



Presenting Firearms (“Ballistics”) Evidence at Trial and Preparing for Expert Witness Testimony

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Marc Pomerance

Marc is a Forensic Scientist in the Firearm/Toolmark Section at the Forensic Science Center at Chicago with the Illinois State Police. He has 23 years of experience and has testified over 200 times in Federal, Civil, Juvenile and Criminal courts. Mr. Pomerance also serves as an adjunct faculty member at the University of Illinois at Chicago, assisting with patterned evidence classes for the Masters of Forensic Science program. He is also a Guest Instructor for BATFE's National Firearms Examiner Academy Moot Courts.



Thomas Darman

Thomas J. Darman has been an Assistant State's Attorney for the Cook County State's Attorney's Office since 1992. He is the Supervisor of the Gang & Complex Homicide Unit and supervises 30 prosecutors who prosecute primarily complex and gang related homicides in Chicago and the surrounding suburbs.

Mr. Darman's past assignments in the Cook County State's Attorney's Office include: the Appellate Division; the Juvenile Justice Bureau; the Felony Review Unit; the Preliminary Hearing/Grand Jury Unit and the Felony Trial Division.

He is an adjunct faculty member at South Suburban College and has taught courses in the Criminal Justice Program such as Criminal Law, Evidence and Criminal Procedure, Criminal Investigation, Ethics, Elite Deviance, Cybercrime and Victimization. He has also been an adjunct faculty member at Governor's State University, Master of Criminal Justice program and has taught Criminal Law & the Constitution as well as Current Issues in Criminal Law.

Thomas Darman is a 1992 graduate of The John Marshall Law School and a 1986 graduate of the Indiana University. He is a three-time recipient of The Cook County Crime Stoppers Excellence in Law Enforcement Award and a two-time recipient of the Chicago Crime Commission Law Enforcement Excellence.



Preparing for Trial

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From the Prosecutor perspective:

- The prosecutor must have an understanding of how lab results impact the proofs of the case
- Make sure that all relevant reports/notes have been tendered to the defense
- There should be a prep session with the lab analyst. Length/timing of session may vary upon experience of both prosecutor and analyst
- Do not gloss over qualification questions/answers. These are important for both the prosecutor and analyst
- Remember that an analyst is not an advocate for either side

Preparing for Trial

Form the Prosecutor perspective:

- Prepare analyst for direct examination
- Prosecutor should make certain of the proper question/answer for ultimate opinion [*Yes, they can change*]
- Prepare the analyst for cross examination. Attorneys are all different and approach cross examination in different ways. Remember to prepare for cross examination prep questions....did you meet with ASA?
- Consider alternative ways to conduct examinations...but make sure analyst knows/understands what and why
- In the unlikely event information shared with the analyst that materially affects an opinion always tender defense at the earliest opportunity

Preparing for Trial

From the Forensic Scientist perspective:

- After receiving a call from the prosecutor or receiving a subpoena:
 - Make sure you have a copy of their CV (for discovery) and qualifying questions
 - Review your case file (report and notes)
 - Look for anything in notes and reports that may be needed to be addressed

Preparing for Trial

Qualifying Questions:

- Most will have basic questions qualifying themselves and explaining what Firearm Identification is in a specific order, where one answer with prompt for the next logical question
- Always schedule a pretrial. Either in person, virtual or over the phone
- Practice going over the questions and answers (prosecutor should know what the answer will be and know when to move on or follow up)
- Never go in blind, even if it's with an expert you have worked with before

Identifying Key Issues in Case

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- What kind of evidence is being presented?
- How does it relate to theory of events?
 - witness corroboration?
 - accidental?
 - self defense?

Identifying Key Issues in Case

- These are the types of things discussed in a prep session
- Be careful to not make analyst uncomfortable by giving unwanted information – remember, the analyst is responsible for factual conclusions about tested evidence
- Generally, it is the prosecutor's responsibility to explain the analyst's conclusion in context of the case
 - (at times, some of your questions may seem irrelevant to the expert)
- Don't forget negative evidence

Considerations for Qualifying Questions

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At the Pretrial Meeting:

- Go over qualifying questions
- Ask if there are any other questions that should be asked (case specific)
- Formulate questions regarding the evidence in the case and the order it should be logically presented

Considerations for Qualifying Questions

- Formulate other relevant questions to ask possibly after qualifying
 - Make sure to include definitions of relevant terms
 - Don't be surprised or embarrassed to be corrected by your expert
- Read through all your questions
 - Take out unnecessary questions if using from a previous
 - Testimonies or from other examiners

Consideration for Other Questions

- Talk about potential defense strategies:
 - The expert may be able to anticipate possible questions and be able to better prepare
 - May want to “front” some seemingly negative information
- After questions are prepared, be sure to give possible schedule of trial and ask for best contact info (texting is effective for quick messages)
- Try to have another pretrial meeting prior to expert’s testimony

Example of Qualifying Questions:

- Please state and spell your name for the court.
- By whom are you employed and for how long?
- Where are you currently working?
- What type of formal education do you have?
- What is your current position and what are your responsibilities?

Example of my Qualifying Questions:

- What is firearms and toolmark identification?
- Do you have any formal training in your specialty?
- Do you have any relevant training or experience?
- What is a firearms and toolmark examiner?
- What is a comparison microscope?

Example of my Qualifying Questions:

- How are you able to make a determination if a bullet or cartridge case was fired by a particular weapon?
- Is this always possible?
- What are class characteristics?
- Can you explain to the court what is meant by “lands and grooves” and “rifling”?

Example of my Qualifying Questions:

- What are individual characteristics?
- How many times have you testified as a forensic scientist?
- Have you been qualified as an expert each time you have previously testified?
-Please admit Mr. Pomerance as an expert witness in the area of firearms and toolmark identification....

Considerations for Qualifying Questions

Another Aspect to consider during testimony is the use of the phrase “reasonable degree of scientific certainty.”

- That wording has been challenged in some jurisdictions – each court or even judge may be different in their requirements to summarize conclusions
- In Illinois, when on the stand, we try to use “regarding your conclusions based on your training and experience, using practices and procedures that are commonly accepted in the field of firearms and toolmark identification.”

Ensuring Testimony aligns with Chain of Custody

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- Have witness go in logical order of the flow of evidence:
 - Crime scene/Medical Examiner
 - Lab personnel
 - Detective

Ensuring Testimony aligns with Chain of Custody

- Have analyst go through evidence before trial, recognize packaging (crime lab may repackage the evidence differently than it was originally received after examination, don't want to hear on the stand "I've never seen this before")
- Should be done during prep with prosecutor
- Photos and physical exhibits
- Analyst prepared PowerPoint Presentations

Preparation of Expert Testimony

- Explain to the expert what you are trying to explain to the jury:
 - They will not “change” their testimony to fit your narrative but can help you ask certain question to get your point across
 - That explanation will assist the expert in understanding why you are asking seemingly irrelevant questions
 - magazine capacities, semiautomatic vs. revolver, bullet types...

Considerations for Use of Evidence

Considerations for Use of Evidence

- Will the evidence be presented by expert?
 - Type of physical evidence, courtroom restrictions
 - Will it be opened at trial or left sealed?
 - Pictures
- Best Practice
 - Go over evidence with prosecutor during prep
 - Questions about prep – evidence related; Earlier you had a chance...

Considerations for Use of Demonstrative Evidence

- How will evidence be presented?
 - Keep evidence on stand
 - Have expert in front of jury

Considerations for Use of Evidence

- When will evidence be presented?
 - Before or after results are made
- Most attorneys will have a list of witnesses usually in the order we plan to call them
- Important to present evidence so that a trier of fact [judge or jury] can understand it easily
- Best practice is to manage witness list so that there is continuity and context for evidence
- For example, entering DNA or fingerprint evidence before having any context for it reduces its utility



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Thank you for you time and attention.

Questions?

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