

One Thing. Just One Thing.

Focusing Attention on Impairment During the
Direct Examination of Your Arresting Officer

by Elliott Wilcox

Did you ever see the movie *City Slickers*? There's a scene worth watching in that movie that will improve the way you prepare your D.U.I. cases and present your direct examinations. In the scene, Curly (Jack Palance), a gruff and grizzled cowboy, reveals the secret of life to Mitchie (Billy Crystal):

Curly: Do you know what the secret of life is?

Mitchie: No, what?

Curly [holding up a single finger]: This.

Mitchie: Your finger?

Curly: One thing. Just *one thing*. You stick to that and everything else don't mean sh**.

Mitchie: That's great, but what's the one thing?

Curly: That's what you gotta figure out.

Most of your D.U.I. cases can be boiled down to **one thing**, too. Do you know what your **one thing** is? Is it actual physical control of the automobile? The defendant's identity? Whether the defendant was under the influence of alcohol?

Probably not. And it's not the intoxilyzer, either.

No, for the majority of your cases, your **one thing** will be whether or not the defendant's normal faculties were **impaired**. If you can prove that, everything else don't mean... well, you know.

In this article, you'll discover a technique to highlight your **one thing** for the jury during the direct examination of your arresting officer. Preparation and planning will be essential to your direct examination, so start by asking your police officer to arrive well in advance of the time he's expected to testify. Here are the specific directions you'll want to give him:

“Officer, before you testify, I'll need you to do me favor. I want you to focus your attention on the defendant. Watch him walking, talking, standing, etc. Pay particular attention to any differences you notice between the way he appears today and the way he appeared the night you arrested him. Are there any physical differences? Do his eyes look different? His face? Differences in his balance? Any differences in his speech? Is his reaction speed different? Keep your eyes, ears, and nose open for any differences between how he appears today compared to how he appeared the night you arrested him for D.U.I.”

The reason you're giving him these instructions is because you're going to conclude your direct examination by contrasting the differences between how the defendant appears today (his normal faculties) with how he appeared the night he was arrested (the indicators of impairment).

Here is an example of how to conclude your direct examination by highlighting your **one thing** for the jurors:

Q. Officer McNulty, have you had the opportunity to observe the defendant today at the courthouse?

A. Yes, I have.

Q. Is there any difference between how he looks today, compared to the night you arrested him?

A. Yes, there is.

Q. Let's talk about his physical appearance. Start with his eyes.

A. Today, his eyes are clear. That night, his eyes were bloodshot and glassy.

Q. And his face?

A. Today, I'd say his face looks “normal.” That night, his face was red and flushed. It looked as if he was sweaty, even though it was cool out.

Q. Any difference in the way he sounds?

A. Today, he's been articulate and crisp in his speech, but that night, he was slurring his speech and stumbling over words.

Q. What about his balance?

A. Today, he hasn't had any trouble walking or standing up, and has been steady on his feet. That evening, he couldn't even stand up straight – he swayed side to side, and lost his balance.

Q. Do you notice any other differences between how he appears today, contrasted with the way he looked the night you arrested him for Driving Under the Influence?

A. No, I think I've mentioned everything I saw. [Asking this question gives the witness an opportunity to mention any other indicators of impairment that you may have missed.]

Q. Overall, what's the difference between the defendant's appearance today and how he appeared the night you arrested him?

A. Today, he's sober. That night, he was drunk.

One thing. Just **one thing...** *impairment*. It takes planning and preparation to develop these types of direct examinations, but the payoff makes it all worthwhile. When your jurors retire to the deliberation room with that **one thing** illustrated clearly in their minds, their decision will be an easy one.

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