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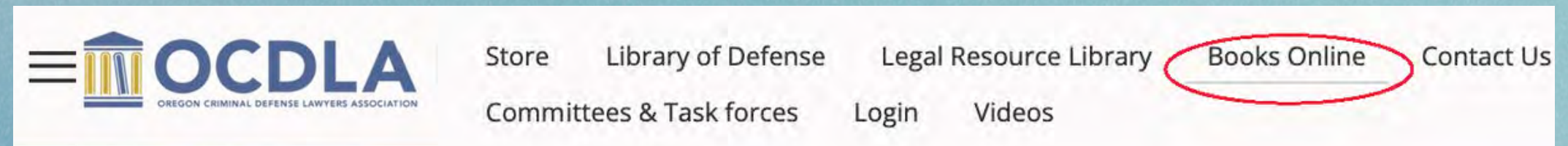
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OCDLA's online subscription service is a spectacular investment.

2023 Updates — Felony Sentencing in Oregon

2022 Updates — DUII Notebook, Search & Seizure Manual, Still at War

June 2021 — A new edition of the Search and Seizure Manual has been added.

March 2020 — The new edition of the DUII Notebook: A Comprehensive Guide to Your DUII Case has been added.

Available Manuals [\[edit\]](#)

- [Defending Sex Cases - View Table of Contents](#)
- [DUII Notebook View Table of Contents 2020 edition - 2022 Update](#)
- [Felony Sentencing in Oregon - View Table of Contents — 2019 Edition — June 2023 Update](#)
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- [Scientific Evidence: A Manual for Oregon Defense Attorneys - View Table of Contents](#)
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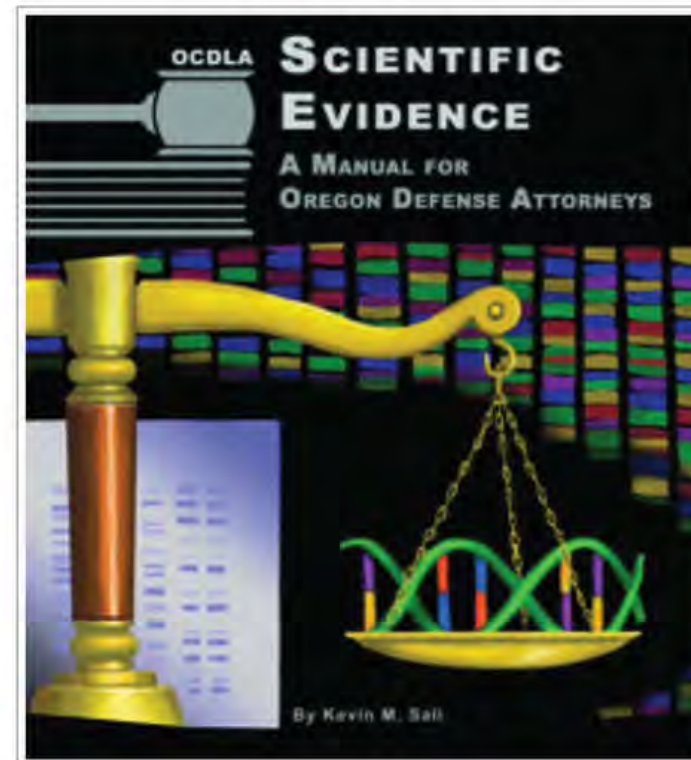


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Scientific Evidence Manual TOC



Scientific Evidence: A Manual for Oregon Defense

2012 edition

by Kevin M. Sali

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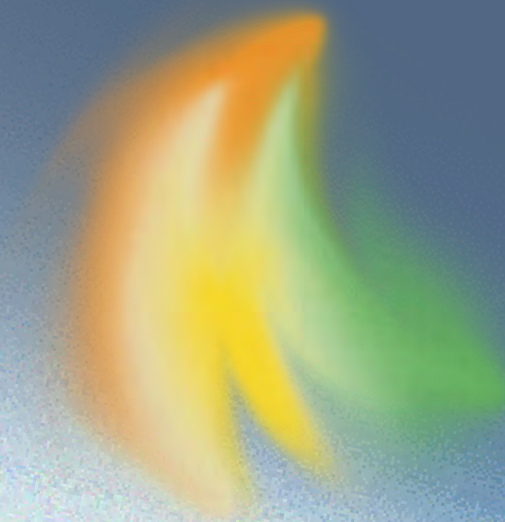
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Scientific Evidence Manual [Discussion](#)

Chapter 1 Learning the Science

2012 edition

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- [4 III. How to Learn the Science](#)

Learning the Science [\[edit\]](#)

*"A lawyer who comes into court without knowing the full extent of the science surrounding his case is a well-coiffed charlatan."*¹

{Note: Gerry Spence, *Win Your Case* (2005).

Your first task in any case involving scientific evidence is to master the relevant principles underlying that evidence. This chapter addresses

- Is it really necessary to learn the science underlying the evidence?
- *Can you realistically hope to do so—especially if you do not have a scientific background?*
- How do you go about doing it?

Of course, you may not end up extensively cross-examining the state's expert on intricate scientific details, or calling your own expert. As discussed in later chapters, tactical decisions about when to call an expert and what to ask are important. But you cannot make those tactical decisions without understanding the type of evidence at issue. Whatever decisions you end up making, you owe it to your client to make them intelligently—and that includes understanding the science underlying the evidence.

II. Can you learn the science? [\[edit\]](#)

Again, the answer is almost certainly yes. It is highly likely that you, as a competent, intelligent attorney, can master a scientific topic to the degree necessary for a particular case, even if you have no formal scientific background or education—to believe. But it is true. The key is to figure out what it is about the purported experts in the relevant field that enables them to do what they do, and to understand the science underlying their testimony.

Some expert testimony is based on knowledge that has been accumulated in a particular field, usually by a number of researchers. For example, an expert might testify that a large number of people have a certain eye movement, or that horizontal gaze nystagmus ("HGN") is associated with alcohol impairment.² {Note: Such testimony may accompany testimony about case-specific facts. For example, an expert may testify regarding how DNA testing was performed and what the computer-generated results were, or about the fact that an allegedly impaired person has a certain eye movement. The key contribution of the expert is in explaining the significance of such observations—for example, that the DNA at issue probably belongs to the defendant, or that the person's eye movement is consistent with alcohol impairment.

Such an expert's role is often simply to transmit to the jury some portion of objective knowledge from what is usually publicly available literature.³ {Note: Under federal rules, such materials are admissible under [Evid 803\(18\)](#) (allowing a "statement contained in a treatise, periodical, or pamphlet" to be "read into evidence" where certain foundational requirements are met). Other jurisdictions, however, allow the use of such materials for impeachment if certain foundational requirements are met. See [OEC 706](#); see also *infra* Chapter 6, Part III.}

Diving In

Updates Added at No Additional Charge:

- **Felony Sentencing Manual – twice yearly**
- **Search & Seizure Manual – yearly**
- **DUII Notebook – biannually**

Easier to Read

Updates are embedded directly within the text where they are intended—with the PDF format, updates are an extension at the chapter's end.

June 2023 Update [\[edit\]](#)

Finally, a defendant who uses an inoperable firearm, but threatens to use it as a firearm, is subject to the firearm minimum. [State v. Giron-Cortez](#), 322 Or App 274, 282-84, 519 P3d 879 (2022), *rev allowed*, 370 Or 822 (2023). Nevertheless, and as noted above, the Supreme Court has allowed review of the lower courts' decisions. The Media Release, [https://www.sos.wa.gov/Newsroom/20230601-01](#), states that the Supreme Court will review the lower courts' decisions on the issue of whether a defendant who uses an inoperable firearm, but threatens to use it as a firearm, is subject to the firearm minimum. The Media Release also notes that the Supreme Court will review the lower courts' decisions on the issue of whether a defendant who uses an inoperable firearm, but threatens to use it as a firearm, is subject to the firearm minimum. The Media Release also notes that the Supreme Court will review the lower courts' decisions on the issue of whether a defendant who uses an inoperable firearm, but threatens to use it as a firearm, is subject to the firearm minimum.

“review of a Court of Appeals decision that affirmed the trial court’s denial of his motion for judgment of acquittal.”

“(1) What mental state attaches to the ‘use or threatened use of a firearm’ element of the offense?”

“(2) Is evidence that a defendant accidentally discharged a firearm during the commission of the offense?”

“(3) Is evidence that defendant showed the victim and a friend a firearm during a conversation with the victim?”

[End Update]

§ 4-2.2.3. Other Limitations on Firearm-Minimum Sentences. [\[edit\]](#)

A court may not impose a firearm minimum unless the state pled and the trier of fact found beyond a reasonable doubt that the defendant used the firearm as a firearm. [State v. Wedge](#), 293 Or 598, 608-09, 652 P2d 773 (1982). Regardless of a defendant’s intent, the use of the firearm as a firearm, and not, for example, as a club, to be liable for a firearm minimum. [State v. Harris](#), 174 Or 300, 308-09, 352 P2d 1000 (1960) (holding that a defendant who used a firearm as a club was not liable for a firearm minimum on prior firearm conviction from Virginia).

June 2023 Update [\[edit\]](#)

Finally, a defendant who uses an inoperable firearm, but threatens to use it as a firearm, is subject to the firearm minimum. [State v. Giron-Cortez](#), 322 Or App 274, 282-84, 519 P3d 879 (2022), *rev allowed*, 370 Or 822 (2023).

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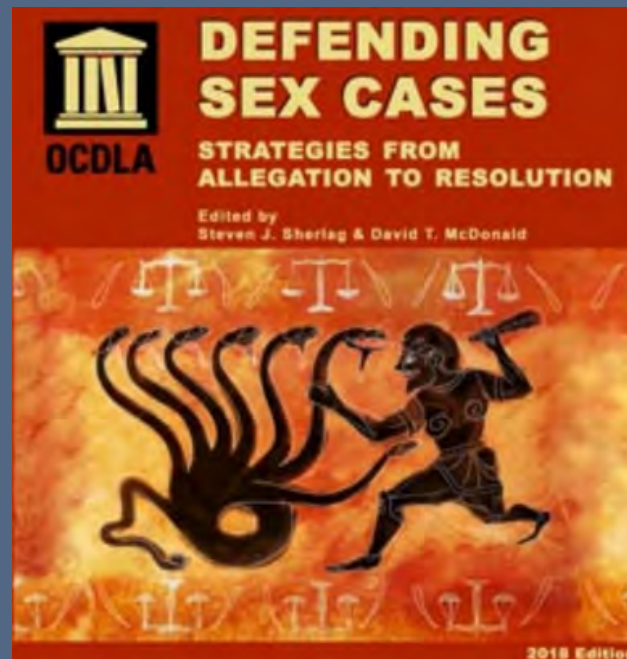
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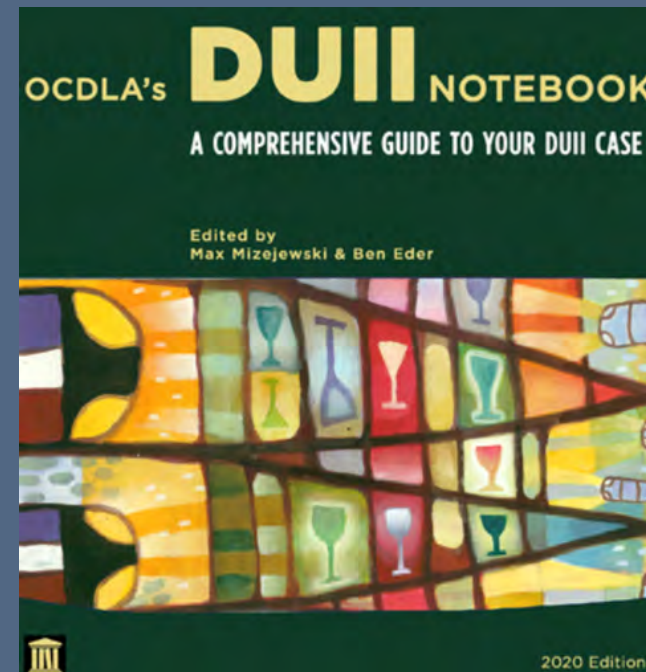
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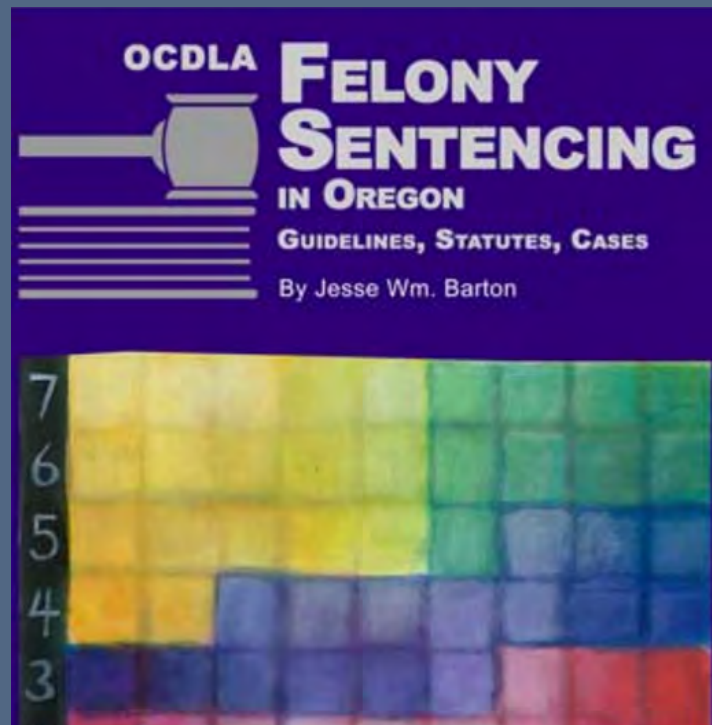
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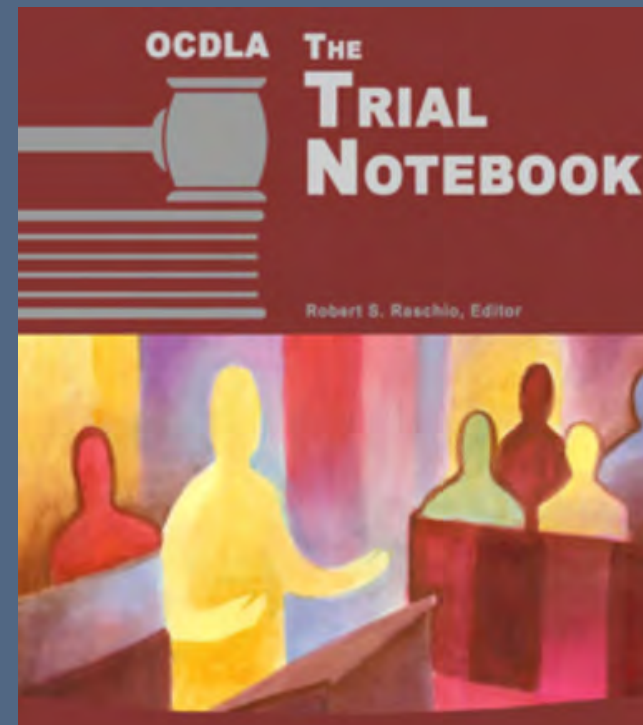
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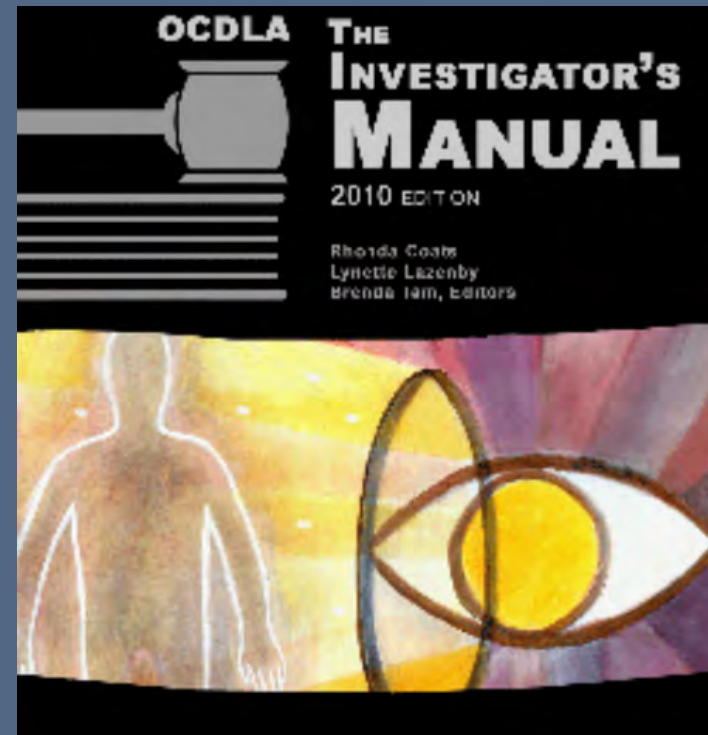
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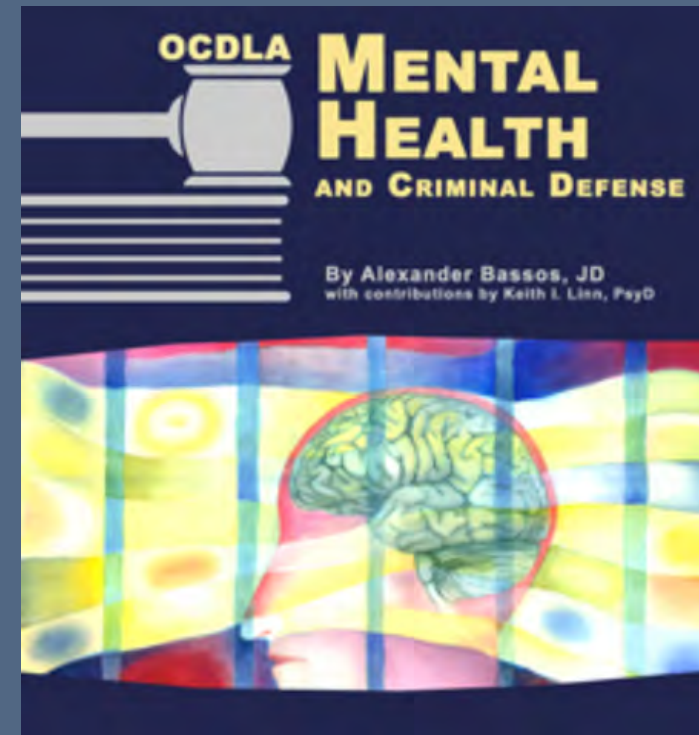
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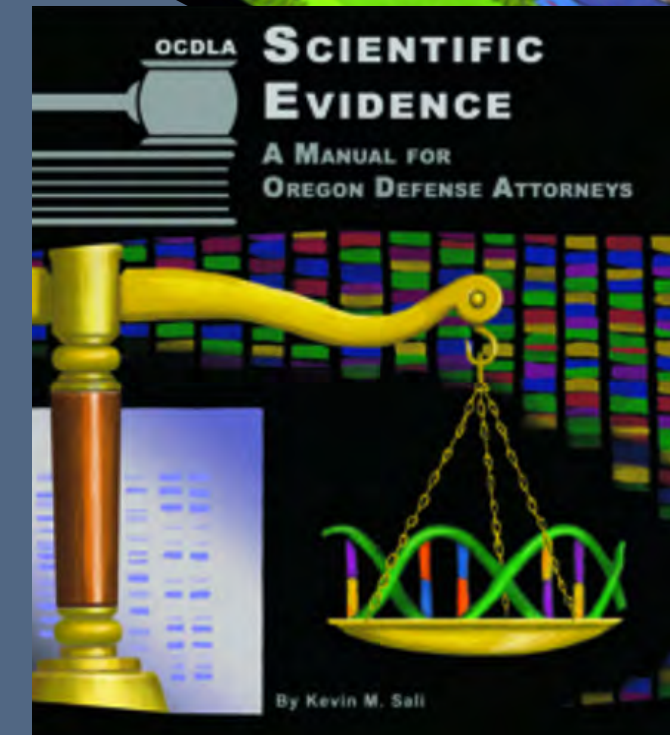
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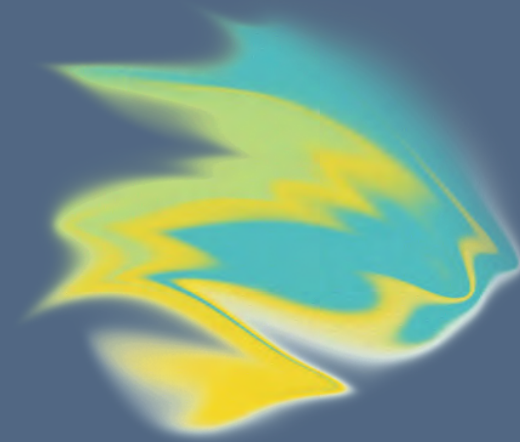


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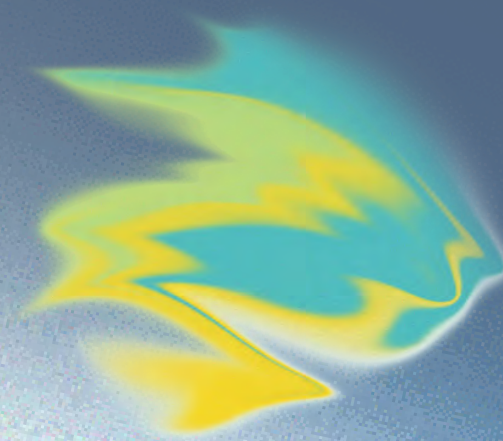


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