

HYPNOTICALLY REFRESHED TESTIMONY

The State [the defense] has presented the testimony of [witness's name], whose testimony it claims has been hypnotically refreshed.¹ Hypnosis is a state of heightened concentration with diminished awareness of peripheral events.² In evaluating this testimony you must consider first of all the ordinary tests of credibility that I have already explained to you. However, you must also consider the following four special facts about the effects of hypnosis.

First, people who have been hypnotized are vulnerable to intentional or unintentional suggestions made by the interviewers. This means that they have a tendency to remember things under hypnosis only because the interviewers intentionally or unintentionally suggested them, and not because they really happened. Second, they tend to lose critical judgment while under hypnosis, which means that they have less ability to judge for themselves whether what they appear to remember is plausible or accurate. Third, they tend to confuse hypnotic recall with waking memory, which means that hypnotized people tend to confuse their memories with facts injected during hypnosis, and tend to think that they actually remember the injected facts. Fourth, they tend to have increased confidence about the accuracy of their testimony after hypnosis.³

Therefore, while the credibility of this testimony is a question for you as jurors to decide, you must consider these special features of hypnotically refreshed testimony along with the ordinary tests of credibility that I have already explained. At the end of this process, you may as judges of the facts accept all of the hypnotically refreshed testimony, or a portion of it, or none of it.

¹ If the parties have presented any testimony by the person who conducted the hypnosis session, or any expert witnesses who challenge or support the testimony's reliability, give the model charge on expert testimony. Also, the model charge on credibility of witnesses should be given before this charge.

² State v. Hurd, 86 N.J. 525, 534 (1981).

³ State v. Fertig, 143 N.J. 115, 127 (1996), citing State v. Hurd, 86 N.J. at 540.