

FORENSIC APPLICATION OF HYPNOSIS

The Texas Model and Road Map To Admissibility

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and

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This article establishes a “TIMELINE – ROAD MAP” of events relevant to the forensic application of hypnosis by law enforcement officers in Texas. The article provides the reader insight regarding the evolution of this investigative tool that can be extremely valuable when used appropriately.

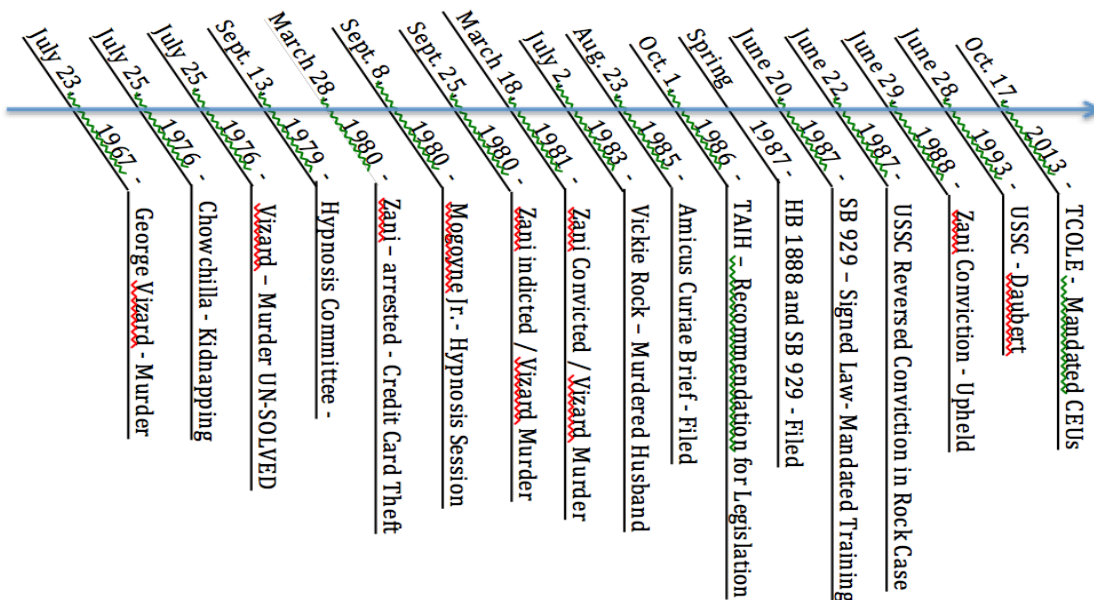
STATEMENT:

Testimony derived from the Forensic Application of Hypnosis may be admissible in Texas based upon the Totality of Circumstance and Procedural Safeguards.

Testimony derived from the Forensic Application of Hypnosis may be admissible in all 50 states when used by defense attorneys with a criminal defendant.

The Texas Appellant courts have upheld convictions where hypnosis was used with crime victims or witnesses for the purpose of refreshing memory. See, e.g., **Laird v. State, 650 S.W. 2d 198 (Tex. App-Fort Worth 1983)**, **Walters v. State, 680 S.W. 2d 60 (Tex. App-Amarillo 1984)**, **Vester v. State, 713 S.W. 2d 920 (Tex. Cr. App. 1986)**, **Zani v. State, 758 S.W. 2d 233 (Tex.Cr.App. 1988)**

The first reported civil case in Texas where hypnosis was used involved an automobile accident in Clay County, Texas on December 21, 1970, **Connally v. Farmer, 484 F2d 454 (5th Cir. 1973)**.



July 23, 1967: George Vizard's body was found by Richard Furlong, a University of Texas professor, shot to death in the frozen food locker at a Town and Country convenience store in Austin, Texas. Justice of the Peace Robert Kuhn was called to the scene to conduct an inquest. Vizard had one bullet in his left bicep and another in his back. It was subsequently determined that Vizard was fatally shot with "either a .38-caliber or .357-caliber bullet" that "was fired from a firearm having eight lands and grooves with rifling inclined to the right" according to the ballistics report by Chief Fred Rymer, Firearms Section, Texas Department of Public Safety. This type firearm was referred to by some as a "right 8." Firearms fitting this description in 1967 were shown to be somewhat rare, comprising an estimated three to five percent of the total firearms population.

During the mid-1960's Vizard was probably one of the most visible and volatile of Austin's radical activists, particularly in and around the University of Texas campus. He proudly proclaimed his membership in the Communist Party and was a local leader of Students for a Democratic Society (SDS). He was arrested several times and was in a number of altercations with authorities. George's wife, Mariann, was also active in their efforts toward social change. After George's death, she changed her name to Mariann Wizard (she changed the "V" to a "W." (Dreyer, 2006.)

The Vizard murder on July 23, 1967 was still unsolved when the Chowchilla kidnapping occurred.

July 15, 1976: Chowchilla, California, three persons kidnapped 26 school children and the bus driver. All occupants were buried alive underground. After the bus driver and children dug their way out of the makeshift grave and contacted law enforcement authorities, it was decided that hypnosis would be used for memory refreshment to develop investigative leads. Dr. William S. Kroger, a Clinical Professor of Anesthesiology, University of California, Los Angeles School of Medicine; Teaching Consultant, Department of Psychiatry, Cedars-Sinai Medical Center, Los Angeles; Consulting Psychiatrist, Department of Neurology, City of Hope Medical Center, Duarte, California; and a leading authority on hypnosis conducted the hypnosis session on Frank Edward Ray, the 55 year old bus driver, and retrieved all the digits except one on the license plate of the vehicle used in the kidnapping. As a result of the information developed through the use of

hypnosis and investigation of leads, three suspects, Fredrick Wood, James and Richard Schoenfeld, were arrested and convicted of kidnapping the students and bus driver (Schefflin, 1989, p. 67.)

September 13, 1979: Leo E. Gossett, Assistant Director of the Texas Department of Public Safety (DPS - Texas State Police), by memorandum, established a seven-member committee responsible for studying available data concerning law enforcement uses of hypnosis; developing recommended guidelines and criteria to be used in the selection and training of DPS personnel in the use of hypnosis; and developing recommended guidelines relative to such use. Inspector Marx Howell was appointed a member of that committee and subsequently served as Chairman of the Texas State Police Hypnosis Oversight Committee until his retirement and continues to serve as a member.

The committee reviewed numerous articles, training materials, books on hypnosis and met or consulted with numerous experts, including Dr. George Mount, PhD. in private practice in Dallas, Texas, and Dr. Matt Stricherz, PhD. of Texas Tech University in Lubbock, Texas. The committee then developed self-imposed guidelines and selected a 50-hour training course for DPS officers use of forensic hypnosis. The training course curriculum included various lectures, demonstrations and applications related to the history of hypnosis; basic psychodynamics, emotional development, the nature, theories and laws of hypnosis; principles of suggestion, criminological versus psychotherapeutic use of hypnosis, myths, misconceptions, inductions and deepening techniques; and information eliciting techniques. DPS personnel selected to receive this training were veteran law enforcement officers with many years of experience and numerous hours of classroom instruction in criminal investigation and interviewing techniques.

Upon completion of the committee's assessment, James Adams, Director of the Texas Department of Public Safety, approved the DPS Hypnosis Program that is formalized as official policy in Texas Department of Public Safety General Manual 01.25.00.00.

The initial basic training for some DPS investigators was conducted at the DPS Academy by the Therapeutic and Forensic Hypnosis Institute of Houston, Texas, after an evaluation of the availability and adequacy of various training courses.

Some Texas DPS personnel had previously received basic and advanced training at the North Texas Regional Police Academy (by Frank Monaghan) in Arlington, Texas and at the Law Enforcement Hypnosis Institute (by Dr. Martin Reiser) in Los Angeles, California. We subsequently developed and coordinated two in-service hypnosis schools in the DPS Academy, emphasizing practice sessions, testifying in court and advanced techniques to enhance the skill and confidence of our investigators.

March 28, 1980: Austin, Texas police Lieutenant Bobby Simpson set up a sting operation in an effort to apprehend a prospective buyer of real estate who was believed to have stolen credit cards from property previously visited. Detectives Paul Ruiz and Robert Martinez were requested to assist with surveillance. After the sting operation was abandoned, Ruiz and Martinez contacted hotel manager James Gooch and made additional inquiries as to the occupant of room 219 at the Austin Ramada Inn North and reviewed the hotel registration records. It was determined that the occupant had paid with a stolen credit card, which had been reported stolen to the Travis County Sheriff's Office. Robert Joseph Zani was arrested upon his return to the Austin Ramada Inn North. Execution of a search warrant revealed that the occupant had credit cards in his possession which had been stolen from a residence which was listed for sale and owned by Richard K. Womack. The Womack property which was listed for sale in the newspaper had been previously shown to Zani. The stolen credit cards were found in the toilet water tank along with a temporary driver's license issued to Zani by the Texas Department of Public Safety (Texas State Police). A .25 Sterling semi-automatic was also recovered in the room (Fero, 1990, p. 35.)

September 8, 1980: Carl Weathers, Texas Department of Public Safety, Texas Ranger Service conducted a forensic hypnosis interview with Jerry Magoyne, Jr. for the purpose of refreshing his memory in an effort to develop a composite sketch of the suspect in the unsolved Vizard murder which occurred on July 23, 1967 (the forensic hypnosis interview was 13 years after the murder). A forensic artist, Arthur Douet, present during the hypnosis session drew a composite sketch of the "man behind the counter" described by Magoyne, Jr., who also picked Robert Zani out of a photo lineup shown to him by Austin Police Detective Paul Ruiz, after the hypnosis was concluded.

Jerry Magoyne, Jr. and his father had purchased some food items in the Austin Town and Country convenience store on the morning of Sunday, July 23, 1967 and observed the man behind the counter who waited on them.

Shortly after the crime Magoyne, Jr. and Sr. were interviewed by the Austin Police Department (APD) related to this murder investigation. Magoyne, Jr. and Sr. had visited this particular convenience store each morning for several days to purchase food items to take to the construction job site where they were working. They advised the APD investigator that, on the Sunday morning in question, the person who had waited on them at the Town and Country convenience store had not been the same person who had waited on them the previous days. They provided a vague description of the person who waited on them on the day of the murder.

September 25, 1980: Robert Zani was indicted for the murder of George Vizard on July 23, 1967. Zani had previously been arrested on March 28, 1980 after using a stolen credit card to rent a motel room in Austin, Texas. Zani was being held in the Travis County jail on the credit card charge. A subsequent investigation by the Austin Police Department resulted in the recovery of a Ruger .357 Magnum Blackhawk revolver identified by a Bureau of Alcohol, Tobacco and Firearms trace as having been purchased by Zani at Oshmans sporting goods store in Austin, Texas on July 22, 1966 – one year prior to the murder of George Vizard – and this revolver was a “right 8” consistent with the murder weapon. Moreover, Zani’s fingerprints were identified on several items including a roll of lifesavers, a package of fudge brownies and a loaf of bread found on the counter of the Austin Town and Country convenience store the morning of the Vizard murder. As a former employee of this convenience store, Zani knew how to operate the cash register and the combination to the floor safe concealed under a rubber mat behind the store counter (Fero, 1990.)

Defense attorneys Roy Greenwood, who considered himself somewhat of an expert on hypnosis, and Patrick Gann served as defense counsel for Zani during his trial in Travis County, Texas. Richard Garver, a San Antonio psychologist was used by Greenwood as a rebuttal witness to attack the credibility of using police officers as hypnotists.

March 18, 1981: Robert Zani was convicted by a jury of the murder of George Vizard and subsequently sentenced to imprisonment for 99 years in the Texas Department of Corrections.

His conviction was appealed by Zani through the Texas appellate judicial system and ultimately affirmed by the Texas Court of Criminal Appeals.

Were it not for the tenacity and commitment of Austin Police Department Detectives Paul Ruiz and Robert Martinez, and Travis County Assistant District Attorney Joseph “Mad Dog” Turner, the case against Robert Zani may not have resulted in a conviction for the murder of George Vizard.

July 2, 1983: Vickie Lorene Rock fatally shot her husband, Frank Rock. A dispute had been simmering about Frank's wish to move from the couple's small apartment adjacent to Vickie's beauty parlor to a trailer she owned outside town. That night a fight erupted when Frank refused to let petitioner eat some pizza and prevented her from leaving the apartment to get something else to eat. When police arrived on the scene, they found Frank on the floor with a bullet wound in his chest. Petitioner urged the officers to help her husband, and she cried to a sergeant who took her in charge, "please save him" and "don't let him die." According to the testimony of one of the investigating officers, petitioner told him that "she stood up to leave the room and [her

husband] grabbed her by the throat and choked her and threw her against the wall and . . . at that time she walked over and picked up the weapon and pointed it toward the floor and he hit her again and she shot him."

Vickie Lorene Rock was charged with manslaughter in the death of her husband, Frank Rock.

Because petitioner could not remember the precise details of the shooting, her attorney suggested that she submit to hypnosis in order to refresh her memory. Petitioner was hypnotized twice by Doctor Bettye Back, a licensed neuro-psychologist with training in the field of hypnosis. Doctor Back interviewed petitioner for an hour prior to the first hypnosis session, taking notes on petitioner's general history and her recollections of the shooting. Both hypnosis sessions were recorded on tape. Petitioner did not relate any new information during either of the sessions, but, after the hypnosis, she was able to remember that at the time of the incident she had her thumb on the hammer of the gun, but had not held her finger on the trigger. She also recalled that the gun had discharged when her husband grabbed her arm during the scuffle. As a result of the details that petitioner was able to remember about the shooting, her counsel arranged for a gun expert to examine the handgun, a single-action Hawes .22 Deputy Marshal. That inspection revealed that the gun was defective and prone to fire, when hit or dropped, without the trigger being pulled.

When the prosecutor learned of the hypnosis sessions, he filed a motion to exclude petitioner's testimony. The trial judge held a pretrial hearing on the motion and concluded that no hypnotically refreshed testimony would be admitted. The court issued an order limiting petitioner's testimony to "matters remembered and stated to the examiner prior to being placed under hypnosis."

At trial, petitioner introduced testimony by the gun expert, but the court limited petitioner's own description of the events on the day of the shooting to a reiteration of the sketchy information in Doctor Back's notes. The jury convicted petitioner on the manslaughter charge, and she was sentenced to 10 years' imprisonment and a \$10,000 fine in the Benton County Circuit Court, in Fayetteville, Arkansas.

However, the trial court ruled that no hypnotically refreshed testimony would be admitted, and limited petitioner's testimony to a reiteration of her statements to the doctor prior to hypnosis, as reported in the doctor's notes. The Arkansas Supreme Court affirmed her conviction in **Rock v. State, 708 S.W.2d 78 (Ark.1986)**, ruling that the limitations on her testimony did not violate her constitutional right to testify, and that criminal defendants' hypnotically refreshed testimony is inadmissible *per se* because it is unreliable.

Vickie Lorene Rock filed a petition for writ of certiorari in the United States Supreme Court.

August 23, 1985: Amicus Curiae Brief filed in the Texas Court of Criminal Appeals by Gerald C. Carruth, Chief of Legal Services, Texas Department of Public Safety.

Chief Gerald Carruth and Inspector Marx Howell collaborated on the issues to be addressed in the Amicus Curiae Brief. Chief Carruth researched the legal aspects through the State of Texas Law Library, and Inspector Howell researched those positions supporting the use of hypnosis by police through the University of Texas Library.

October 1, 1986: Inspector Marx Howell, as an officer of the Texas Association for Investigative Hypnosis (TAIH), proposed to the membership that the association support legislation

establishing minimum training standards, testing and certification for police officers who utilize hypnotic interviewing techniques with witnesses and victims of crime events. A rough draft copy of what subsequently became Senate Bill 929 was provided to each member for review and input. After the bill was introduced, several TAIH members testified before Senate committee hearings in support of this legislation.

Prior to the passage of Senate Bill 929 in 1987, it was determined that approximately 850 city, county and state police officers who had received training in hypnosis for interviewing witnesses and victims.

Inspector Howell has personally had the opportunity to visit with police officers from various agencies who have conducted hypnosis sessions. Many of the hypnosis interviews were satisfactory; however, some would not meet scrutiny of cross examination in a court.

Many states have lost the use of hypnosis as an interviewing procedure due to abusing this investigative tool.

Inspector Howell and Chief Carruth had previously met with Fred Toler, Executive Director, of the Texas Commission on Law Enforcement Standards and Education (TCLEOSE) and discussed the rough copy of the proposed legislation. He was in favor of and supported legislation mandating training, testing and certification of police officers who use hypnosis interviewing techniques. He was provided a rough draft copy of the legislation.

June 22, 1987: The United Supreme Court reversed the manslaughter conviction of Vickie Lorene Rock in **Rock v. Arkansas, 483 U.S. 44 (1987)**, and held the Arkansas *per se* rule excluding all hypnotically refreshed testimony impermissibly infringed upon the right of a criminal defendant to testify on her own behalf and violated the 5th, 6th and 14th Amendments to the United States Constitution. After reviewing the case law regarding forensic hypnosis and the dangers of using hypnosis for memory enhancement, the Supreme Court noted the Defendant's post-hypnosis recall of the accidental shooting was corroborated by the testimony of the firearms expert regarding the defective condition of the revolver in which the fatal bullet was fired. Moreover, the tape-recordings of the Defendant's hypnosis sessions provided a means to evaluate the hypnosis and lead the trial judge to conclude the hypnosis sessions were not unduly suggestive. These circumstances present an argument for the admissibility of the Defendant's testimony in this case which must be considered by the trial court on remand.

Spring 1987: House Bill 1888 by Representative Bill Arnold and companion Senate Bill 929 sponsored by Senator Robert "Bob" McFarland were filed in the 70th session of the Texas Legislature.

Inspector Howell coordinated the testimony of several TAIH members before Senate committees on criminal justice jurisdiction in support of this legislation.

June 20, 1987: Senate Bill 929 was passed by the 70th Session of the Texas Legislature and signed into law by Governor William P. Clements Jr. to become effective January 1, 1988.

The Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE) was charged with the implementation and administration of this act. TCLEOSE is the state agency responsible for licensing commissioned police officers in Texas.

The legislation grandfathered prior Forensic Hypnosis Training but not testing.

Tommy Honeycutt, TCLEOSE, attended the 1987 TAIH Annual Conference at Sam Houston State University in Huntsville, Texas and administered 80 + Texas Police Officers the Forensic Hypnosis examination.

Language in the statute specifically addresses and is limited to police officers who use hypnosis for investigative purposes. This law does not impose restrictions on individuals who use hypnosis, for any purpose, in the private sector.

Some of the key points related to Senate Bill 929 include:

- Authorizes the Commission (TCLEOSE) to promulgate rules and regulations for the administration of this bill including the following.
- Establishes minimum requirements for hypnosis education and training of police officers.
- Requires a police officer to attend training and pass a state commission administered examination prior to utilizing investigative hypnosis.
- Dr. George Mount, PhD. in private practice Dallas, Texas, and Dr. Matt Stricherz, PhD. Texas Tech University, Lubbock, Texas certified/validated the test to be administered by TCLEOSE.

NOTE: In Texas, if a police officer is trained in the use of forensic hypnosis and conducts a hypnosis interview with a victim or a witness of a crime without passing the state administered exam, any evidence derived from the hypnotic session conducted by the unlicensed hypnotist must be suppressed. See **Soliz v. State, 961 S.W.2d 545 (Tex.App. – San Antonio 1997)**.

- Authorizes proficiency certification of officers who complete a commission approved training program and pass the state-administered test.
- Imposes a potential fine of up to \$1,000 for a police chief, sheriff, or other law enforcement administrator who appoints an officer under his supervision to utilize investigative hypnosis without being certified by TCLEOSE.

During the first year following the effective date of this act, approximately 100 Texas police officers had been certified to conduct this type of interview. As of publication date, Texas is the only state in the USA which requires mandated certification for police hypnotist, and there are approximately 440 Texas police officers who have been state certified to conduct forensic hypnosis interviews (Texas Commission on Law Enforcement.)

June 29, 1988: The Texas Court of Criminal Appeals issued its opinion in **Zani v. State, 758 S.W.2d 233 (Tex.Cr.App. 1988)**, addressing the use of hypnotically refreshed testimony and establishing ten procedural safeguards.

In a case of first impression, the Texas Court of Criminal Appeals approved the admissibility of hypnotically enhanced testimony under certain circumstances. This case involved the hypnosis of a witness thirteen years after the murder of a convenience store clerk for which defendant Robert

Zani was subsequently convicted and sentenced to 99 years in the Texas State Prison. The Court of Criminal Appeals, the highest appellate court in Texas for criminal cases, held that in considering the admissibility of hypnotically enhanced testimony, a trial court should consider the four-prong dangers of hypnosis:

1. hypersuggestibility
2. loss of critical judgment
3. confabulation, and
4. memory cementing

The court listed several factors relevant to the trustworthiness of hypnotic recall, including:

1. The level of training in the clinical uses and forensic applications of hypnosis by the person performing the hypnosis.
2. The hypnotist's independence from law enforcement investigators, prosecution, and defense.
3. The existence of a record of any information given or known by the hypnotist concerning the case prior to the hypnosis session.
4. The existence of a written or recorded account of the facts as the hypnosis subject remembers them prior to undergoing hypnosis.
5. The creation of recordings of all contacts between the hypnotist and the subject.
6. The presence of persons other than the hypnotist and the subject during any phase of the hypnosis session, as well as the location of the session.
7. The appropriateness of the induction and memory retrieval techniques used.
8. The appropriateness of using hypnosis for the kind of memory loss involved.
9. The existence of any kind of evidence to corroborate the hypnotically enhanced testimony.
10. The presence or absence of overt or subtle cuing or suggestion of answers during the hypnotic session.

Upon consideration of the totality of the circumstances, if the trial court should find by clear and convincing evidence that hypnosis neither rendered the witness post-hypnotic memory untrustworthy nor substantially impaired the ability of the opponent fairly to test the witness recall by cross-examination, the testimony may be admitted.

Of significant importance are the following statements contained in the concurring opinion by Judge White with Judges Davis and McCormick concurring.

“There are several factors which satisfy the test and support the conclusion that Magoyne’s testimony was admissible. The hypnotist, Ranger Carl Weathers, was independent of the law enforcement personnel who investigated the case, as well as the attorneys for the State and the defense. At trial, Weathers testified that he knew nothing of the details of this case prior to the hypnosis session. There was a record in the instant case, by interview with Jerry Magoyne, Jr., of what Magoyne recalled prior to hypnosis. The hypnosis session was tape-recorded. The majority concluded that the questioning was not overtly suggestive. Although two other persons were present during the session, they did not exert an influence on the subject during hypnosis. Lastly, there was sufficient corroboration, both direct and circumstantial, of the hypnotically refreshed testimony.”

The court rejected the *per se* exclusion of hypnotically refreshed testimony based upon the opinion of the U.S. Supreme Court in **Rock v. Arkansas, 107 S.Ct. 2704 (1987)**, which held that a trial court may not automatically exclude the testimony of a criminal defendant who has been hypnotized for memory enhancement prior to trial. The Court of Criminal Appeals also held that Zani was not entitled to the presence of counsel at the hypnosis session conducted prior to indictment. Finally, the court determined that a jury charge cautioning against excessive reliance on hypnotically enhanced testimony should not be given, since the requested charge would constitute a comment on the weight of the evidence unauthorized by Texas Law.

One of the dissenting judges, Marvin Teague, referred to the use of hypnosis as self-taught “gypsy-voodoo” testimony.

June 28, 1993: The United States Supreme Court issued its opinion in **Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)**. This landmark case, which announced a new standard for the admissibility of scientific evidence, involved a civil suit for monetary damages for serious birth defects allegedly caused by the mother’s prenatal ingestion of a prescription drug manufactured by the Defendant. The trial court granted summary judgment in favor of the drug manufacturer based upon the rule announced in **Frye v. United States, 293 F. 1013 (D.C.Cir.1923)**, which rejected the admissibility of evidence derived from a systolic blood pressure deception test, a crude precursor to the polygraph. The so-called “Frye Rule” required a trial court to find, before expert testimony regarding a new scientific technique could be admitted into evidence, that the reliability of the scientific technique had received generally acceptance in the relevant scientific community. For the next 70 years, the Frye Rule’s “generally acceptance in the relevant scientific community” remained the prevailing standard for admissibility of expert scientific testimony in American jurisprudence. Since mental health experts were unable to agree upon the reliability of hypnosis for restoring memory, the Frye Rule was used by those states, like Arkansas, which adopted a *per se* rule of inadmissibility of hypnotically refreshed testimony by a witness during trial.

However, the Supreme Court vacated and remanded the **Daubert** case to the trial court, after rejecting the Frye Rule’s “general acceptance” test regarding the admissibility of scientific evidence as having been superseded by the subsequently adopted Federal Rules of Evidence, which provide the standard for admissibility of expert scientific testimony in federal trials.

Rule 702 of the Federal Rules of Evidence, which governs expert witness testimony, provides:

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.”

The foregoing requirement of Rule 702 that the testimony “assist the trier of fact to understand the evidence or to determine a fact in issue” requires that such testimony be relevant. Under the Federal Rules of Evidence, all relevant evidence is admissible unless specifically excluded by law. For example, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Since the text of Rule 702 does not require “general acceptance” as an absolute prerequisite to admissibility of expert testimony, the Frye Rule was held to be too rigid and contrary to the more liberal relevancy test of Rule 702, which relaxed the traditional barriers to expert opinion testimony.

Under the **Daubert** standard, the trial judge is the “gatekeeper” who determines whether an expert witness may testify to relevant scientific knowledge that will assist the trier of fact. In discharging these “gatekeeper” duties, the trial judge should not allow the fact-finding process to become distorted by so-called “junk science” and must: (1) determine whether the witness is sufficiently qualified by “knowledge, skill, experience, training, or education” before being permitted to provide expert testimony; and (2) “ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.” In determining the validity and reliability of scientific testimony, the trial judge should consider several factors including: (1) testing and validation of the scientific principle or methodology; (2) peer review and publication; (3) known or potential rate of error; and (4) “general acceptance” of the scientific theory or technique.

Although **Daubert** did not address expert testimony relating to forensic hypnosis, its holding may logically be extended to include such testimony when appropriate, and any proposed expert testimony on this subject may be subject to challenge under the **Daubert** standard. While **Daubert** involved standards for the admissibility of expert testimony in federal trials, its application may be extended to cases in state courts, including Texas, which have adopted model rules of evidence identical or similar to the Federal Rules of Evidence. (*See, e.g.*, Rule 702, Texas Rules of Evidence, the text of which is identical to Rule 702, Federal Rules of Evidence.)

The Texas Court of Criminal Appeals held in **Kelly v. State, 824 S.W.2d 568 (Tex.Cr.App. 1992)** that the Frye Rule’s “general acceptance” standard had been overruled by Rule 702, Texas Rules of Evidence, which governs the admissibility of expert testimony in Texas courts. In **State v. Medrano, No. 1919-02 (Feb.4, 2004)**, the Texas Court of Criminal Appeals reaffirmed its prior ruling in **Zani v. State**, which remains the law in Texas for determining the admissibility of hypnotically enhanced testimony in Texas courts.

October 17, 2013 Texas Commission on Law Enforcement (TCOLE, previously TCLEOSE) mandated continuing education for Texas police hypnotists to insure proficiency.

According to minutes of the December 2012 meeting of the Texas Association for Investigative Hypnosis, it was decided that the association would seek mandatory continuing education for Texas Police Hypnotists to maintain proficiency, either through legislation or by TCOLE rule making authority.

A meeting with Chief Kim Vickers on December 17, 2012 and a subsequent letter to Sheriff Joel Richardson, Chair of the Texas Commission on Law Enforcement (TCOLE) from Marx Howell, requested the commission, by rule making authority, to require a minimum of eight (8) hours of Continuing Education Hours every two (2) years for Texas Police Hypnotists to maintain their Hypnosis Certification.

The request for the mandated training was a follow-up letter to a 6-month process, which consisted of a meeting with the Executive Director of TCOLE, submission of a 7 page position paper, and testimony before a hearing of the commissioners at their quarterly meeting. After Inspector Howell testified, the proposed rule change/testimony was published in the Texas Register for 90 days to allow for objections, of which there were none.

During the next quarterly meeting on October 17, 2013, the nine (9) Commissioners voted unanimously to approve the required mandated training

The additional requirement for mandated CEU's was a follow-up to the initial legislation (SB 929 passed in 1987) in an effort to maintain the highest level of proficiency possible for police officers who conduct Forensic Hypnosis Interviews with victims and witnesses.

Police Officers who fail to maintain their mandated CEU hours will result in their Hypnosis Certification being suspended by the State of Texas (TCOLE)!

(Source Note: The provisions of this Rule §221.7 adopted to be effective March 1, 2001, 26 TexReg 233; amended to be effective October 17, 2013, 38 TexReg 6604).

The author's website contains a number of articles related to the forensic application of hypnosis including a *Forensic Hypnosis Interview Guide* to assist the hypnotist in a step-by-step procedure to be followed in compliance with legal requirements (Howell, 2014.)

Additional useful information for the investigative hypnotist can be found in Reiser's Handbook of Investigative Hypnosis (Reiser, 1980.)

Finally, it is the author's intent that this article will assure the reader that investigative hypnosis when used appropriately, is a legally accepted, viable, useful and effective tool for refreshing victim/witness recall of a crime event.

FORENSIC APPLICATION OF HYPNOSIS - Resource

There are many items of information related to the application of forensic hypnosis available. The key is to find sources that are credible, that are vetted, and that have been proven through verifiable use. Inspector Howell's website, www.marxhowell.com, contains a number of articles related to the forensic application of hypnosis including a *Forensic Hypnosis Interview Guide* to assist the hypnotist in a step-by-step procedure to be followed in compliance with legal requirements. Additional useful information for the investigative hypnotist can be found in Dr. Martin Reiser's *Handbook of Investigative Hypnosis*.

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About the Authors

Inspector Marx Howell is a 32 year veteran of the Texas Department of Public Safety – (Texas State Police), a graduate of the FBI National Academy, holds a Bachelor of Science degree in Criminal Justice, and served in the United States Marine Corps. He started his career as a state trooper in the Traffic Law Enforcement Division and then promoted through the ranks to Captain in the Criminal Law Enforcement Division and then to Inspector. He is considered to be a leading authority on the forensic application in hypnosis for the purpose of refreshing memory and particularity with victims and witnesses of crime. He has 52 years of law enforcement experience.

Gerald C. Carruth earned his Bachelor of Arts degree from Texas A&I University and his Doctor of Jurisprudence degree from the University of Texas School of Law. His bar admissions include the State Bar of Texas, United States Supreme Court, United States Court of Appeals for the Fifth and Eleventh Circuit, United States District Courts for Northern, Southern, Eastern and Western District of Texas; Chief of Legal Services, Texas Department of Public Safety, Assistant Attorney General of Texas and Assistant District Attorney. Prior to attending law school, he was employed as a public school teacher and began his law enforcement career in 1963 as a commissioned police officer with the Kingsville, Texas Police Department.