

## DWI Cross Examination Questions

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### Probable Cause for Stop

1. No accident?
2. No criminal violation?
3. Traffic light per ticket?
4. According to Report-Not close to hitting other car
5. According to Report not endangering any person/property?
6. No details in report of driving willful on went to disregard of rights of others?
7. No ticket for lane violation?
8. No ticket for careless?
9. No reason to believe weapons?
10. No tip by reliable informant?
11. Pulled over my client without a warrant?
12. No Radar?
13. No Pace?
14. Could not have issued ticket for speeding?

### Cross of Police Regarding Field Sobriety

15. Do you have documents describing how, under what conditions and by whom each test was given? Are you aware the National Highway Traffic Safety Administration has advice and instructions on giving the Field Sobriety Test.

#### 15A. Walk and Turn

Your report does not say that you:

- Always begin by having the subject assume the heel-toe stance
- Verify that the subject understands that the stance is to be maintained while the instructions are given.
- If the subject breaks away from the stance as the instructions are given, cease giving instructions until the stance is resumed
- Tell the subject that he or she will be required to take 9 heel-to-toe steps down the line, to turn, and to take 9 heel-to-toe steps up the line.
- Demonstrate several heel-to-toe steps
- Demonstrate the turn
- Tell the subject to keep the arms at the sides, to watch the 1

feet, to count the steps aloud, and not to stop walking until the test is completed.

- Ask the subject whether he or she understands; if not, re-explain whatever the subject doesn't understand
- Tell the subject to begin
- If the subject staggers or stops, allow him or her to resume from the point of interruption; do not require the subject to start over from the beginning
- Cannot keep balance while listening to instructions (i.e., breaks away from the

heel-to-toe stance)

- Starts before instructions are finished
- Keeps balance but does not remember instructions
- Stops while walking to steady self
- Does not touch heel-to-toe while walking (i.e., misses by at least one-half inch)
- Loses balance while walking (i.e., steps off line)
- Uses arms for balance (i.e., raises arms by six inches or more)
- Loses balance while turning
- Incorrect number of steps

Are you aware the NHTSA states that officers should note in their reports how many times each of the eight clues appears. However, isn't it true the NHTSA for purposes of applying the standardized criterion, a clue should be "counted" only once, even if it appears more than once.

#### 15B. One Leg Stand

Your report does not say you would:

- Tell the subject to stand with heels together, and arms at sides
- Tell the subject not to start the test until you say to do so
- Ask the subject whether he or she understands
- Tell the subject he or she will have to stand on one foot, with the other foot about six inches off the ground
- Demonstrate the stance
- Tell the subject to count from 1 to 30, by thousands
- Demonstrate the count, for several seconds
- Ask the subject whether he or she understands; if not, re-explain whatever is not understood
- Tell the subject to begin
- If the subject stops or puts the foot down, allow him or her to resume at the point of interruption; do not require the count to begin again at "one thousand and one"
- Swaying while balancing
- Uses arms to balance (i.e., raises arms from side six inches or more)

- Slightly uneasy
- Quite unsteady
- Starts before instructions are finished
- Puts foot down
- Hops

Are you aware the NHTSA states that there are the only four validated clues of One Leg Stand.

#### 15C. Horizontal Gaze Nystagmus Test

Your report does not say:

- Hold the stimulus 12-15 inches in front of the subject's face
- Keep the tip of the stimulus slightly above the subject's face
- Always move the stimulus smoothly
- Always check for all three clues in both eyes
- Lack of smooth pursuit
- Distinct jerking at maximum deviation
- Onset of jerking within 45 degrees

Are you aware that no other "clues" are recognized by NHTSA as valid indicators of horizontal gaze nystagmus. In particular, NHTSA does not support that allegation that onset angle can reliably be used to estimate BAC, and considers any such estimation to be misuse of the horizontal gaze nystagmus test.

16. Documents describing test results?

17. Documents describing "test" results?

18. What are procedures to permit defendant to obtain independent tests of blood, breath or?

According to your Alcohol influence rep?

19. Section 25 of Alcohol Influence report, Able to walk, talk?

not falling

-not on hands and knees

-not staggering

20. According to Section 26, Ability to stand?

-no swaying

-no leaning for balance

-feet not wide apart

21. According to Section 27, Speech-not slurred?

-not incoherent

-not slobbering

- could understand what she was saying
- 22. Demeanor-cooperative, polite, calm?
- 23. Eyes watery now?
- 24. When is allergy season?

#### Questions on Breathalyzer Op Check List

- 25. What is step one?
- 26. What did you do next?
- 27. What did thermometer show? [50 degrees plus minus 3 degrees C]
- 28. What next? [Gauge Reference Ampoule]
- 29. How do you Gauge Reference Ampoule?
- 30. Where put Ref. Ampoule? [Left hand holder]
- 31. Do next? [Gauge Test Ampoule open]
- 32. How do you Gauge the Test Ampoule?
- 33. Where do you Gauge the Test Ampoule? [Insert in right hand holder]
- 34. What next? [insert bubbler]
- 35. What is bubbler connected to? [outlet]
- 36. What is step 5? [Turn to take]
- 37. After turn to take- what next? [Flush out]
- 38. After flush out, what next? [Turn to analyze]
- 39. What happens next? [When red empty signal appears wait 12 minutes]
- 40. How long do you wait? [12 minutes]
- 41. Use a formal stop watch to time 1 1/2 minutes?
- 42. After waiting what next? [Turn on light and balance]
- 43. How balance?
- 44. Did you show defendant how this is done?
- 45. Do next? [Set Blood Alcohol Pointer on Start line]
- 46. Do next? [Turn to Take, Take Breath Sample]
- 47. What happens next? [When red empty signal appears, wait 1 1/2 minutes, turn on light and balance]
- 48. Next step? [Record answers, turn control knob to "off"; dispose of test ampoule]

#### DWI Questions Regarding Under Influence

- 49. Did prosecutor or state supply an experts report?
- 50. Not a medical doctor?
- 51. No test of Pharmacological effects of any medications?
- 52. No direct measurement of the quantity of any medications or 4

drugs in defendants blood?

53. Gas Chromatography/ Mass spectrometry can provide direct measurement of quality?

54. You don't have any gas Chromatography results with your blood?

55. Not licensed to prescribe medications?

56. Have not attended Medical School?

57. Not Qualified to Render a Medical Opinion

58. Do not have a Ph.D..?

59. Do not have a Masters degree in Chemistry

60. Do not have a BS degree in Chemistry?

[saved 100 Cross Exam Q-DWI Brendan articles]