

FORENSIC HYPNOSIS and THE LAW

Legal Aspects

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I would like to express my appreciation to Jack Zimmermann who has consistently made presentations and provided legal updates to the Texas Association for Investigative Hypnosis, which is primarily for police personnel who are certified by the state of Texas to conduct Forensic Hypnosis interviews with witnesses and victims to crimes.

CASE CITATIONS TO
"USING HYPNOSIS TO INVESTIGATE A CRIMINAL CASE:
HOW TO DO IT LEGALLY"
(updated October 2003)

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A . HYPNOTIZING A WITNESS RENDERS ALL TESTIMONY INADMISSIBLE

Arkansas

Mills v. State, 910 S.W.2d 682 (Ark.1995).
Rock v. Arkansas, 483 U.S.44, 107 S.Ct.2704, 97 L.Ed.2d
37 (1987) (stating that a criminal defendant has a right
to testify on his own behalf, even if he has been
hypnotized).

B. ONLY PRE-HYPNOSIS RECALL IS ADMISSIBLE

Alabama

Chamblee v. State, 527 So.2d 173 (Ala.Crim.App.1988).
Martin v. State 839 So.2nd 665 (Ala. Crim. App.2001)

Alaska

Contreras v. State, 718 P.2d 129 (Alaska 1986), overruled on other grounds by State v. Coon, 974 P.2d 386 (Alaska 1999).

Arizona

State ex rel. Collins v. Superior Court, 644 P.2d 1266 (Ariz. 1982).
State v. Lopez, 887 P.2d 538 (Ariz. 1994).

California

People v. Hayes, 783 P.2d 719 (Cal.1989).
People v. Alcala, 842 P.2d 1192 (Cal.1992).

Connecticut

State v. Pollitt, 530 A.2d 155 (Conn.1987)

Delaware

Elliott v. State, 515 A.2d 677 (Del.1986).

Florida

Bundy v. State, 471 So.2d 9 (Fla.1985).
Way v. Dugger, 568 So. 2d 1263 (Fla. 1990).

Hawaii

State v. Moreno, 709 P.2d 103 (Haw.1985).

Illinois

People v. Zayas, 546 N.E.2d 513(Ill.1989).

Indiana

Strong v. State, 435 N.E.2d 969 (Ind.1982).

Iowa

State v. Seager, 341 N.W.2d 420 (Iowa 1983).
Odem v. State, 483 N.W.2d 17 (Iowa Ct.App.1992).

Kansas

State v. Haislip, 701 P.2d 909 (Kan.1985).

Kentucky

Rowland v. Commonwealth, 901 S.W.2d 871 (Ky.1995).

Maryland

State v. Collins, 464 A.2d 1028 (Md.1983).

Burrall v. State, 724 A.2d 65 (Md.1999).

Massachusetts

Commonwealth v. Kater, 447 N.E.2d 1190 (Mass.1983).

Michigan

People v. Gonzales, 329 N.W.2d 743 (Mich. 1982).

People v. Lee, 450 N.W.2d 883 (Mich, 1990).

Minnesota

State v. Mack, 292 N.W.2d 764 (Minn.1980).

State v. Grimmett, 459 N.W.2d 515,517(Minn.Ct.App.1990).

Missouri

State v. Blackman, 875 S.W.2nd 122 (Mo. Ct. App. 1994).

State v. Post, 901 S.W.2nd 231 (Mo. Ct. App. 1995)

Nebraska

State v. Palmer, 313 N.W.2d 648 (Neb.1981).

State v. Patterson, 331 N.W.2d 500 (Neb.1983).

New York

People v. Hughes, 417 N.Y.S.2d 643 (N.Y.County Ct.1979).

People v. Gray, 545 N.Y.S.2d 945 (N.Y.App.Div.1989).

North Carolina

State v. Peoples, 319 S.E.2d 177 (N.C.1984).

State v. Annadale, 406 S.E.2d 837 (N.C.1991).

Oklahoma

Harmon v. State, 700 P.2d 212 (Okla. Crim. App. 1985)

Pennsylvania

Commonwealth v. Nazarovitch, 436 A.2d 170 (Pa.1981).

Commonwealth v. Romanelli, 560 A.2d 1384 (Pa.1989).

Utah

State v. Tuttle, 780 P.2d 1203 (Utah 1989).

Virginia

Hopkins v. Commonwealth, 337 S.E.2d 264 (Va.1985).

Hall v. Commonwealth, 403 S.E.2d 362 (Va.Ct.App.1991)

Washington

State v. Martin, 684 P.2d 651 (Wash.1984).

State v. Coe, 750 P.2d 208 (Wash.1988).

West Virginia

State v. Beard, 461 S.E.2d 486 (W.Va.1995).

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C. REQUIREMENT FOR STRICT PROCEDURAL SAFEGUARDS FOR POST-HYPNOSIS TESTIMONY TO BE ADMISSIBLE

Georgia

Walraven v. State, 336 S.E.2d 798 (Ga.1985).

Mississippi

House v. State, 445 So.2d 815 (Miss.1984)

Navada .

Nev. Rev. Stat. 48.039

State v. Hurd, 432 A.2d 86 (N.J.1999)

State v. Choinacki, 734 A.2d 324 (N.J. Super. Ct. App. Div. 1999)

New Mexico

State v. Beachum, 643 P.2d 246 (N.M.Ct.App.1981).

State v. Hutchinson, 661 P.2d 1315 (N.M.1983).

New Jersey

State v. Hurd, 432 A.2d 86 (N.J.1981).

State v. Choinacki, 734 A.2d 324 (N.J.Super.Ct.App.Div.1999).

South Dakota

State v. Adams, 418 N.W.2d 618 (S.D.1988), abrogated on other grounds, State v. Hofer, 512 N.W. 2d 482 (S.D. 1994)

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D. CREDIBILITY AND WEIGHT TO BE DETERMINED BY

TRIER OF FACT FOR POST-HYPNOSIS TESTIMONY

Louisiana

State v. Wren, 425 So.2d 756 (La.1983).

State v. Broadway, 753 So.2d 801 (La.1999).

North Dakota

State v. Brown, 337 N.W.2d 138 (N.D.1983).

Breeding v. State, 584 N.W.2d 493 (N.D.1998).

Oregon

State v. Jorgensen, 492 P.2d 312 (Or.1971).

State v. King, 733 P.2d 472 (Or.Ct.App.1987).

Tennessee

State v. Glebock, 616 S.W.2d 897 (Tenn.Crim.App.1981).

Wyoming

Chapman v. State, 638 P.2d 1280 (Wyo.1982).

Prime v. State, 767 P.2d 149 (Wyo.1989).

United States Court of Appeals for the Seventh Circuit

United States v. Kimberlin, 805 F.2d 210 (7thCir.1986)

United States Court of Appeals for the Ninth Circuit

United States v. Adams, 581 F.2d 193 (9thCir.1978)

United States Court of Appeals for the Eleventh Circuit

Bundy v. Dugger, 850F.2d1402 (11thCir.1988)

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E. TOTALITY OF CIRCUMSTANCES TEST FOR POST-HYPNOSIS TESTIMONY

Colorado

People v. Romero, 745 P.2d 1003 (Colo.1987).
Brooks v. People, 975 P.2d 1105 (Colo. 1999).

Idaho

State v. Iwakiri, 682 P.2d 571 (Idaho 1984).
State v. Bainbridge, 698 P.2d 335 (Idaho 1985).

Kentucky

Roark v. Commonwealth, 90S.W.3d 24 (Ky.2002)

Ohio

State v. Johnston, 529 N.E.2d 898 (Ohio 1988).

South Carolina

State v. Cheeseboro, 552 S.E.2d 300 (S.C.2001).

Texas

Zani v. State, 758 S.W.2d 233,243 (Tex.Crim.App.1988).
State v. Medrano,86S.W.3d 369 (Tex.App.-ElPaso 2002,pet.granted).

Wisconsin

State v. Armstrong, 329 N.W.2d 386 (Wis.1983).

United States Court of Appeals for the Second Circuit

Borawick v. Shay, 68 F.3d 597 (2dCir..1995).

United States Court of Appeals for the Fourth Circuit

Harker v. Maryland, 800 F.2d 437 (4th Cir.1986)

United States Court of Appeals for the Fifth Circuit

Merschv. City of Dallas, 207F.3d 732 (5thCir.2000).

United States Court of Appeals for the Eighth Circuit

Sprynczynatyk v. General Motors, 771 F.3d 1112 (8thCir.1985)

F. NO PRECEDENT

District of Columbia

Maine

Montana

New Hampshire

Nevada

Rhode Island

Vermont

It is important that you check the legal status of hypnosis in your jurisdiction as it may change at any time !!!!!!!!