

AUTHOR'S INTRODUCTION

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Operating under the influence cases are among the most frequently litigated criminal cases in Massachusetts. Successfully defending an individual charged with OUI requires far more than a working knowledge of the law. The practitioner must understand how alcohol is absorbed, distributed, and eliminated by the human body; the techniques employed by law enforcement, including field sobriety testing, breath testing, and blood testing; the limitations and potential sources of error associated with those tests; and the continually evolving legal landscape governing their admissibility.

With nearly 20,000 OUI arrests each year in Massachusetts, the stakes are significant. Yet many cases that warrant meaningful litigation are resolved by plea without a thorough examination of the evidence. Drunk Driving Defense is intended to provide the practitioner with a practical understanding of an OUI prosecution—from the initial motor vehicle stop through investigation, testing, pretrial litigation, trial, and, ultimately, acquittal.

The renewed use of breath testing requires defense counsel to understand not only the operation of the breath-testing instrument, but also the protocols and procedures that law enforcement must follow when a defendant submits to testing at a place of detention. Equally important is an understanding of the instrument's calibration methodology, maintenance and quality-control procedures, records, and the scientific principles underlying the reported result. Further, there is a robust jurisprudence surrounding breath testing that the practitioner needs to understand and explore in the defense of any OUI case using a breath test measurement.

Accordingly, the book places particular emphasis on the practical aspects of analyzing and defending breath-test cases. Counsel must be prepared to examine the entire testing process—not simply the number reported by the instrument. That examination may include the circumstances surrounding the test, compliance with required protocols, the instrument's calibration and performance, laboratory and quality-assurance records, discovery, and the scientific and legal foundations supporting the

Commonwealth's evidence.

The objective of Drunk Driving Defense is straightforward: to provide Massachusetts practitioners with the knowledge necessary to identify weaknesses in an OUI prosecution, develop effective litigation strategies, and provide every client with the vigorous defense to which he or she is entitled.

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