of jeopardy attached, since the charges were dropped.

Rep M: I move that since this issue seems clear, we close testimony and take a vote.

Investigator: Madame Chairman, I have additional information to offer.

(For Investigator's testimony, see Appendix D).

VW: My name is Janet Buell and I'm from Apache Junction. A year ago, my husband was murdered. We came home. There was a man in the house. During the robbery, my husband was shot and killed. The man took me and my year old son at gunpoint. He didn't wear a mask. I got a chance to look at him. I convinced him to let me and my baby go. I administered CPR to my husband until the paramedics arrived. They took over.

I was able to tell the investigator what happened. I was able to give height, weight, hair and eye color, a general description. The next day, I couldn't deal with it. The investigator felt it would be a good idea to try hypnosis. I was hypnotized and made a composite drawing. My daughter was also hypnotized. It was all recorded.

Now because of the Supreme Court opinion, this will never come to trial. I will not be allowed to testify because I was hypnotized. My husband's last breaths were forced into his body by me as I administered CPR. The law is supposed to provide justice and equal protection under law. There is no equal protection.

Sen K: I appreciate your testimony. I know how difficult it must be. When were you hypnotized?

VW: Two weeks after.

Sen K: Did you experience any reluctance?

VW: No. It happened in December. Somebody had to be with me till April. I would pass out when people asked me about it. I have no memory of the hypnotic session.

Sen K: You say they got a composite drawing?

VW: Yes. The composite drawing fit the suspect picked up later. A warrant was issued. Charges were dropped when the Supreme Court made its ruling. And in December the County Attorney's Office decided there could be no case without witnesses.

Sen K: Did they get new information while you were under hypnosis?

VW: No, there was no new information.

Sen K: Did you talk with your daughter?

VW: I only talked to my daughter to tell her her father was dead. The same information was obtained from my daughter under hypnosis.

Sen M: What is the age of your daughter?

VW: She's eight years old.

Sen M: Have there been other sessions since?

VW: No.

Sen S to Chair: Will there be people to testify to other cases? What effect will it have on them?

Staff: We are fortunate to have a world renowned expert on hypnosis here today. Let me introduce Dr. Zeig.

PPW: My name is Jeffrey Zeig. I am a certified psychologist, Director of the Milton Erikson Foundation, a hypnotist, I provide consultation and training in hypnosis and ... Arizona State University. I have edited two volumes on hypnosis and am here to answer any questions you may have about hypnosis.

Sen O: I agree that hypnosis is a state of altered consciousness. Is it a highly suggestible state?

PPW: Defining it as highly suggestible is accurate. Hypnosis is a state of focused awareness. It enables a subject to be in touch with resources, psychological and physiological of which he or she is not previously aware.

Sen O: Do you agree that during hypnosis one is prone to experiencing distortion of reality and false memories?

PPW: The subject is not prone to distortion or confabulation. Distortion is a possibility. It depends on the phrasing of the questions. If leading questions are used, there is a chance of confabulation or distortion. For example, did you see a man or did you see the man with the mustache. Focused attention allows the possibility of distortion.

Sen O: I have another question on heightened suggestibility. Is is possible that under hypnosis the subject might try to please a hypnotist?

PPW: Yes. A person under hypnosis could be--A problem with leading questions is that a hypnotized subject could be more in the position of wanting to please an operator. There is a recommended procedure and, for example, in the FBI, general questions are asked, then more specific. When general questions are asked, one can obtain veridical information. There is a higher percentage of truth. Still, all information contains distortions, with and without hypnosis. Thus taping is recommended to preclude the possibility of leading or biased questions.

Sen O: Confabulation was a new word till I read it in the literature. Can you define it?

PPW: Confabulation occurs in memory when some details which are true (veridical) are weaved in among distortions or fantasies.

Sen O: Is that a characteristic of the hypnotic state?

PPW: Not the hypnotic state, but human memory.

Sen O: You mean confabulation always occurs in memory?

PPW: No, it doesn't always happen.

Sen O: Then during hypnosis, one fills in memory gaps. Then after the session is over, one assimilates, fills in the material, and then believes it consciously in memory?

PPW: That can happen. Reconstituted memories--that's been a problem with previous work in the scientific community. We've examined this in experimental psychology and in the legal area. Possibilities doesn't mean probabilities. Possible limitations simply mean hazards to be explored further.

Sen O: Would you agree that the hypnotist who strays from the professional duty to be impartial could in fact consciously plant material in the mind of the person under hypnosis.

PPW: Could you clarify your question.

Sen O: (Asks again)

PPW: You mean, could it be done? That's a complex area in psychology--coercion. Can a person be forced against his or her standards?

Sen O: I'm not concerned with causing behavior against which we have an abiding objection. I'm more concerned with the implanting of information.

PPW: I'm not sure I understand.

Sen O: If a hypnotist were inclined to give bits of information to fill in the gaps.

PPW: It could be done. It would probably be more likely to happen inadvertently.

Sen O: Unconsciously?

PPW: Taking the position that under hypnosis one is suggestible, if the hypnotist had a bias and used leading questions, he or she could influence the subject. That's why the guidelines recommend that a hypnotist not have previous information about the person.

Sen R: You keep using the word veridical. What does it mean?

PPW: Veridical means truthful.

Sen R: Hypnosis is used a lot where there are traumatic experiences?

PPW: In some circumstances it is especially helpful. If you want leads as to what possibly might have occurred, you can use hypnosis. It's been used in restoring meaningful material, incidental events, sequential events or when a person is under emotional duress, for getting leads in an investigation. To refresh memory--that's a different can of worms. To bring back incidental information its well established. Its use in restoring information following a traumatic event is rare, but sometimes a person is amnesic, that is, they block out a portion of memory. Hypnosis could be valuable in breaking through a repression.

Sen R: Is it true that some people cannot be hypnotized? Can a person fake the hypnotic state?

PPW: The issue of simulation is well researched. There are some tests that are effective in determining when simulation occurs.

Sen R: Can you always determine that?

PPW: I don't know the statistical information.

Sen R: In your own experience, have you detected faking?

PPW: My expertise is in clinical not experimental hypnosis. I don't know from my own work.

Sen R: In using hypnosis to bring out information that was blocked out and when a person doesn't want to remember, don't leading questions have to be used to get passed that point. Where would you use leading questions to get passed a block?

PPW: There are many psychological techniques--regression back to the date, memory dissociated with events--like in a movie, taking a peripheral portion, reintegrate, build up information.

Sen R: Reintegrate? Doesn't a hypnotist have to lead? Either information from the hypnotic session or other needs to be furnished. I'd like to know something about what's needed.

PPW: Yes, you start by getting general information, record it, preferably on videotape to check leading questions.

Sen R: Have you done any forensic hypnosis?

PPW: No, clinical only.

Sen M: I'm interested in the ability of witnesses who are willing to help--to an extent that they will give more information than they have (confabulation). Is it possible to fill in gaps and believe the information they give?

PPW: You mean, what is the wheat to chaff ratio. After general questions you ask more leading ones. Some information you get will be good, some not so good. With more specific questions you get more valuable information. About 60% is okay. But the scientific community has established safeguards to get good information rather than damaging memory.

Sen M: Is there a core of truth or facts from which a person can't be dissuaded despite hypnosis? Can you get that information by rehypnotizing the person, or would you be implanting information again?

PPW: Confabulation could be implanted so it would be difficult to determine, if you take someone and push. If you did that you could bias the information or distort it. As long as you stay within the scientifically established guidelines, the likelihood is reduced.

Sen M: Confabulation is probably rare?

PPW: Yes. Who does the hypnosis is an issue. A Society of Clinical and Experimental Hypnosis trained professional follows ethical guidelines. Only people who are qualified by them should use hypnosis. Some concern came in from the legal direction suggesting that hypnosis should not be done by nonpsychologically trained personnel. I think there's been a tendency to throw out the baby with the bath water due to doubt in the scientific community. Even in the professional community, there is no concurrence of opinion, but the safeguards have been demonstrated effective.

Sen M: What about using body language as a tool to assist? Is it essential to videotape?

PPW: Some experts say videotaping should be done regularly. Only about 10% of information is transmitted verbally and 90% nonverbally... With audio you have voice tone, but video is definitely beneficial.

Sen M: So you'd recommend a neutral well trained hypnotist and video recording. Given these qualifications, what could you say about the veracity of testimony?

PPW: Given an understanding of the hypnotic and scientific literature, yes it can be a valuable tool.

Sen K: According to The Willamette Law Review there is a federal rule allowing opinion of the expert as well as facts. Are you familiar with the Federal Court testimony cases?

PPW: No.

Sen K: My concern is that it appears courts that allow hypnosis don't permit testimony to occur before the jury. They say it's unduly influential when done in the courtroom.

PPW: Hypnosis should not be done in court. The pendulum is swinging in favor of overreaction, guidelines. We are bending over backwards to be sure there are no problems. Courts may have erred. As long as we adhere to the guidelines, it is a good tool.

Sen K. What about cross examination under hypnosis? For example, how could you be cross examined.

PPW: I suppose, not being a legal expert, that's the purpose of the recording.

Sen K: If you don't know what's said under hypnosis, the other side can't cross examine.

PPW: The hypnotist should be astute. If you inform the person to be hypnotized that the memory of an event remained separate, then it can be kept separate--it's a safeguard.

Sen G: You indicated there are guidelines available. Does the bill have sufficient guidelines?

PPW: As written? No. It doesn't give guidelines. The bill covers hypnotism, mesmerism by any technique. I only talk about hypnosis and the knowledge of the professional community. ...to provide guidelines. The main thing is for cross examination. Proper recording is there.

Sen G: Do the guidelines include a psychiatrist or psychologist specializing in the area, or can a child psychiatrist do it?

PPW: There's a problem--the argument in favor of law enforcement hypnotists who have already been trained. Psychological hypnotists deal with the psyche and emotional reactions. At the federal level, they use a team approach where one does know and the other doesn't know the facts of the case.

Sen G: Is it best to have no prior knowledge of the case?

PPW: Yes, that's helpful.

Sen G: What about videotaping? Does that add value?

PPW: Yes, that makes the testimony of greater value.

Sen G: In videotaping, could you tell if you could avoid implanting information. Could you preclude implanting?

PPW: You couldn't preclude it. High stress could bias testimony irreparably. With safeguards, the opposing party would know if this had occurred.

Sen G: Is there a limit to the number of people who should be in the room?

PPW: Yes. Only experts, trained psychologists should be in the room. In tandem it should be limited to only two. More people influence results. It's a good idea not to have others present.

Sen G: Can a hypnotist avoid implanting suggestions?

PPW: Yes.

Sen G: Even though his or her body language suggests expectations?

PPW: When the hypnotist is trained in the procedures and techniques, there's small chance of that. One can limit bias.

Sen G: Can a previously hypnotized witness restrict memory to actual facts, free from fantasy?

PPW: I think so. That's a general enough question that it's possible...In accepted scientific procedures we do our utmost to keep memories separate...as long as they're distinct, there's an opportunity for the subject to hold onto unbiased memories.

Sen G: When there is distortion, after awakening do distortions disappear?

PPW: Distortions can be incorporated and can damage memory. Proper safeguards limit that possibility.

Sen G: During hypnosis can the hypnotist or others discriminate?

PPW: You mean if doubt is expressed by the witness? It's improbable. If biasing occurs it is not easy for the subject, hypnotist or expert to tease out the false from the true.

Sen O: Is mesmerism synonymous with hypnosis?

PPW: In 1850 Braid coined the term hypnosis. Mesmerism was used till that time. The term has not been used in over 100 years, at least not in common usage.

Sen K: I'm concerned about the core of truth. Is it accurate that it is not necessary to tell the truth under hypnosis?

PPW: You can lie under hypnosis.

Sen K: Would you agree that the public perception of hypnosis is scientific?

PPW: It's a misconception that hypnosis can function as a lie detector. Although as there has been a resurgence of hypnosis, the older myths are more and more dispelled--like the myth that you can't wake up. You can. It's a rare perception that hypnosis can function as a lie detector since it's been publicized.

Sen K: What about giving a cautionary signal to courts and legislators. Can that be dealt with in safeguards?

PPW: Yes. A good hypnotist will talk to a subject first, a preinduction to dispel myths. You describe what it is and the myths as hypnosis is introduced.

Sen K: I've read that there are four levels of hypnosis, hypnoidal which is relaxation, a light trance, medium trance and deep trance. Is that accurate?

PPW: That's the traditional way to conceptualize hypnosis. The modern way bypasses depth. Some people can develop amnesia in a hypnoidal state. The depth is not as important as the amount needed--the amount to accomplish the task.

Sen K: Of those stages, which is best for recall?

PPW: Subjects can recall in any state. Through progressive relaxation a person can be put in a hypnoidal state. 20% of people can control pain in that state. Usually age regression requires deeper hypnosis, but memory can happen anywhere.

Sen K: Are there tests to distinguish the hypnotic state, can you feign a pinprick?

PPW: Are you asking if that's the only reliable test? I believe it should be routinely administered...the main danger, however, is not in the person feigning hypnosis.

Sen K: In the subject hypnotist relationship, the hypnotist tells the subject what her or she wants to hear. Can't that be dangerous when he has insight into the psyche?

PPW: That's overstated, but accurate in basis.

Sen K: Are these the guidelines in question--proper recording, meaning video and qualifications?

PPW: (Nods). Certification is difficult. Guidelines can be composed by an established state agency like the State Board of Psychological Examiners. But wouldn't legislating that be an awesome project?

Sen K: It shouldn't be used on a suspect or defendant, only a victim or witness.

I'm interested in the bottom line. If safeguards were written in, if you or a member of your family were on trial would you feel confidence in justice, that you had adequate protection.

PPW: I'm here to supply expert opinion, not to be convicted of a crime. (laughter).

Yes, as one tool. Under proper guidelines, I would foresee no problems. It can be used safely.

Sen M: Let me paint a scenario. Presume in a small neighborhood cul de sac, there are four homes, one occupied by an elderly family, one with teenagers, and that's a cause of enmity. The boys have noisy parties, and the enmity builds up. Late one night there is a robbery. The old couple presumes its the rascal across the street. In their minds there is the belief that...

In the home it's dark and they only got a glimpse. Could the old lady build a situation where she convinced herself she saw the perpetrator to the point where it couldn't be detected with a polygraph? Under hypnosis, how could you prevent this. Is it possible?

PPW: When someone is patently prejudiced, no technique of the psychological community can break that bias. How can I predict the danger if people on the jury believe that hypnosis is a magical tool to provide truth? If proper safeguards are employed, hypnosis should not be an influencing factor in the case.

Sen S: Under the scenario above.

PPW: It wouldn't be used under that situation, at least not to add credence to the testimony. It's important to have corroboration.

I appreciate the committees' taking time to ask such astute questions.

Sen K: I appreciate your time. In all my years, no other witness has been quite so enlightening and provided such objective detached testimony.

AGO2: I'm Mike Jones, Assistant Attorney General. I've handled the criminal cases where hypnosis has been used from the Arizona Supreme Court and Court of Appeals. I'm an advocate of criminal investigation like Martin Reiser's (Los Angeles Police Department). I've experienced some frustration with the Arizona Supreme Court decisions. Following

Silva they issued a total ban on hypnosis for both criminal and civil cases.

The court accepted the testimony of an expert--Dr. Bernard Diamond who says that this is tainted testimony. That's an extremist point of view. Most psychologists and psychiatrists believe it's tainted. I believe the safeguard of recording should be sufficient to convince the Supreme Court that hypnosis is reliable and no more influential than normal eyewitness testimony. It's not the process of hypnosis that taints, its the person's memory itself. Dr. Sloane a psychologist from Maricopa County will address that issue. Hypnosis does not contaminate or change memory more than other forms of testimony.

I just got back from a workshop in New York where I learned that getting testimony involves a subtle means of compulsion--a form of hypnosis, even though hypnosis is not actually induced. Suggestibility exists everyday. The interview in a police station is suggestive.

Hypnosis is not the bogeyman. Rather, its a process of interchange between contaminated memory, not just hypnosis. The interview doesn't begin or end the process. The system is fraught with reinterviews. A witness testifies and is interviewed at least 10 times. Each time, it is subject to contamination...

I believe that the safeguard of recording should be used preserving whatever happens.

Sen O: What about heightened suggestibility?

AGO2: The courts react with fear. They say hypnosis is unlike any other technique. That's not true. Hypnosis occurs whenever one is anxious like the witness testifying here--exhausted, angry, fearful. Fear of suggestion occurs in everyday life.

The judge's dress is a form of suggestibility. Senator M. suggested that there is danger when a witness is willing to please the hypnotist. Granted, that is true, whether or not the individual is hypnotized, but to no greater or lesser degree.

Sen G: What about safeguards?

AGO2: The recommendations of Martin Orne are not universally accepted, just in New York and New Jersey.

I'm concerned because I believe police officers get testimony improperly. I disagree that only a psychologist or psychiatrist can administer hypnosis, because they have no background in law enforcement, and don't know what a leading question is...

Sen G: What about videotaping? That seems like a good idea, and educating courts to facts.

AGO2: As for videotaping, I don't believe law enforcement agencies are equipped or have sufficient funds. Hypnosis is used all over the state--Jerome, Cochise County. Audio taping should be acceptable unless we are willing to provide video equipment.

Sen K: Do you believe the safeguards are sufficient?

AGO2: Yes.

Sen K: If this legislation passes, would Mrs. Buell's case be refiled? Can it be refiled?

AGO2: I don't know. That's up to the Pinal County Attorney's Office...

Sen S: I'd like to pursue the issue of videotaping. You say we don't really need it? Imagine anybody using hypnosis and having it admitted under any circumstances, that's scary. You say the state can't include video. That's like moving from no admissibility to absolute. Would you care to comment?

AGO2: We can't afford it, but that's not the only reason.

Hypnosis is used where a person is traumatized and cannot recall, or with the victim of crime or homicide when someone is about to die. It's impractical and physically impossible then.

It's not a question of allowing anybody to use it. Everybody has experience with informal hypnosis--being engrossed in a time or place, book, movie. It isn't scary. I use hypnosis every time I interrogate.

If audio taping is used we can view implantation or cuing by attending to leading questions.

Sen S: Do you believe with Dr. Zeig that mesmerism is not necessary.

AGO2: I agree. However, the courts have used that term.

Sen S: What about progressive relaxation?

AGO2: Yes, that's definable, similar to hypnosis.

(Interruption--Staff member introduces Representative Sossaman)

Sossaman: I'm not an expert, but I'll tell you how I got involved. I represent the VW. She's here. It's difficult for her. I believe hypnosis is a tool that law enforcement has used for some time, because there are court cases here today.

I also agree with the concern of abuse. As with any procedure, it is up to the courts to process those concerns and see that hypnosis is used correctly.

We considered videotaping in the House, but the state of the art is such that it can't be used in all cases. If required, and lighting is bad or picture is bad, it an be excluded. Often there are lines and static. That's why we didn't include it. I believe that where possible, it will be used, and that it will be of benefit in court.

Sen G: I'm intrigued. It seems the state of the art of videotaping is not reliable, but hypnosis is reliable. That's not very logical. /NP Sossaman: I didn't mean to say that video recording is not reliable at a high level, only that equipment is not available.

Sen K (to AGO2): Is it fair to say that through repeated testimony a regular witness without hypnosis is more likely to be tainted or influenced than a subject hypnotized with limited knowledge, and that all this concern with hypnosis is somewhat overweighted?

AGO2: Yes.

Sen O: Were you in the room when PPW testified about audio or video recording?

AGO2: Yes.

Sen O: Did you understand what he said about body language communication?

AGO2: I heard it.

Sen O: He said up to 90% was nonverbal.

AGO2: What I believe is dangerous is not approval or disapproval but cuing or leading the witness.

Sen O: I'm not referring to that aspect. Video recording provides a complete accurate picture.

AGO2: That's a qualified yes. DA's later object that the camera was only on the subject...when the hypnotist is in profile, you can't see the right eye. To have adequate video recording requires three cameras. That's ludicrous.

Sen O: Do you deny that heightened suggestibility is a factor.

AGO2: No, I do not...Only with repeated interviews, there is also heightened suggestibility. If you testify only once vs. 10 times, the testimony may be more reliable...

Sen G: You suggested this was headed for the U.S. Supreme Court, that state law would back up the state's contention and that would lead to the Supreme Court's overturning the AZ court decision? How would that happen?

AGO2: Hypnosis has occurred for sometime without safeguards. I attempted to establish safeguards, but the procedures were cut short by the Supreme Court ruling.

Hypnotists worked under their own standards before our involvement. There were no procedural regulations. If a statute passed, there would be firmer grounds for procedural safeguards. Afterward, all hypnosis had to clear the Attorney General's Office. Stringent guidelines are being used. I want to head for the Supreme Court...

Sen G: So the state law enforcement agencies will buy non mandatory guidelines?

AGO2: They are mandatory. That's caused trouble.

Sen G: Don't you think that additional safeguards would make for a stronger case to present to the Supreme Court, that by having guidelines it will have a greater chance of being accepted?

AGO2: That's an excellent question. We want a strong bill. Only what safeguards would you agree on.

PPW indicated only the subject and hypnotist should be present. Ideally, that's fine. What about with a minor child who wants a parent present. The prosecutor might say that contaminates the testimony.

Rather than have the legislature rule, you should allow the prosecutor to lay guidelines in the record, case by case.

Sen K: I know of at least one amendment being prepared. Let's set the bill aside and put it on next week's agenda.

EM: My name is Eleanore Miller. I am an attorney with a criminal defense practice. I sat through the testimony last week, and am here to discuss what you heard and answer questions from a different perspective.

As part of my research, I worked with Martin T. Orne who published his first paper on hypnosis in 1951 and who has researched the area since then, even though AGO2 disagreed with him. Dr. Orne testified in Arizona on 24 September 1979.

Orne adds some things which we haven't yet considered.

1. Hypnosis depends on the rapport between hypnotist and client. If there is no rapport, there is no hypnosis. In order to have hypnosis there must be a significant dyadic relationship.

2. Hypnosis is a state of increased focus or awareness of surroundings at a particular moment.

3. Hypnosis is a state of increased suggestibility.

4. Something not mentioned by Dr. Zeig--There is a decrease in critical judgment. That makes it easy for a subject to accept ideas from the hypnotist when, once rapport is established, the client wants to affiliate by pleasing the hypnotist.

When the police hypnotize a person, that suggests the police want helpful information. Orne states that there is a place for hypnosis in criminal investigation. So does the Supreme Court. If the state takes the deposition first, then hypnosis is used, Arizona hasn't ruled on that. They don't say they won't admit it...

In criminal investigation it is different than when preparing for trial. The state's agents use hypnosis to prepare for trial...

AGO2 made a point that there is no difference between hypnotized subjects and others. That's not true. If there were no difference, the state wouldn't hypnotize a person. The hypnotized person is highly suggestible, and attuned to what is going on. He or she wants to please the hypnotist...

Hypnosis is a medical tool. The police shouldn't use it more than chiropractors should practice medicine. It is a problem for the victim to reexperience the episode without a doctor.

In medicine, hypnosis is used on a daily basis to treat pain or for relaxation. It results in a chemical change in the body. There is deep relaxation. I can't explain it, Orne can't explain it, but there is a real physiological change. They don't know why it controls pain. It is also used to lose weight.

There is a legal danger in the inability to cross examine the patient who has been given a suggestion to remember what happened. They believe what they say happened during the hypnotic session is fact. Experiments have been done where people were given false information and tested on the polygraph. They were unshakable.

If the jury finds out, they may give undue weight to hypnotically induced testimony. There is a simplistic view being given here and to the courts on a daily basis. This is dealing with human minds--tampering with a human being's mind.

You heard AGO2 state that if hypnosis is improperly conducted, defense council will throw it out. Defense cousel doesn't throw things out. It goes to the judge, but the judge has no information.

There is only one real safeguard and that is for police to find independent reliable corroborative evidence. Recall the Chowchilla investigation--a bus was hijacked, and the driver was subsequently hypnotized. Under hypnosis he was able to provide a license number. That with the description of the van went into the records. They found the vehicle, issued a warrant and found evidence in the vehicle. It was not a situation of sitting a witness down and having him or her give information to the police. When information was given, there was already information surrounding the case. Hypnosis does bring out information, but if it's not independently corroborated, that's it.

If you consider legislation, you should consider legislation to prohibit use of hypnosis by the defense except under strict guidelines when the individual has no memory.

Sen S: Is it possible now, within the Arizona Courts, to use hypnosis as an investigative tool?

EM: Yes. There is a specific exception, but police may use hypnosis in criminal investigation...

Sen S: Is it being used as an investigative tool with witnesses?

EM: Yes.

Sen S: It seemed to me the hypnotized witnesses can't appear in the trial later.

EM: The opinion says that those hypnotized can't testify because of dangers. It was left open for future whether we may have a witness deposed under oath to get information, then hypnotized. Orne recommends that we get testimony first, then use hypnosis.

Sen S: That didn't happen in the Silva case.

EM: Yes.

Sen O: Did I understand that hypnosis as presently practiced permits others to be in the room.

EM: Absolutely, at least one prosecutor and several police officers.

Sen O: Is there a limit on others?

EM: No, others can ask question also. There are no restrictions. In the Silva case, there were five persons in the room.

Sen O: Did any enter into the dialogue?

EM: Yes, but the prosecutor asked almost of the questions.

Sen K: You heard AGO2 testify that there is a high probability that a witness will testify in numerous interrogations. Do you believe that will have more influence than hypnosis?

EM: Memory is dynamic and changes over time. The fact that memory changes over time is normal. During a hypnotic session, the memory change will not be normal. As a result, the state's agents are doing something akin to creating evidence. Subjects are more suggestible, more likely to change their minds, and what they remember become a permanent memory unless direct effort is made to change it.

Sen K: Aren't their memories subjected to imprinting...not appropriate for prosecution but defense.

EM: No. If the Supreme Court permits, hypnosis will increase.

Sen K: ...Why distinguish between hypnotized and non hypnotized witnesses if the jury knows the pitfalls. In rare instances, it appears the exclusion of testimony resulted in a lack of justice.

EM: There is a great difference between testimony from hypnotized witnesses and testimony from witnesses who are not. There is an extreme danger in a hypnotic session that information will be suggested and false evidence introduced. There is a difference in taking a witness and creating evidence without corroboration. It flies in the face of what I believe about the legal system. Normal testimony can be overthrown by cross-examination...Testimony from previously hypnotized witnesses cannot. Individuals are entitled to due process.

Sen K: Why do you think hypnosis is an appropriate technique in investigation as opposed to preparing a witness?

EM: It is viable for criminal investigation because it enhances memory on occasion. It doesn't have to change it. Therefore, as in Chowchilla, it is a useful tool when there are no other leads. However, there must be independent corroborating evidence. When an individual is already in custody and on the front page of The Gazette, the hypnotized witness may remember the face on the front page of the Gazette. Hypnosis should not be used then...

Sen K: This is an area of uncertainty. We've heard evidence on both sides. I don't know why the trier can't judge.

EM: Admitting testimony of hypnotized witnesses would create a trial within a trial. If witnesses are permitted to testify, we must put on an expert to discuss the dangers of memory enhancement. That will lengthen the process.

Sen K: Is there anything like the breathalyzer to measure the veracity of the witness?

EM: The jury may believe hypnosis is a magical tool, giving it undue weight in the trial, limiting due process. Additionally, some can't afford to hire an expert. Under such sircustances it is likely they will then believe the testimony from the hypnotized witness...

Sen K: What about jury instructions?

EM: Instructions are a fiction. The jury hears whatever is discussed.

AGO3: My name is Lynn Gallager, and I am a Deputy County Attorney in Pima County and a forensic hypnotist. I am here to express our office's interest and support of HB 2224. I didn't hear AGO1, but I know his positions and read his memorandum. I agree with him and concur with his research opinions.

I'd like to say a few things, making you aware of the practicalities in light of the Silva opinion. There are a number of cases in our office where there are some problems, a number of rape victims that are now precluded from testifying. Their assailants have been identified.

Hypnosis is an important investigative tool, and HB 2224 has sufficient safeguards. Expert testimony can give the jury the information they need. Though hypnosis is not a truth determining device, the danger that the jury may weight testimony can be balanced by expert testimony...

Concerning EM's point on the Chowchilla argument--as the body is aware, the driver was hypnotized, and remembered the license. Under the law, the driver would be unable to testify despite coming up with the information. The state does not preclude corroboratory evidence, but the witness can't be used.

Silva is being reheard, and new opinions are expected within the next couple of weeks. It is important for the body not to delay. The court needs to be aware of the legislative decision...

EM argued that independent corroborative evidence be used, nothing else. Sometimes that's impractical. A common case would be in a rape where the victim has been traumatized. Through hypnosis she can recall specifics. There may be no independent corroborating evidence.

Sen M: The law as passed by the body wipes out safeguards. You do that anyway, don't you?

AGO3: No. Some hypnotic sessions have not been recorded.

Sen M. What safeguards are left?

AGO3: There is only one necessary. The argument against hypnosis is increased suggestibility. Defense can use tapes to point out improper testimony...

Sen M: It has been recommended that hypnosis be used as a tool in investigation. There is compelling need for truth, facts, knowing what occurred. When switched to trial, there is trouble. As an investigative tool, hypnosis is fine. Once it goes back, it becomes not as useful for truth. One side says use it. EM says don't. There must be a middle ground. Perhaps we should allow courts to decide. I'm not impressed with these courtroom presentations...

AGO3: You're right. The only safeguard is that testimony is recorded. There will also be experts to enable the jury to weight testimony properly. Sometimes, the victim is the only witness. If we use hypnosis to identify the victim, we may be able to come up with the assailant, but if we can't use hypnosis, the witness is on trial! We have no case!

Sen M: Do you think any police officer who has gone to the local school for hypnosis is adequately trained? There were nine assaults in the Silva case. Were they all hypnotized?

AGO3: All the victims were not hypnotized, and there were 16. Those that were hypnotized are precluded from testifying.

It has been suggested that MD's or psychologists perform the hypnosis. The problem is that they are not aware of the dangers of leading questions, are not trained in investigations.

Sen G: How can you concur with AGO2 when you didn't hear him. Let me suggest that on the opinion of videotaping, you don't concur. PPW suggested safeguards. He's an expert. You're an expert. AGO2 is an expert. You experts have no common ground where all three can agree. Do you think it's a good idea to put into law when not even the prosecution experts can decide which safeguards are needed. The PPW suggested several safeguards. He didn't feel comfortable with the extant ones.

AGO3: I have no objections to video recording, I just don't know that it's necessary.

Sen G: PPW felt strongly about videorecording, the number and type of people interviewing. I have problems when you experts tell us different things.

MS: I'm Martin Sloane, Director of Psychology Services in Maricopa County. That's a state appointment. I have special knowledge in the area as I have participated in over 60 sessions. I am a clinical and forensic hypnotist and have completed study for the L.A.P.D. I have been a student of eyewitness testimony for years.

Sen K: If you have something new, add it, but don't repeat.

MS: I am in favor of HB 2224 and believe it is useful in investigation because hypnosis is a state experienced by all of us all the time. When we try to remember events in sequence or in shock, there is physiological change.

Hypnosis is not a truth detector. When eliciting information, either corroborated or refuted, confabulation occurs whether hypnosis is used or not. It is true as PPW says that eyewitnesses and victims are poor recallers, whether hypnotized or not.

I favor safeguards, though I'm not convinced they can be legislated. Perhaps that can be left to the County Attorney's Office. (Laughter from the committee).

The safeguards that are important are proper recording, preferably video with a time display.

The presence of an operator who is blind to all facts. Lack of information and narrative questioning techniques guarantee neutrality.

...The operator should be trained. I'm not opposed to police officers who are properly trained acting as hypnotists.

No post hypnotic suggestions should be implanted, i.e., "call if you remember". The number of people in the room is not critical if the subject cannot see them and they can't talk.

Hypnosis should not be performed in a police setting.

Verbal report should be used. Automatic writing and finger lifts should not be used unless necessary.

Sen S: Of the 60 sessions, how many included a number of findings in the trial.

MS: I don't know yet. 30 I think. In others, there was insufficient information for indictment.

Sen O: Were your hypnotic sessions part of an investigation or for witness preparation?

MS: All were investigative, none for witness preparation.

Sen K: EM said hypnosis has undue influence? Is that valid?

MS: It makes little difference. It is a question of reasonableness. We can propose more safeguards...

Following this testimony, a personal injury lawyer testified about adding the word "civil" with criminal, and the Senators amended the bill. (See Appendix E).

APPENDIX D

USE OF HYPNOSIS: IMPACT IN THE COURT SYSTEM

Hypnosis has become a tool for criminal investigation in the last few years. Consequently, the question of whether or not hypnotically induced testimony (HIT) should be submitted in the courtroom is now before us.

In order to examine this question, it is necessary to examine the assumptions related to the use of HIT and to assess the validity of these assumptions. Research provides a means to assess the validity of those assumptions and to develop legislation which assures that benefits can be maximized while dangers are minimized.

Assumption 1: Hypnosis facilitates recall. Psychiatrists have frequently reported success in retrieving memories from victims of violent crimes where emotional trauma has made these memories unavailable. However, psychological researchers have been more cautions in their conclusions. For example, one researcher found that hypnosis did not greatly improve memory and concluded that "some additional information may be secured" when strong emotional elements surround the event to be recalled.

The assumption that hypnosis facilitates recall is true, though to a more limited extent than its advocates often claim.

Assumption 2: Hypnotically induced testimony is accurate. In some instances, HIT is vulnerable to the same inaccuracies which confound other eyewitness testimony, and therefore can be examined in the same way. For example, a hypnotized individual can lie or conceal information and there is no way for the hypnotist to detect that occurrence. This is a problem with any eyewitness testimony. Additionally, memory is relatively impermanent and changes over times in predictable ways. Though hypnosis tends to solidify memories, there is no reason to anticipate more alteration before HIT than before any other eyewitness testimony.

HIT is probably less accurate than eyewitness testimony for the following reasons. First, it is difficult to know when the hypnotist is retrieving memories or something else. For example, a hypnotized individual will readily "remember" future events as vividly as past ones. Second, hypnosis is an interactive process between the hypnotist and the individual being hypnotized. In this process, the hypnotized

subject tends to cooperate with the hypnotist, often to the point of filling memory gaps with material which may or may not be true. Finally, the hypnotized subject may be more susceptible to suggestion which can be communicated either intentionally or unintentionally by the hypnotist. Specifically, hypnotized subjects are more likely to err in responding to leading questions than are nonhypnotized subjects. This is further complicated by the fact that the form of even a nonleading question can have an impact on the accuracy of response. It would seem likely that hypnotized subjects would also be more vulnerable to this effect than nonhypnotized subjects, though the research does not address this issue directly.

The assumption that HIT is accurate is clearly invalid. At best, HIT is as accurate as other eyewitness testimony. HIT is, however, more vulnerable to suggestion than is other eyewitness testimony.

Assumption 3: Witness confidence in testimony indicates that the testimony is true. It has been noted that hypnotized witnesses tend to believe whatever they say under hypnosis, and that following hypnosis they are virtually unshakable in their testimony. One study involved inducing false guilt in witnesses. The subjects were so convinced of their guilt that they were unable to pass a polygraph test afterward. Another researcher noted that confidence is not a predictor of accuracy even when witnesses have not been hypnotized.

The evidence is clear that witness confidence in testimony is not an indicator of truth in testimony. This becomes problematic because whether or not the hypnotized witness's testimony is true, the process of cross examination reveals a witness who is sure of him/herself and appears credible.

Conclusion. Hypnosis does facilitate recall of details which might not be obtained in other ways. However, the assumption that hypnotically induced testimony is accurate is questionable, and responsible legislation needs to account for this fact if HIT is to be admitted into the courtroom. Specifically, one possibility is to take certain precautions in obtaining hypnotically induce testimony. In this vein, one commentator, Martin T. Orne of The Institute of Pennsylvania Hospital and the University of Pennsylvania has made the following suggestions:

Only a psychiatrist or psychologist trained in hypnosis should elicit hypnotic testimony. Further, he should be informed in writing about the necessary facts, should have no involvement in the investigation and should be responsible to neither the prosecution nor investigators. Additionally, there should be no one other than the psychiatrist or psychologist and the individual being hypnotized present in the room before and during the session. Before hypnosis is induced, the hypnotist should evaluate the individual and record waking memories. As testimony is elicited, the psychologist or psychiatrist needs to

avoid adding new elements to the witness's described experiences or reminding the witness of his or her waking memories.

The issue of the credible appearing witness should also be addressed. Because communication happens on a nonverbal as well as verbal level, all contact of the psychiatrist or psychologist with the individual being hypnotized should be videotaped from the moment they meet until the entire interaction is completed. Audiotape recordings of prior interrogations would also be advisable in order to insure that the witness has not been explicitly or implicitly cued pertaining to information which might appear to come forward for the first time under hypnosis. Finally, in order that the rights of those testified against are not abridged by the procedure, the videotape recording should be made available to both parties in the litigation.

APPENDIX E

State of Arizona
House of Representatives
Thirty-fifth Legislature
Second Regular Session
1982

SENATE ENGROSSED COPY

HOUSE BILL 2224

AN ACT

RELATING TO CRIMES; PROVIDING FOR ADMISSIBILITY OF TESTIMONY OF HYPNOTIZED WITNESS; PRESCRIBING EXCEPTIONS; PROVIDING FOR GUIDELINES, AND AMENDING TITLE 13, CHAPTER 38, ARTICLE 20, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4065.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 13, chapter 38, article 20, Arizona Revised Statutes, is amended by adding section 13-4065, to read:

A. EXCEPT AS PROVIDED IN SUBSECTIONS B AND C, THE COURT SHALL NOT DISQUALIFY A PERSON FROM TESTIFYING IN ANY CRIMINAL OR CIVIL ACTION OR PROCEEDING BECAUSE THE PERSON HAS PARTICIPATED IN HYPNOSIS, PROGRESSIVE RELAXATION TECHNIQUES OR ANY OTHER TECHNIQUE OR EXERCISE TO ALTER THE PERSON'S STATE OF CONSCIOUSNESS IN ORDER TO RETRIEVE OR ENHANCE THE PERSON'S MEMORY, PROVIDED THE SESSION, TECHNIQUE OR EXERCISE IS CONDUCTED BY A NEUTRAL, QUALIFIED PARTY.

B. A PARTY TO A CRIMINAL OR CIVIL ACTION OR PROCEEDING WHO OFFERS THE TESTIMONY OF ANY PERSON, INCLUDING THE DEFENDANT, WHO HAS PARTICIPATED IN ANY TECHNIQUE OR EXERCISE DESCRIBED IN SUBSECTION A SHALL RECORD THE ENTIRE TECHNIQUE OR EXERCISE WITH AN AUDIO AND VIDEO RECORDING DEVICE. THE COURT SHALL REQUIRE THE PARTY TO MAKE THE ENTIRE RECORDING AVAILABLE TO THE OPPOSING PARTY BEFORE ALLOWING THE PERSON TO TESTIFY.

C. IF THE COURT, FOLLOWING THE REVIEW OF THE RECORDING DESCRIBED IN SUBSECTION B AND ALL CIRCUMSTANCES, DETERMINES THAT ANY TESTIMONY DESCRIBED IN SUBSECTION A IS UNRELIABLE, THE COURT SHALL EXCLUDE THAT TESTIMONY.

D. THE SUPREME COURT SHALL ESTABLISH GUIDELINES FOR CONDUCTING THE SESSION, TECHNIQUE OR EXERCISE PROVIDED IN THIS SECTION AND THE QUALIFICATIONS OF THE NEUTRAL QUALIFYING PARTY.

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