

**HOUSE OF REPRESENTATIVES  
COMPILATION OF PUBLIC COMMENTS**

Submitted to the Committee on Criminal Jurisprudence  
For SB 338

Compiled on: Tuesday, May 2, 2023 9:56 PM

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Hearing Date: May 2, 2023 10:30 AM - or upon final adjourn./recess or bill referral if permission granted

Christopher Forbis, Sheriff  
Randall County Sheriff's Office  
Canyon, TX

To the Honorable Senator Hinojosa;  
I am writing in opposition to restricting the use of Hypnotically induced statements. The use of properly obtained statements through hypnosis is a worthy tool that has been successfully utilized by Texas law enforcement over the years. To curtail its proper use would be a detriment to the efforts to effectively bring justice to victims in the State of Texas.

Thank you for your service to the citizens of the State of Texas.  
Sheriff Chris Forbis

Frank Malinak, Ranger Ast. Chief Retired  
Retired Texas Ranger Assistant Chief and Forensic Hypnotist  
Giddings, TX

Ref: House Bill 4271/Senate Bill 338: Bill to Abolish Police Use of Investigative Hypnosis

My name is Frank Malinak, and I retired as Assistant Chief of the Texas Rangers in 2017. As a police hypnotist, I am writing to voice my concern on pending legislation that would make hypnotically refreshed testimony inadmissible in court and essentially abolish law enforcement's ability to use hypnosis. Investigative hypnosis, also known as forensic hypnosis or police hypnosis, has been used in Texas under court approved guidelines since the 1980s. The Texas Court of Criminal Appeals established strict guidelines for police under State vs. Zani. Only state licensed investigative hypnotists who have been trained and tested by the Texas Commission on Law Enforcement may engage in forensic hypnosis. Hypnosis is not frequently used by law enforcement, but when time is of the essence such as during the urgency of child abduction or when leads are exhausted in sexual assault or homicide investigations, hypnosis becomes another tool available to police investigators. Every part of a hypnosis session from "A" to "Z" is recorded so the session may be scrutinized by the courts to ensure procedures are done according to law and policy. I do not take writing this letter lightly. I have seen the incredible results of hypnotically refreshed testimony in solving serious violent crimes. The Texas Rangers recently chose to discontinue their hypnosis program, but that decision has nothing to do with the validity of hypnosis as a tool. Since that time, individual Rangers have sought assistance from forensic hypnotists including myself. Hypnosis alone never leads to a conviction and it must always be corroborated. For instance, Information from a hypnosis session has led to the identity of a potential suspect which was subsequently linked to the crime using DNA evidence. This is why hypnosis is still valuable to law enforcement. I respectfully urge you to support law enforcement and allow the continued use of hypnotically refreshed testimony in court by voting against these bills.

DOUGLAS GARNER

self; CLERK

FT WORTH, TX

I write opposing passage of SB 338 because is the responsibility of a jury, or judge if a bench trial, to weigh and consider evidence. The method by which evidence is gathered is of no concern of legislators if it does not impinge on the rights of the accused. The so-called Zani principles clearly do not. These principles only allow facts, which must be supported, to be ascertained from witnesses who otherwise did not recall circumstances or identities for whatever reason. There are certain guidelines to follow, and these should be adhered too; it would be unfortunate for the tool to be discarded because of it's improper use, even by those who should have known better. If anything, assert that these principles should be known as the Vizard Principles, after the first known victim of Robert Zani, and for whose murder established these principles. That or the Howell Principles, for the hypnotist whose skill elicited the corroborated evidence.

Marx Howell  
Self  
Round Rock, TX

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.

In the interest of fairness the good rule of evidence works equally for the defendant and the prosecution.

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 which must be substantially followed as a prerequisite to admissibility.

In *State v. Medrano*, 127 S.W.3d 781 (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.

Shawn Scott  
Self/Honorably Retired Police Officer (Violent Crimes Detective)  
Tyler, TX

I am opposed to the aforementioned bill that would prohibit hypnotically induced statements from qualifying as admissible evidence during a criminal trial.

Perry Gilmore, Dr.

Self, retired  
Amarillo, TX

Criminal Jurisprudence Committee

May 2, 2023

Dear Committee Members:

I am Dr. Perry Gilmore. I am advocating continuing the use of investigative hypnosis & oppose HB 4271. Investigative hypnosis is a valuable resource for criminal justice. It is best utilized in cases where a suspect is at large, investigative leads have been exhausted, and/or the crime places the public at risk if it remains unsolved. Hypnosis is particularly effective when a witness is traumatized & that hinders normal interviewing. The loss of hypnosis as an aid to difficult investigations would leave some of our most serious crimes unsolved, hamper law enforcement, & therefore put the public at risk. Ongoing training for investigative hypnotists is required. As our knowledge of cognitive psychology, memory, & the fallibility of eyewitness testimony has evolved, our training has kept pace. In *Zani v. State*, 1988, the Texas Court of Criminal Appeals established 10 stringent guidelines for the admissibility of hypnotically-refreshed testimony, including corroboration of the eyewitness' information, recording the interview, & the absence of suggestions by the hypnotist. These guidelines, in investigative hypnosis interviews, far exceed those employed in a standard police interview. Drs. Ronald Fisher & Edward Geisman state that hypnosis does not produce incorrect witness testimony at rates greater than other forms of interviewing. Investigative hypnotists are law enforcement officers that already have basic academy training in criminal investigation, eyewitness interviewing & procedures, psychology, recognizing mental health issues, & other topics. The hypnotists must complete & pass a TCOLE 40-hour class (many of these classes are longer), pass a state exam, & receive biannual refresher training in investigative hypnosis. Many of these hypnotists have years of law enforcement experience. Since one of the procedures in investigative hypnosis is to screen a witness for mental health issues, the hypnotists do not need extensive knowledge of counseling psychology because they are not providing therapy or dealing with someone with a mental health issue. The American Psychological Association (APA) suggests that many licensed clinical psychologists use hypnosis in their therapeutic practices. Their Division 30 is the Society of Psychological Hypnosis consisting of 637 members. I am a retired assistant chief of police in Amarillo, a reserve deputy, & graduate of the FBI National Academy. I have conducted investigative hypnosis interviews since 1993. I am a past president of the Texas Association for Investigative Hypnosis. I have taught investigative hypnosis classes for many years. My PhD is in psychology. I ask you to not take this valuable resource away from law enforcement. The courts are managing the admissibility of hypnotically-refreshed testimony well. Thank you for the opportunity to share my experience.

Dr. Perry Gilmore  
Amarillo

Brian Thomas, Sheriff  
Potter County Sheriff's Office  
Amarillo, TX

I am opposed to SB 338 & HB 3271 - if you want good law enforcement don't take away this tool.

It is not used in cases to help take dangerous criminals off the streets

If it is not used properly the judge can throw out the testimony of that witness.

It requires corroboration in # 9 per the court's ruling.

GRETCHEN SWEEN

self

Austin, TX

The Legislature demonstrated patent common sense when it passed similar legislation last term. There is no scientific basis for the belief that "hypnotizing" witness to "uncover" forgotten memories is a reliable practice--under any circumstances, let alone when undertaken by law enforcement officers. Indeed, contemporary science has demonstrated the opposite; that hypnosis is highly suggestive, induces confabulation and, instead of recovering actual memories, produces false confidence in false memories such that exposing the problem through cross-examination is virtually impossible. In short, this practice is contrary to the truth-seeking function that is supposed to fuel criminal trials. Texas should be proud to join the majority of jurisdictions who have banned hypnotically induced testimony from the courtroom. The committee should confidently vote in favor of this bill.

Chris Donofrio

Self

The Woodlands, TX

I strongly support SB 338.

I urge you to quickly pass it out of committee.

The bill's Analysis is spot-on.

We need to eliminate the use of proven unreliable witness accounts based on hypnotically-induced statements.

Respectfully,

Chris J. Donofrio

Gerald Carruth, Attorney at Law

Self - Retired Assistant U.S. Attorney, U.S. Department of Justice & Former Chief of Legal Services, Texas Department of Public Safety

Austin, TX

Rules of evidence and procedure should apply equally to all parties in a judicial proceeding. SB 338 would unduly prejudice prosecutors and benefit only criminal defendants. The infamous 1976 Chowchilla kidnapping of 26 school children and their bus driver was successfully prosecuted after the bus driver, under hypnosis, was able to recall all but one of the license plate numbers on the van used by the kidnappers. SB 338 would prevent the use of such evidence obtained under hypnosis to prosecute kidnappers of our Texas school children. *ROCK v. ARKANSAS*, 483 U.S. 44 (1987) confirmed the right of a criminal defendant to testify in her own defense, after hypnosis was used to enhance her memory recall, despite an Arkansas statute prohibiting use of posthypnosis testimony. *ZANI v. STATE*, 758 S.W.2d 233 (Tex.Cr.App. 1988) authorized use of posthypnosis testimony by a prosecution witness, provided specific procedural safeguards were satisfied including the existence of other evidence to corroborate the hypnotically enhanced testimony. SB 338 would have prevented the conviction of Robert Zani based, in part, upon a description and subsequent photo lineup identification of the defendant made after hypnosis by an eyewitness 13 years after the murder and robbery of convenience store clerk George Vizard. Under the foregoing federal and state legal precedents, **NO DEFENDANT MAY BE CONVICTED USING POSTHYPNOSIS TESTIMONY BY A PROSECUTION WITNESS, UNLESS SUCH TESTIMONY IS CORROBORATED BY OTHER EVIDENCE**, just as a conviction cannot be had on the uncorroborated testimony of an accomplice under Art. 38.14, Texas Code of Criminal Procedure. Thank you for supporting equal justice under the law by voting AGAINST SB 338.