

Popular Threads on Solosez

FIREARMS EXPERT WITNESS

A criminal case I have been working on (and have asked about here before) is now approaching trial. I am looking at how I will be able to establish the points I need to make.

One point that I must make to the jury, is that, while an automatic pistol automatically ejects its shell casings, a revolver does not.

Do I need to call a gun expert to establish this little fact? It seems to me that this would be in any number of "learned treatises" on handguns. There will also be some witnesses who are familiar with guns. One witness is being called for his eyewitness testimony, but I know he has himself fired (for sport) both semi-automatics and revolvers. Also, there will be police called to the stand to testify as witnesses, I am assuming these folks have some experience with handguns.

Do you think this will be adequate, if I question these folks about their own knowledge of handguns, or do I need an expert witness just on this one point? (I will also need to talk about how, since it is not ejected automatically, a shell casing is removed from a revolver)

I have a friend in NV who is part owner of a firearms training facility. I can't tell where your case is, but it sounds like you need someone more than the novice, you need someone who knows about the operation of guns.

Let me know if I can help.

Joseph G. Bonanno, Massachusetts

Depends on your jurisdiction, I guess. In some areas you might be able to ask judge to take judicial notice of commonly known fact; I can think of at least a couple of our local judges who would be willing to do so, however, I can also think of a couple of local judges who probably wouldn't.

Honestly, if your case turns on firearms evidence, I'd get someone presumably competent to testify to this; gun dealer, gun smith, the more credentialed the better (i.e., former police or military armourer, but at very least someone who can testify that they know and deal with a lot of guns).

I wouldn't count on the police. Some cops are quite knowledgeable about guns, but a lot of them know no more than what they learned in police academy, which may not have been much.

Ronald Jones, Florida

What I recall is that "expert" doesn't mean "best in the world", it just means "knows a lot more than the average person." That said, my take would be that a novice doesn't meet that definition, a police officer or

military member might, and a gunsmith or experienced shooter does.

You should be able to find a reliable reference book at any reputable library. Brownells publishes "The Encyclopedia of Modern Firearms" that might have what you need, but if not, some common reference will. I found "Pistols: An Illustrated History of Their Impact" by Jeff Kinard at google books, ISBN 1-85109-470-9 (hardback), 1-85109-475-X (e-book). Starting on page 172, there is a good description of semi-auto function, with a "compare and contrast" on page 171.

Morris Albers

Worse than the cops relying on what they learned in the academy, some of them think that they know far more than they do.

Take this guy for instance: *<http://tinyurl.com/qhmpba>

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Some of these guys think that because they are around guns all day that they are an instant expert. Be very careful.

Frank J. Kautz, II, Massachusetts

IMHO...you need a true expert (military or civilian)...and, in my experience, police officers in general don't even come close.

Alan L. Inglis, California

It depends on your jurisdiction. In my neck of the woods (north Georgia), it would be well within the knowledge of the average juror. It's such elementary knowledge that I would not need an expert. I would just ask each of the police officers and the eyewitness with knowledge. If the cops don't know the answer, they would automatically lose credibility with the jury. I might have to establish the witness's expertise, or get a stipulation, for the appellate court, but not for the jury.

In other venues, where the jurors would know nothing about guns (like reporters who think that concealed carry laws apply to openly-worn handguns), you would need someone with "expert" credentials. You might want to skim through the reported cases in your state to see who can testify to what about guns.

Debbie Ausburn, Georgia

Sounds like your part of the world is a lot like mine, Debbie (South Texas).

Another thing that occurs to me regarding semi-auto vs. revolver is that semi-autos all have some way to get the expended case out of the chamber

(99.99% of the time, an extractor hook that pulls the case out) and a way to impel the expended case away from the mechanism (an ejector, usually a simple post or a spring-loaded one). The extractor and the ejector usually leave some kind of mark on the expended case, and the case might actually be deformed (no longer nicely round) if it rattles against the ejection port on the way out. Point is, a case that has been through any but the lowest powered semi-auto pistol ought to have some marks that distinguish it from one that was fired in a revolver and received much more tender treatment afterward. And now, you *are* getting into the gunsmith/armorer/high-end shooter kind of qualification.

Morris Albers

The VERY best firearms expert I ever used is a man named George Fassnacht from Philly. He was an OSS member in WWII who passed info to sabotage German weapons, and served in the CIA as a firearms expert until the 1970's (google the name). He specialized in screwing-up the manufacture of enemy weapons. He knows EVERYTHING about firearms - and, I mean EVERYTHING.

He was Brilliant. I'm not sure I can still contact him (he may have passed away) but he was the absolute best I've ever encountered. EVER. If he's still around, find him & pay him whatever he asks.

Good luck,

Russ Carmichael

I would consider making testimony on this issue a show and tell event. Having someone talk about it is not nearly as persuasive as showing it. Depending on venue and level of nerves where case is located, this is easy or hard to set up. Regardless, having a semi-auto and a revolver available and having someone walk through the ejection process and basic action would be clearest path to understanding, and of interest to any juror that did not already know how it all worked. Regarding who would be the witness, a police officer or anyone with basic knowledge and familiarity could do the demonstration.

Darrell G. Stewart, Texas

Thanks to everyone who has written.

I'm really trying to keep this case as simple as possible.

I am a court-appointed criminal attorney, and I am trying to keep costs down. The case itself may only take a day or two. The charge is "Carrying a Concealed Weapon".

I didn't want to repeat everything I said about this case the last time I asked about it, but it now looks like that would have been a good idea.

The case actually is quite complicated. But the points I am working on are

these:

The police found a revolver at the location in question. They also found two expended shell casings nearby. This is not in dispute. I don't think there is any dispute that the particular shell casings came from that particular revolver.

I think the prosecution is going to try to convince the jury that someone at the location recently fired the revolver at that location.

I'm trying to get the jury to understand that, based on this evidence, the revolver could have been fired some time ago, maybe even a LONG time ago, at some other location, then someone carried it to the location in question recently, and then removed the shell casings manually. The shell casings HAD to have been removed manually.

Because it is a revolver, not a semi-automatic or automatic.

Do I really need an expert witness to testify to this? One of the eyewitnesses, technically a prosecution witness (but his some of his testimony is very helpful to me) said at the prelim exam that he has fired a variety of weapons, revolvers, semi-automatics, a 308. That he has been "around guns". I was wondering if I could just ask him "So based on your own personal experience with firing revolvers . . ." and so on.

Also there will be police officers on the stand. Who I also assume I can ask about their own personal experience with handguns. Again, these are prosecution witnesses. And one police officer in particular had trouble at the prelim exam identifying the parts of a revolver by name.

Technically, this is tangential to the actual charge. The prosecutor just has to prove that at some point my client had the revolver in his control. And I genuinely don't believe my client ever had the revolver in his control (it's somebody else's revolver, I don't think he had ever seen it before). He certainly never fired it!

I don't need anyone to testify to "muzzle velocity" or anything like that, just this very simple fact about revolvers. I might simply be able to do this with a standard treatise like Jane's. I don't think the court will allow me to fly in an expert witness, or pay high expert witness fees. (Since I am court-appointed I have to get approval from the court for additional expenses). If I need an expert witness, it may well end up being a local gunsmith. Or maybe a professor from the local university?

They make fake rounds called dummy rounds. They are used for dry fire training. Do not get snap cap rounds which are a little different and actually make noise. You can get a pack of 5 for 5-10 \$ online or any gun shop. Get the right size and bring them into court, get permission first. Ask any LEO carrying a gun, they will probably be automatics, to describe what his gun does as rounds are fired, and how the cartridges are ejected. Ask if their gun is loaded and if there is a round in the chamber. If you

are lucky you can get away with asking them to demonstrate how they unload their gun. When they rack the slide to eject the chambered round, you can ask them about the slide retracting automatically when a round is fired, and throwing the casing out. That should get across the point of how autos work.

Then have each LEO or state witness who claims to know about guns demonstrate on the evidence gun with the dummy rounds. Ask them how the gun operates, does it eject shell immediately as fired or have to be done manually? I can't imagine them trying to lie about this and getting away with it. get permission to load the dummy rounds or the casings in evidence and show that there is no way for the casings to be ejected except manually. If they claimed before that the revolver ejects automatically get them to explain just how it does that when there is no opening and closing hole for the case to eject from and no spring to close the hole after each shot. The comparison should be obvious to the jury by that point and if its is admitted by the state's own witnesses it is much better than any expert you could hire.

Anyone ever gotten an officer to unload his gun in the courtroom?

Eric Friday

I am no expert, but if shell casings were found at the scene, and this is part of the states case, do those shell casings even fit a revolver?
Fit a semi-automatic handgun?

If the police are saying that shell casings were found at the scene and this was because the fire arm in question discharged the shell after firing, be sure that the shell casing would fit a revolver.

I cannot think of a common caliber that will fit a revolver and a semi-automatic handgun. This may be a better point than how the casings need to be removed.

Phil A. Taylor, Massachusetts

Did anyone test the casings for fingerprints? The guy who loaded the revolver had to touch the shells, and not many people wipe down their ammunition.

Morris Albers

On a related note, the lack of investigation may be relevant as well. Also, are the found casings the same brand as the ones in the revolver.

More food for thought,

Phil A. Taylor

The brand of the casings, as indicated by the headstamp, would not be

dispositive. Oftentimes commercial reloads use mixed brass, so you can have a box of ammo with casings from several different manufacturers.

David S. Markowitz

.38 the caliber at issue according to another post, can be found in both autos and revolvers.

Eric Friday