

COMPETENCY OF WITNESSES

HYPNOSIS

FOUR GENERAL APPROACHES

1. MAJORITY: Hypnotically inducing or enhancing testimony is no per se barrier to admissibility, but can be taken into account in assessing the weight to be given the evidence.

EMPHASIS: CREDIBILITY—NOT COMPETENCY

2. TREND: ALLOWING HYPNOTICALLY ENHANCED TESTIMONY WITH SAFEGUARDS.

For example,

1. Accurate Record of what the witness knows before hypnotism.
 2. What occurs during hypnotism. (Video)
 3. Trained and disinterested hypnotist.
 4. Presence of Counsel.
 5. Experts to explain the effects of hypnotism.
 6. Careful instruction of the jury.
3. BAR TESTIMONY OF ANY MATTER DISCUSSED WHILE THE WITNESS WAS UNDER HYPNOTISM. (Arizona Rule, used only in California)
 4. ADMIT testimony re matters recalled by Witness prior to hypnosis BAR testimony recalled only through hypnosis.