

1 APPEARANCES:

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JON GRANOFF, Asst. State Attorney
on behalf of the State of Florida.

MILTON HIRSH, Esquire
9130 S. Dadeland Blvd.
Miami, florida 33156 Suite 1200

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>
DR. CHARLES MUTTER	3	

1 Thereupon:

2

DR. CHARLES MUTTER

3 was called as a witness on behalf of the Defendant, having
4 been first duly sworn, was examined and testified as follows:

5

DIRECT EXAMINATION

6 BY MR. GRANOFF:

7 Q State your name for the record.

8 A Charles Mutter, M-U-T-T-E-R.

9 Q How are you employed?

10 A I'm a physician specializing in practicing in
11 Psychiatry.

12 Q Doctor, when were you contacted in relationship to
13 this case?

14 A It was probably on September 3, 2003.

15 Q That was the first contact that you had with the
16 defense attorney?

17 A Yes, I was contacted by Mr. Hirsch to examine his
18 client.

19 Q Examine for what?

20 A Well, he stated that this man was charged with a
21 crime and it was during this man's recollection that he had a
22 blank area of memory loss and he knew that I worked with
23 hypnosis and maybe treated this. The purpose was to evaluate
24 him first and probably utilize hypnosis regression to see if
25 we could retrieve any memory, any part of the memory to

1 explain some of the incidents that occurred in the man's
2 cases.

3 Q How much was your fee for this case?

4 A I think it was fifteen hundred dollars.

5 Q Is that the Florida rate?

6 A Yes.

7 Q Including testimony, trial, depositions?

8 A No, for the evaluation.

9 Q And then the treatment?

10 A Certain law principals that I had to follow.

11 Q Okay. And what are you going to charge for trial
12 testimony or anything like that, hourly rate?

13 A Yes.

14 Q What is that?

15 A The State rate.

16 Q Okay.

17 A My fees with the State Attorney and the Public
18 Defender's Office, my fees are fixed.

19 Q Have you ever testified in court on hypnosis
20 regression?

21 A How many times in trial, jury trials, I would say in
22 excess of twenty times.

23 Q Every time that you testified on hypnosis regression
24 you have testified for the defense on this issue?

25 A No. Well, in Federal Court in New Orleans I

1 testified about hypnotic regression. I went before a Federal
2 Court Judge and the case was thrown out of court. In other
3 cases, I think in the Miami area where I testified maybe nine
4 to twelve times on different defense attorneys and/or
5 sometimes with the State Attorney's Office rarely.

6 Q Okay. I'm sorry?

7 A Rarely with the State Attorney's Office, apparently
8 with the Public Defender's Office.

9 Q I'm trying to get an idea. Have you ever testified
10 on hypnotic regression for the State in a criminal case?

11 A It may have been on one occasion.

12 Q Okay. Where was that, in what case?

13 A I don't remember that. I don't keep track of those
14 things.

15 Q In fact you testified for Mr. Hirsch before in the
16 past?

17 A Yes, I did on a different case.

18 Q What case was that?

19 A It was the B-A-I-S-D case.

20 Q What year was that?

21 A I have no idea.

22 Q Ball park figure?

23 A Years ago. I think Mr. Hirsch would be better able
24 to answer that.

25 Q Okay. What was your testimony in that case?

1 A This was a case where a woman has disassociated
2 reaction based on my examination of the hypnotic regression.
3 It was admitted in the court of law later, was subsequently
4 convicted for different reasons I believe, but there was an
5 independent psychiatric opinion. This lady was insane at the
6 time of the defense based on the independent psychiatric
7 evaluation by information that was able to be put together by
8 hypnotic regression.

9 Q She had memory loss?

10 A Yes.

11 Q It was a murder case?

12 A Yes.

13 Q So you testified maybe 29 in total on the issue?

14 A Maybe in trial -- no, not that many times, perhaps
15 ten to fifteen times.

16 Q One time for the State, you don't remember which
17 case?

18 A I believe this was a man who was a tug boat operator
19 in New Orleans, and his sister was seen at one of the
20 universities there, and she took a weekend course in hypnosis.
21 This woman was a patient and after the hypnosis she stated
22 that she was physically abused by her brother from the age of
23 eight to twelve and raped. At that point there on prior to
24 this information she was very close to her brother, and the
25 therapist confirmed the brother did not know what she was

1 talking about and the case was used in court. I was asked by
2 defense counsel to present information how hypnosis may or may
3 not be valid. This lady violated every guideline. There was
4 no notes or videotape taken.

5 Q So getting back to my questions now, I'm confused,
6 you testified for the defense in this case as well?

7 A I believe that would be for the defense.

8 Q Have you ever testified for the State in this area?

9 A I don't remember. I may have rarely. It's used to
10 benefit the State because the State laws preclude using
11 hypnosis for an eyewitness. There is one exception when I did
12 work for the Coral Gables Police on two occasions. I'm sorry,
13 one where a man was shot and able to get some identification
14 factors under hypnosis, and the second one was in a felony
15 case where a woman was mugged and under hypnosis we had a
16 license tag and those people were apprehended.

17 Q Okay.

18 A That did not go to trial.

19 Q Doctor, in this case you did the hypnotic regression
20 on the defendant, correct?

21 A Yes, sir.

22 Q What records or note have you relayed on this case,
23 do you have those with you? Can I make copies?

24 A The videotape that I made from beginning to end and
25 I have a copy of my handwritten notes when I examined this

1 man.

2 Q Can I make copies of that?

3 A Sure. Do you mind, Mr. Hirsch?

4 MR. HIRSH: May I see?

5 BY MR. HIRSH:

6 Q Anything else besides the videotape?

7 A Handwritten notes that I extracted from the video,
8 and this is the introductory information, and then I have my
9 file and an authorization to perform an evaluation with
10 hypnosis, maybe his medical release form, and also the Privacy
11 Act Law in the State of Florida.

12 Q Anything else that you relied on in this case?

13 A That's it.

14 Q Do you know anything about the case, about the facts
15 of the case?

16 A No, sir. I specifically told Mr. Hirsch I don't
17 want to know anything about the case other than the date of
18 his arrest and the date of the alleged offense.

19 Q Do you know what the charge was?

20 A Yes, I believe so.

21 Q You did at the time?

22 A Yes, that was the only thing I wished to get.

23 Q Other than the charge you did not know anything
24 about the case, date of arrest?

25 A No. Off the record.

1 (Thereupon, there was an off the record discussion
2 held after which time the following proceedings were had:)

3 MR. HIRSCH: I have no objection of you making
4 copies.

5 MR. HIRSCH: Okay. I'll be right back.

6 (Thereupon, there was a short break had after which
7 time the following proceedings were had:)

8 BY MR. GRANOFF:

9 Q What is hypnotic regression?

10 A Hypnotic regression is an ultra state of
11 unconscious. You take a person back to a specific time frame
12 and attempt to get the individual to remember information
13 during that particular point in time.

14 Q How do you perform it?

15 A How do I perform it?

16 Q Yes.

17 A I put a hemostat clamp in this hand which is about
18 thousand pounds of pressure. A person can always fake
19 hypnosis if he's faking it it's going to hurt like anything.
20 He did not respond to very painful stimuli. At that time I
21 counted him backwards and had him go back to the time of the
22 date of the alleged event.

23 Q Are you talking about this case now?

24 A Yes, sir.

25 Q Okay. I was just asking in general.

1 A I'm trying to be specific to this case. Have them
2 first do a silent recall of the material, and then I may ask
3 them for permission to speak to them and ask them questions,
4 and try to get them to recall what they may recall,
5 remembering the time of the event. Many people do, others
6 don't. I just tell them remember what they can handle
7 emotionally. I bring them back to the present. I dehypnotize
8 them and realert them.

9 Q Do you know the rules, not what the law required?

10 A No sir, of opposing parties.

11 MR. HIRSCH: I don't agree to it. I object. It's a
12 misstatement of the law.

13 BY MR. HIRSH:

14 Q You're not familiar with that?

15 A I know you can't hypnotize a witness or client
16 because there's law that was handed out a while back to
17 preclude that prehypnotic memory is okay with eyewitnesses --
18 case is not admissible in the State of Florida, but in the
19 case which the US Supreme Court supercedes State law and
20 hypnotic regression is admitted in the State, those which I
21 testified to today, and it had not been probably the only
22 issue. The judge ruled why the videotape can be shown to the
23 jury.

24 Q You never heard of any notice requirements to the
25 other party before?

1 MR. HIRSCH: Same objection. It's not this
2 witnesses concern.

3 MR. GRANOFF: I'm just asking.

4 MR. HIRSCH: I'm objecting.

5 MR. GRANOFF: If you know the answer.

6 THE WITNESS: No, I don't.

7 BY MR. GRANOFF:

8 Q Have you ever done that in the past, given notice to
9 the other party in other cases?

10 A When you say the other party?

11 Q The deposing party?

12 A No. This was initially treated as a work product.

13 Q Okay.

14 A And there is a lawyer client privilege which I
15 understand and respect.

16 Q The other thing I want to put on the record, in this
17 deposition, Mr. Hirsch told me he's going to provide me with a
18 videotape of the hypnotic session. If after I receive that
19 tape I have any other questions I need to ask Mr. Mutter based
20 on that tape he has no objection to me bringing him back here,
21 so I could do that?

22 MR. HIRSCH: Absolutely.

23 MR. GRANOFF: Thank you, Mr. Hirsch.

24 BY MR. GRANOFF:

25 Q I'm looking at your notes. Can we go over the two

1 page notes? Is this the first thing, something that you do
2 every time you do the hypnotic regression, it's chart form?

3 A Yes.

4 Q This relates to Mr. Casey?

5 A Yes, sir.

6 Q What was the date that you did this?

7 A September 15, 2003.

8 Q It was done in your office?

9 A At my home.

10 Q At your home?

11 A The reason why I did it that way I want to use the
12 video machine.

13 Q And you videotaped what part of the session?

14 A The entire session.

15 Q And the first time that you saw Mr. Casey that day
16 is on video ?

17 A Yes, I think it was a phone call that I turned the
18 video off for the moment that I was responding to the phone
19 call, then I put it back on immediately.

20 Q Okay. Outside of the entire videotape session have
21 you had any other conversations with Mr. Casey about this
22 case?

23 A No, sir.

24 Q What is nine dash fifteen?

25 A What are you referring to, sir?

1 Q On your little page here, first page --

2 A That was when I asked him the date. He gave it to
3 me. He remembered my name and these other letters that deal
4 with the past present. I was testing his memory in front of
5 the information which is accurate.

6 Q His memory was good?

7 A Yes, sir.

8 Q Nothing wrong with it?

9 A No, except for the time of the alleged offense.

10 Q Can you read that other thing next to proverbs? I
11 can't read your writing.

12 A I asked him to which he was able to do without
13 difficulty.

14 Q At the bottom it says DUI manslaughter. What is
15 that?

16 A Elderly female.

17 Q Where did you get that information from?

18 A I think he told me this.

19 Q And the one paragraph, is that basically what he
20 told you related to these memories of this event?

21 A Where are referring to?

22 Q The second page. I'm sorry.

23 Q Please show me what you're referring to. This is
24 page one. I stapled it wrong.

25 A Yes, under CC this is what he told me, he said I

1 don't remember it. Do you want me to read it into the record?
2 My car was involved. It was the night before, night before
3 this happened. I went to a bar, had three, four, mixed rum
4 and cokes. He told me he went to a second bar. He was at
5 the first bar about 5:30 in the morning. The bar closed and
6 he went to a second bar, and he had some other drinks, and the
7 next memory was about eleven o'clock in the morning he was
8 awakened by the police, and said the accident was on 79th
9 Street, which is different from where he lived, I believe, and
10 he said that it was on -- he lived on 10th and West Avenue,
11 which is Miami Beach, and he had some money that was gone and
12 his car was not there.

13 Q Okay. Says he does not remember leaving the second
14 bar. Did you say that?

15 A That's correct. He said that he had memory loss
16 around 6:30 or which he thought was the time that he leaves
17 the bar until he was awakened by the police.

18 Q 6:30 in the morning?

19 A Yes, sir.

20 Q Until about?

21 A 11:00 a.m. that morning.

22 Q Does he remember speaking to the police?

23 A He remembers being confronted by the police that
24 there was an accident and his car was involved.

25 Q Did he tell you that he remembered actual events

1 with the police after 11:00 a.m.?

2 A Well, yes, to some degree. He said he was later
3 arrested that afternoon.

4 Q Okay. Anything else that he said about that?

5 A No.

6 Q Did he tell you that he remembers giving a taped
7 statement to the police?

8 A I believe he said that he made a statement although
9 I did not put it in my notes.

10 Q Did he tell you how he was treated by the police?

11 A No, I did not ask that question.

12 Q He did not make any complaints about that to you,
13 did he?

14 A That was not asked so I can't answer that.

15 Q He did not complain about it to you?

16 A I don't remember if he did.

17 MR. HIRSCH: Did he complain about the food, about
18 any restaurants in town?

19 THE WITNESS: No.

20 MR. HIRSCH: Just curious.

21 BY MR. GRANOFF:

22 Q Doctor, I'm sorry I made you take much of your time
23 sir, you're doing all right?

24 A Yes, I'm fine.

25 Q Was two hundred and forty dollars. What does that

1 mean in your notes?

2 A He said he went to an ATM machine and two hundred
3 and forty dollars was taken out and it was missing, that some
4 of his money was missing. He did not know how or why that
5 was.

6 Q So took out two hundred and forty dollars. The next
7 thing I knew it was gone, that's what he told you?

8 A That's what he told me at the time that I saw him,
9 yes.

10 Q You stated 3/11/01, 10:15 a.m. What does that refer
11 to the last line there?

12 A He said the police came around 11:45 a.m. but
13 there's about an hour time difference.

14 Q So that's the last time. I'm trying to figure out
15 the paragraph that I'm reading. Is that when he's under
16 hypnosis or not?

17 A No, this is in an awakened state. I usually ask
18 what do you remember about that particular date. Maybe I
19 could explain.

20 Q Go ahead.

21 A After I do a complete work up I take the person's
22 past history, where they were born and grew up, background and
23 education and work history, and then I ask them to tell me a
24 medical history as well. I determine how they function
25 mentally. After I do that I usually tell them to tell me

1 about what happened at that time or what do you recall
2 consciousness without hypnosis, and this is called prehypnosis
3 to see if I could get any data, information to make sense of
4 this, and he told me what happened prehypnotically and he said
5 from the time that he awoken -- I'm sorry, around 6:30 in the
6 morning the police woke him. He had no memory of any events.
7 He did not know where his car was and also some money was
8 missing. That's the only thing that I recall that was
9 explained to him at that time.

10 Q So this first page that was the prehypnotic state?

11 A Yes, this is all prehypnotic. That is correct.

12 Q Then you tried to hypnotize him?

13 A No, I did hypnotize him.

14 Q How do you know that he was under hypnosis?

15 A I put a hemostat on his hand and a person faking it
16 is going to respond to painful stimuli. He did not respond,
17 whatever that is on the videotape, and then I proceed to
18 regress him back in time to the date of the alleged offense
19 which was March 11, 2001.

20 Q How long did this whole event take while he was
21 under hypnosis, how long?

22 A Less than an hour.

23 Q Okay. During that hour what question do you ask
24 him?

25 A Well, I have to do this in a very professional

1 manner. I'm going to tell him I'm going to ask you a number
2 of questions. You said first thing that comes to you if you
3 don't know the answer say you don't know because sometimes you
4 could coheres false memory under hypnosis. That's also
5 possible. I take every precaution, that's why I videotape it
6 so it could be visualized by other individuals to show that
7 you do not do anything that is unprofessional in that you
8 could get false information under hypnosis. That has been
9 proven, so I I do this in a nonleading way. I follow his line
10 of thought. I asked him what happened next and after the
11 silent memory and get as much information as I can. This is
12 what happened in this particular case. I suggested
13 posthypnotic that he may have other memory that could come
14 back later that he could confirm with his attorney later that
15 he could get other data and I bring him back to the awakened
16 state. I dehypnotize him and that was the end of the
17 interview.

18 Q So March 11, 2001 he told you that he did not
19 remember getting into his car; is that accurate?

20 A That is correct. He remembers leaving the second
21 bar and the next thing he remembers it was about eleven or so
22 in the morning when he was abandoned by the police.

23 Q Did he tell you that he drove to the first bar?

24 A I believe so. That would be on the tape. I don't
25 recall writing that down.

1 Q I mean was it your impression that he had his car
2 out with him that night?

3 A I don't know. I really did not ask that specific
4 question if I recall but the videotape will reveal whether I
5 did or not. He did not know anything about the car until
6 posthypnotically.

7 Q What I'm saying, when you're in posthypnotically,
8 I'm just reading through the notes. It states that he does
9 not remember getting into the car, then went to a nightclub
10 1:30 a.m. to 2:00 a.m. I'm reading your first three lines
11 there.

12 A Yes, he says I don't remember my car was involved.

13 Q No, I'm reading this.

14 A Yes, he says his car was involved but told me about
15 this in the prehypnotic state. That's right, he said that he
16 did not remember leaving the second bar or how he got home.

17 Q Okay. You state here that he drove to another club
18 between 5:30 and 6: an a.m.

19 A I believe so, yes.

20 Q That's what he told you?

21 A Yes.

22 Q And was he referring to his own car?

23 A I would presume so. I did not ask him if it was his
24 own car.

25 Q No memory leaving the bar?

- 1 A That's correct.
- 2 Q And he woke up and the police were knocking. The
3 police were in my apartment, woke up by police in my
4 apartment?
- 5 A Yes.
- 6 Q In my apartment in South Beach the car was not
7 there?
- 8 A And he saw the accident occurred around 10:00 a.m.
- 9 Q Last memory around 7:00 a.m. Is that accurate?
- 10 A That's correct.
- 11 Q And this page referring to the hypnotic state, is
12 that accurate or not?
- 13 A No, this is prehypnotic.
- 14 Q Okay. So this is prehypnotic and this is
15 prehypnotic?
- 16 A Correct.
- 17 Q Yellow page referring to the yellow page of notes
18 that you have in your hand?
- 19 A Yes.
- 20 Q With Sean Casey underlined on the top?
- 21 A Yes.
- 22 Q Memory, Sunday a.m.
- 23 A The last --
- 24 Q 3-1101. Go ahead doctor.
- 25 A Of the last line under hypnosis when I put regarding

1 the incident he said no recall, and this was under hypnosis,
2 and what I said is that he had an alcoholic blackout, no post
3 hypnotic memory. He left the bar with the guy but was not
4 sure. That's the only memory that he gave.

5 Q That's the only memory that he had?

6 A Yes.

7 Q Which is really no memory, right?

8 A Well, no memory of the events that occurred at the
9 homicide.

10 Q And prehypnotic state he admitted to drinking how
11 many drinks to you?

12 A He said that the first bar three or four mixed
13 drinks, all totaled five to six drinks.

14 Q And was it your conclusion that the reason he had no
15 memory because of blackout related to alcohol?

16 A That would be the most logical conclusion, yes.

17 Q What would cause you to experience a blackout
18 relating to alcohol, how much alcohol?

19 A It depends on each individual and their physical
20 structure.

21 Q Right.

22 A But some people can have two to three drinks and
23 have a blackout if they're sensitive to alcohol. He has five
24 to six based on his recollection which I have to trust what he
25 told me, and he claims that he had no memory and no other way

1 to explain this.

2 Q So it would be your experience that somebody would
3 have to be pretty drunk to have a blackout related to
4 alcohol?

5 A Yes, pretty intoxicated.

6 Q You could still function even though you have no
7 memory; is that correct?

8 A Roughly but not well.

9 Q Sure. For example you could still try to drive a
10 car, right?

11 A Some people do, yes.

12 Q If you're called to testify as a witness by
13 Mr. Hirsch, the defense attorney is there anything else that
14 you're going to testify to being involved in this case that
15 you could think of?

16 A No.

17 Q Is there anything else that you think is relevant
18 that we have not discussed, Doctor Mutter?

19 A No, my participation was very limited in this case
20 to see if we could retrieve. There was some evidence that
21 this car was involved in this accident which could have
22 implicated him. My major function was to see if we could
23 bringing back memory on his part to help his attorney with his
24 own defense.

25 Q You were not able to do that?

1 A No, sir. It was not successful.

2 MR. GRANOFF: Okay. Thanks a lot, doctor, I
3 appreciate it.

4 MR. HIRSCH: I have one question. Do you have an
5 opinion as to whether or not Sean Casey was too drunk or
6 not too drunk to drive a car at the time in question?

7 THE WITNESS: I don't have an answer to that because
8 I would defer to law enforcement blood alcohol tests and
9 other specific data to get a better answer.

10 MR. HIRSCH: Thank you very much.

11 (Thereupon, there was an off the record discussion
12 held after which time the following proceedings were had:)

13 BY MR. GRANOFF:

14 Q Back on the record. Dr. Mutter, how many people out
15 of all the people that you do the hypnotic regression have no
16 memory?

17 A I worked with about nine or ten people in using
18 hypnotic regression. I think two people have not been able to
19 get data from.

20 Q How many people have you done this to overall in
21 your entire career?

22 A Well, I work with thousands of people but not in the
23 medical or legal area.

24 Q I'm talking about hypnotic regression, how many
25 times have you done this your entire career?

1 A Many, hundreds of times.

2 Q Out of all the hundreds of times you did hypnotic
3 regression how many people have not had any memory of
4 events?

5 A Maybe four altogether.

6 Q Okay. That's all I have. Thank you very much.

7 (Thereupon, the deposition concluded at 1:15 a.m.)

8 FURTHER DEPONENT SAITH NOT.

9

10 _____
 DEPONENT

11

12 Sworn to and subscribed before me this 3rd day of
13 June, 2004.

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16 _____
 Notary Public

17 My commission expires:

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CERTIFICATE

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, CINDY CHAIFETZ, Court Reporter, certify that I was authorized to and did stenographically report the foregoing deposition; and that the foregoing transcript is a true record of the testimony and given by the witness.

I further certify that said witness was duly sworn according to law.

I further certify that I am not a relative, employee, attorney, or counsel or any of the parties, nor am I a relative or employee or any or the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 15 day of June, 2004

Cindy Chaifetz

Cindy Chaifetz,
Court Reporter

