

# STATE V MACK

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## Introduction to the State V Mack Decision

The landmark legal decision known as **State V Mack** established a crucial precedent within American jurisprudence concerning the admissibility of evidence derived from memory recovered or refreshed under hypnosis. Issued by the Minnesota Supreme Court, this ruling fundamentally altered the landscape for forensic investigations and courtroom testimony, particularly in cases relying heavily on eyewitness accounts. At its core, **State V Mack** determined that testimony based on memories retrieved during or subsequent to a hypnotic session is generally inadmissible in court. This strong stance was necessitated by the growing body of psychological research highlighting the inherent unreliability and potential for irreversible contamination associated with hypnotically induced recollections, leading the court to prioritize the fairness of the judicial process over potentially misleading evidence. The ruling serves as a powerful illustration of the intersection between developing scientific understanding, specifically in cognitive psychology, and the stringent requirements of legal proof and due process.

The central mechanism implemented by the **Mack** decision is often referred to as the **per se exclusion rule**. This rule mandates the automatic exclusion of evidence when it is determined to have originated from a memory recovered through hypnosis, irrespective of the credentials of the hypnotist, the procedures followed during the session, or the apparent coherence of the testimony itself. This categorical ban reflects the court's deep skepticism regarding the ability of legal fact-finders, such as juries, to accurately assess the credibility and reliability of such evidence. Unlike other forms of contested evidence where the trial judge might weigh reliability on a case-by-case basis, the **per se** nature of the **Mack** rule indicates a definitive judicial judgment that the probative value of hypnotically refreshed memory is outweighed by the risk of undue prejudice and confusion of the issues.

It is imperative to understand the foundational context of the ruling, which emerged during a period when hypnotic techniques were increasingly, though often carelessly, utilized by law enforcement agencies seeking to enhance witness recall in complex criminal investigations. Prior to **State V Mack**, courts often struggled with inconsistent standards, sometimes admitting the evidence and sometimes excluding it, creating a patchwork of conflicting precedents across jurisdictions. The Minnesota Supreme Court's definitive action provided a clear, enforceable standard designed to protect the integrity of the trial process from memories that, while potentially feeling truthful to the witness, are prone to distortion, confabulation, and inadvertent suggestion. This decision thus represents a critical judicial intervention aimed at limiting the use of scientifically questionable investigative tools in the pursuit of justice.

## The Genesis of the Per Se Exclusion Rule

The development of the **per se exclusion rule** was not an arbitrary legislative act but a direct

judicial response to mounting psychological and legal concerns regarding the nature of memory retrieval under an altered state of consciousness. The court recognized that hypnosis does not function as a truth serum or a perfect memory recall device; rather, it often increases the suggestibility of the subject and can inadvertently lead to the creation of false memories, a phenomenon known as **confabulation**. When a witness is hypnotized, they feel immense pressure to produce information, often resulting in them filling gaps in their genuine memory with plausible, but entirely fabricated, details. Crucially, once these manufactured details are integrated into the witness's narrative, the witness often gains a profound, yet unwarranted, confidence in their new, reconstructed memory, making it incredibly difficult for cross-examination to expose the falsehood.

The legal system traditionally relies on the jury's ability to observe the witness's demeanor and assess their certainty and consistency when weighing credibility. However, the hypnotic process inherently compromises this assessment. A witness who was uncertain before hypnosis often returns to the stand with a rock-solid, yet artificially induced, certainty regarding the details recovered. This heightened confidence, regardless of factual accuracy, poses a severe risk of misleading the jury. The **Mack** court concluded that standard evidentiary safeguards, such as cross-examination and expert testimony explaining the flaws of hypnosis, were insufficient remedies to counteract the powerful, prejudicial effect of a witness confidently testifying to a memory that may have been implanted or distorted during the hypnotic session. Therefore, the rigid exclusion rule was deemed necessary as the only effective prophylactic measure.

Furthermore, the ruling addressed the critical issue of **source monitoring errors**. Post-hypnosis, the witness may genuinely believe that the details they recalled under hypnosis were actual memories of the event, failing to distinguish between information derived from their original memory trace, information suggested by the hypnotist, or details they fabricated to satisfy the demands of the session. This inability to accurately identify the source of the memory makes the witness impervious to impeachment regarding the reliability of the memory's origin. By adopting the **per se exclusion rule**, the **State V Mack** decision sought to prevent the introduction of evidence that inherently masks its own unreliability, thereby protecting the defendant's right to a fair trial based on verifiable facts rather than reconstructed, contaminated testimony.

## Hypnosis in Forensic Settings: Historical Context

Before landmark rulings like **State V Mack** became widely accepted, the use of hypnosis in criminal investigations enjoyed a period of relatively enthusiastic adoption, particularly in the mid-to-late 20th century. Law enforcement agencies viewed hypnosis as a powerful tool to unlock "repressed" or forgotten memories from victims and witnesses of traumatic crimes. The underlying, though scientifically inaccurate, assumption was that the human mind recorded all events perfectly and that hypnosis merely served as a retrieval mechanism to access these hidden, accurate records. This belief led to the widespread practice of hypnotizing key witnesses, often resulting in

complex and highly detailed testimonies that seemed compelling to investigators and prosecutors alike, providing information that might otherwise have been unavailable.

However, the historical application of hypnosis was often executed without the rigorous protocols required to minimize suggestion. Hypnotists, who were frequently police officers rather than trained medical or psychological professionals, sometimes inadvertently introduced facts or leading questions that contaminated the witness's memory. For example, asking a witness "Can you see the color of the suspect's jacket?" immediately suggests the existence of a jacket and a specific color, rather than allowing the witness to recall freely. This lack of standardization and the resultant high rate of memory distortion began to generate severe legal complications, particularly when key identification evidence rested solely on hypnotically refreshed testimony.

The judicial climate began to shift as experts in cognitive science detailed the dangerous potential for abuse and inaccuracy inherent in the process. The legal community started realizing that admitting hypnotically refreshed testimony created an unfair advantage for the prosecution, as the defense was essentially rendered incapable of proving that the refreshed memory was fabricated or suggested. The case of **State V Mack** served as a crucial turning point, moving the legal community away from a naive acceptance of hypnosis as a memory aid and towards a recognition of its profound potential for evidentiary contamination and the miscarriage of justice. This historical re-evaluation underscored the necessity of establishing firm, clear boundaries for the use of psychological techniques within the courtroom.

## Psychological Mechanisms Underlying Hypnotically Refreshed Memory

To fully appreciate the reasoning behind the **Mack** ruling, one must understand the psychological processes that undermine the reliability of hypnotically induced memory. Hypnosis is fundamentally a state of focused attention and heightened responsiveness to suggestion, not a gateway to perfect memory archives. When a person is hypnotized, their critical filters are lowered, making them far more susceptible to receiving and integrating external information, even if that information is subtle or unintended. This increased suggestibility is the primary psychological mechanism that concerns the courts, as it means the resulting memory is a collaborative effort between the witness's genuine recall and the input, both conscious and unconscious, from the hypnotist or the investigative environment.

A second critical mechanism is the previously mentioned phenomenon of **confabulation**. The hypnotic state encourages the subject to maintain the narrative flow and satisfy the perceived expectations of the hypnotist. If there are gaps in the witness's memory, the brain will instinctively attempt to fill those voids with logical, yet fabricated, information to create a coherent story. These fabricated details are not intentional lies; the witness genuinely believes they are recalling real events. This is why hypnotically refreshed memories often appear so rich in detail and consistent in

structure. The problem is that these details, while seemingly robust, lack a grounding in actual perception of the original event, rendering them scientifically invalid as evidence of fact.

Furthermore, hypnosis significantly impacts the witness's metacognitive awareness--their ability to monitor and reflect upon their own thought processes and the source of their memories. After a hypnotic session, the witness's perceived certainty dramatically increases, regardless of the memory's veracity. This phenomenon, known as memory hardening or **post-hypnotic confidence boost**, means that a witness who was previously hesitant or unsure becomes highly confident regarding even the most dubious details. From a psychological standpoint, this enhanced confidence is entirely disconnected from the accuracy of the memory itself. Because the jury relies heavily on a witness's confidence level to gauge truthfulness, the psychological effect of hypnosis directly subverts the established mechanisms for credibility assessment in the courtroom, cementing the rationale for the **per se exclusion rule**.

## Legal Rationale and Concerns over Reliability

The core legal justification for the **State V Mack** decision rests squarely on the principles governing the admissibility of scientific evidence and the constitutional requirement for fair trials. Prior to **Mack**, the admissibility of novel scientific techniques was often evaluated under the **Frye Standard**, which required that the technique be generally accepted within the relevant scientific community. The Minnesota court, recognizing the division and skepticism within the psychological community regarding the forensic reliability of hypnosis, found that hypnotically refreshed memory failed this crucial test of scientific acceptance, particularly concerning its ability to reliably produce accurate factual recall in a forensic context.

The ruling emphasized that the primary legal concern was not merely that the evidence might be wrong, but that the process of obtaining it rendered it fundamentally untestable and misleading. If the defense cannot effectively challenge the origin or veracity of a memory because the witness genuinely believes the implanted or fabricated details are true, the adversarial system breaks down. The court concluded that the risk of prejudice--where the jury gives undue weight to highly confident, yet contaminated, testimony--far outweighed the marginal probative value of information gained through hypnosis. This careful balancing act ultimately led the court to favor a blanket exclusion over a flawed, case-by-case reliability determination.

The decision also implicitly addressed due process concerns. Allowing the prosecution to introduce evidence that is inherently unreliable and resistant to typical adversarial testing mechanisms potentially violates the defendant's right to confront the evidence against them in a meaningful way. By establishing the **per se rule**, **State V Mack** provided clear, predictable guidance, minimizing the potential for judicial error and ensuring that the outcome of criminal trials rests on verifiable, non-contaminated evidence. This strong stance reinforced the judiciary's role as the

gatekeeper, preventing the introduction of techniques deemed too fraught with the potential for false positive outcomes, thereby safeguarding the integrity of the judicial record.

## Scope and Limitations: Exceptions for the Defendant

While **State V Mack** established a broad **per se exclusion rule** for hypnotically refreshed memories, a critical limitation exists, specifically concerning the defendant's right to testify on their own behalf. The ruling dictates that the exclusion applies primarily to testimony offered by the prosecution or by witnesses for the prosecution. However, the constitutional rights afforded to a criminal defendant--most notably the Fifth Amendment right against self-incrimination and the Fourteenth Amendment guarantee of due process--necessitate a vital exception to the exclusion rule. If a defendant chooses to undergo hypnosis for investigative purposes and subsequently wishes to testify, they are generally permitted to do so, even if their memory was refreshed through that process.

This exception is predicated on the fundamental constitutional principle that a defendant must be allowed to present a defense and offer testimony on their own behalf. Barring a defendant from testifying solely because they underwent hypnosis would constitute an unacceptable infringement upon their constitutional rights, even if their testimony carries the same risks of confabulation and increased confidence as a prosecution witness. The legal system permits this risk because the constitutional right of the accused to speak in their own defense is deemed paramount to the evidentiary concerns regarding reliability. The defendant is not being forced to rely on the evidence; they are choosing to present their narrative, which is a choice protected by the highest law.

In such cases where the defendant testifies after hypnosis, the court must implement specific safeguards to mitigate the inherent unreliability. For instance, the jury may be instructed that the defendant's memory was hypnotically refreshed and that they should treat the testimony with caution. Furthermore, the prosecution is generally permitted to introduce expert testimony detailing the dangers of hypnosis, allowing the jury to properly contextualize the defendant's testimony and assess its credibility with appropriate skepticism. Thus, while the **per se rule** is rigid for most witnesses, it bends significantly for the defendant, demonstrating a crucial balance between evidentiary reliability and fundamental constitutional protections.

## Impact and Subsequent Jurisprudence (The Legacy of Mack)

The **State V Mack** decision had a profound and lasting impact, serving as a critical touchstone for jurisdictions across the United States. Following the Minnesota Supreme Court's lead, many state supreme courts adopted the **per se exclusion rule**, acknowledging the insurmountable difficulties in reliably assessing hypnotically induced testimony. The ruling standardized the approach to this

type of evidence, resulting in a significant decrease in the use of forensic hypnosis by police departments nationwide. The legacy of **Mack** is characterized by a heightened judicial awareness of the delicate nature of memory and the need for stringent standards when applying psychological techniques in a legal context.

However, the application of the rule has not been entirely uniform. While many states adopted the strict exclusion rule, other jurisdictions opted for a more moderate, case-by-case approach. The opposing view, often referred to as the "admissibility approach," allows hypnotically refreshed testimony if the proponent can demonstrate that strict, pre-established procedural safeguards were followed during the hypnotic session (such as the use of video recording, limiting the number of participants, and documenting all suggestions). Nevertheless, even in these moderate jurisdictions, the influence of **Mack** is evident, as courts require specific protocols designed to prevent the very abuses and contaminations the **Mack** court sought to eliminate.

Crucially, the principles articulated in **State V Mack** foreshadowed broader changes in the way courts handle scientific evidence. The ruling contributed to a legal environment that demanded greater scientific rigor and scrutinized the methodology underlying evidentiary claims, paving the way for the later development and widespread adoption of the **Daubert Standard**, which focuses on the scientific validity and methodology of expert testimony. Thus, **Mack** is remembered not only for ending the widespread use of forensic hypnosis but also for championing a more cautious, scientifically informed approach to all novel evidence presented in court.

## Comparison with the Frye and Daubert Standards

Understanding the **State V Mack** decision requires placing it within the larger framework of scientific evidence admissibility, specifically in relation to the **Frye Standard** and the later **Daubert Standard**. When **Mack** was decided, the prevailing test for scientific evidence admissibility in many jurisdictions was the **Frye Standard**, which required that the scientific principle or technique be generally accepted in the relevant scientific community. The **Mack** court effectively utilized the **Frye** test to exclude hypnotically refreshed memory, determining that the lack of consensus among cognitive scientists and psychologists regarding the reliability of the technique meant it failed the general acceptance threshold. The court found that the dangers of suggestion and confabulation were too widely acknowledged to permit admission under a standard demanding scientific consensus.

In contrast, the **Daubert Standard**, established by the U.S. Supreme Court in 1993, shifted the focus from general acceptance to the scientific validity and methodological rigor of the evidence. **Daubert** requires trial judges to act as "gatekeepers," assessing factors such as whether the technique can be tested, whether it has been subjected to peer review and publication, the known or potential rate of error, and the existence and maintenance of standards controlling its operation.

Although **Mack** predates **Daubert**, the reasoning used in **Mack** aligns perfectly with **Daubert's** concerns. The high, unmeasurable error rate associated with hypnosis and the absence of reliable controlling standards are precisely the issues that would lead to its exclusion under the **Daubert** framework today.

Therefore, while **State V Mack** initially operated under the authority of the **Frye** framework, its conclusion--that the inherent risk of scientific unreliability justifies exclusion--remains robust even under the more flexible **Daubert** regime. Both standards, applied to forensic hypnosis, lead to the same result: the evidence is deemed too scientifically flawed and potentially misleading to be presented to a jury without overwhelming safeguards. This consistency across different legal standards underscores the strength of the psychological evidence demonstrating the unreliability of hypnotically refreshed memory in the forensic context.

## Ethical Considerations for Forensic Psychologists

The ruling in **State V Mack** imposed significant ethical responsibilities upon forensic psychologists and psychiatrists who might be called upon to utilize or evaluate hypnosis in criminal cases. Before **Mack**, the ethical guidelines surrounding forensic hypnosis were often weak or non-existent, leading to practices that compromised professional standards. The ruling served as a stern legal reminder that practitioners must adhere to the highest ethical mandates, ensuring that their work does not inadvertently lead to the contamination of evidence or the miscarriage of justice. Psychologists are ethically bound to prioritize the scientific validity and reliability of their techniques over the pressure to produce information for law enforcement.

Forensic professionals must now clearly communicate the limitations of hypnosis, particularly its tendency to induce false confidence and confabulation, to both legal counsel and law enforcement. If a psychologist is involved in the hypnotic session of a witness, they must ensure rigorous, documented protocols are followed, primarily to protect against suggestion, even if the resulting memory is unlikely to be admissible under the **per se exclusion rule**. The ethical imperative is to prevent memory contamination at all stages, recognizing that once a memory is contaminated, it is practically impossible to restore its original integrity.

In jurisdictions that still permit the use of hypnotically assisted testimony under strict guidelines (often only for investigative leads, not courtroom testimony), the psychologist must act as a crucial check against procedural abuse. This includes ensuring that a detailed pre-hypnosis interview is conducted, that the session is recorded in its entirety, and that only neutral, non-suggestive language is used. Ultimately, **State V Mack** reinforced the ethical obligation of mental health professionals to serve truth and accuracy within the legal system, cautioning against the enthusiastic adoption of techniques that lack demonstrable scientific reliability.