

The legal system: Litigation

FRANK W. NAGORKA, JD, EMT
CHICAGO, ILLINOIS
FRANKEMTP@AOL.COM © 2019

The legal system

- ▶ Criminal System
- ▶ Civil System
- ▶ (Which one are you in?)
- ▶ Remember it is always a matter of burden of proof



Criminal System

- ▶ Beyond a reasonable doubt standard
- ▶ Less discovery
- ▶ Fines and incarceration



Civil system

- ▶ Preponderance of the evidence
- ▶ Extensive discovery
- ▶ Insurance and settlement



Arson in Illinois

- ▶ State Law: 720 ILCS 5/20-1
- ▶ Definition: Knowingly using fire or explosives to damage any property worth \$150 or more without the owner's permission.
Residential Arson: Knowingly using fire or explosives to partially or totally damage someone's residence. **Place of Worship Arson:** Knowingly using fire or explosives to partially or totally damage any place of worship. **Aggravated Arson:** Arson where: 1) the perpetrator knows that one or more persons are inside the building; or 2) where any person suffers great bodily harm, permanent disability, or disfigurement; or 3) where a fireman, policeman, or correctional officer on duty at the scene is injured.

Arson and its proof

- ▶ Are you using the latest scientific evidence?
- ▶ How quickly can you respond the scene?
- ▶ What evidence are you looking at?



Arson scene

- ▶ At a crime scene involving **arson**, proceed like it's any other scene: find and collect any **evidence** that could possibly be relevant. Follow the basics and look for fingerprints, latent prints, tire tracks, foot prints, impression **evidence**, hair, fibers, blood, and other body fluids.
- ▶ Remember your chain of custody....



What do arson investigators look for?

- ▶ Investigators use a combination of crime scene investigation, interview and interrogation techniques and knowledge of fire science to inspect scenes. They look for evidence of the use of accelerants, **such** as gasoline and other flammable materials, and **work** to identify the source, starting point and spread of fires.

Great definition

- ▶ **Arson** is the crime of willfully and maliciously setting fire to or charring property. ... A common motive for **arson** is to **commit** insurance fraud. In such cases, a person destroys their own property by burning it and then lies about the cause in order to collect against their insurance policy.



More than just arson

- ▶ Chapter 47 State Fire Marshal
- ▶ Portable fire extinguishers, Buildings, Automatic Sprinkler Systems, Residential Systems, Institutional Buildings, Child Care Facilities and so forth and so on...



Let's talk about the codes

- ▶ Annual inspections: Assess and mitigate: Written report. Varies widely
- ▶ Codes promulgated by consensus: NFPA 101 and Intl. Fire Code [Revised on a 3 year basis]



Benefits of inspections

- ▶ Safer working/living environment
- ▶ Safer for visitors
- ▶ Safety and security: 80% of small businesses suffering fire never reopen
- ▶ Improved resale value
- ▶ Possible reduction in insurance premiums

A better fire inspection (avoid problems)

- ▶ ITM reports in advance (Inspection, Testing, Maintenance)
- ▶ Helping Fire Department (Clear address, Easy Access, Lock Boxes, Fire Department Connections)



Let's talk about negligence



ELEMENTS OF NEGLIGENCE

- ▶ Duty
- ▶ Breach of duty
- ▶ Proximate cause
- ▶ Damages



DUTY

- ▶ Responsibility owed to another that arises out of a relationship
- ▶ Always a question of law
- ▶ The parameters of duty can change as society changes



STANDARD OF CARE

- ▶ What would a reasonable person do under like or similar circumstances?
- ▶ Can be a battle of experts
- ▶ Probably a national standard
- ▶ Changes over time



PROXIMATE CAUSE

- ▶ Connection between the deviation from the standard of care and the alleged damages
- ▶ Always a question of fact
- ▶ Expert testimony often required



DAMAGES

- ▶ Must look to state law
- ▶ Liquidated damages
- ▶ Unliquidated damages
- ▶ Punitive damages
- ▶ Tax consequences
- ▶ May be hard to prove



Now you are going to testify



Definition

A statement under oath

This means that you are tell the truth, the whole truth and nothing but the truth. (Tell your lawyer everything!)



Depositions

- ▶ Court reporter: Watch what you say
- ▶ Possibly video taped. [Area for practice.]
- ▶ What you say today lasts forever!



Deposition Preparation

- ▶ Handling discrepancies
- ▶ Meet at your lawyer's office—In a significant case not the day of the deposition
- ▶ Take all the time that you need to prepare



Witness preparation

- ▶ Art of answering questions—Listen then answer
- ▶ Never Volunteer information
- ▶ Don't qualify answers



Witness Preparation 2

- ▶ Make sure that your lawyer tells you what the other lawyer will probably want you to say. (Theory of the case.)



Witness Preparation

- ▶ Overcome anxiety
- ▶ Review all documents
- ▶ Remember to review the art of answering questions—Do you do it well?



Deposition Preparation

- ▶ Tell the truth → It relieves anxiety
- ▶ No guessing; no education; forget anger
- ▶ Any notes are discoverable



Deposition Preparation

- ▶ Do you want to have written statements?
Generally No other than your report.
- ▶ Review the standard works:
It pays to know your stuff
- ▶ Learn how to make an impression



Be a Great Witness

- ▶ Dress well. Where is your mirror?
- ▶ Be sincere
- ▶ You are not there to prove a point. Do that at trial.



Be Convincing

- ▶ Listen to the question
- ▶ Trust your lawyer
- ▶ Keep your story straight. Know what others have said.



Deposition—The Day

- ▶ Deposition is not a Social Tea
- ▶ Leave Self Doubt for the Confessional



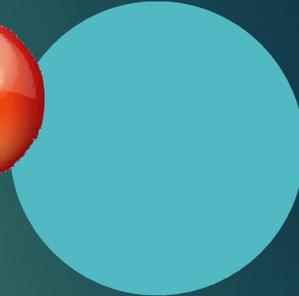
Deposition—The Day

- ▶ Maintain confidence
- ▶ Always serious business
- ▶ It's OK to say: I don't remember
- ▶ Never volunteer information
- ▶ Take breaks



Be Convincing

- ▶ Listen to the question
- ▶ Trust your lawyer
- ▶ Keep your story straight



Cross-Examination

- ▶ Great engine for truth
- ▶ Watch for the conclusions
- ▶ Slow it down (Speak slowly and pause)
- ▶ Just because someone says it does not make it right





You as the Expert

FRANK W. NAGORKA, JD, EMT
CHICAGO, IL
FNAGORKA@GMAIL.COM © 2018

Frank W. Nagorka, JD, EMT
Chicago, IL
fnagorka@gmail.com © 2018

Why are you an expert?

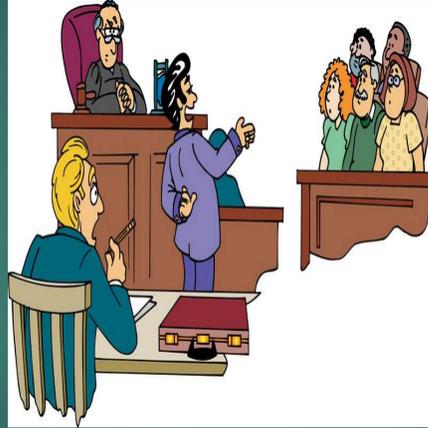
- 1) Experience
- 2) Training
- 3) Education
- 4) Teacher



Areas for Testimony

Standard of Care
Proximate Cause
Damages

You cannot testify about DUTY



What is the most important thing?



An expert witness must believe in the correctness of their opinion and it must be based upon sound principles well articulated.

How are you paid?



Generally speaking, you are paid by the hour or a flat fee. You cannot be paid on a contingency.

A real rule....



You cannot be a partisan and you must know your stuff.

What do you need from the Attorney?

- 1) A fair statement of the case
- 2) All relevant documents
- 3) A reasonable period of time for review
- 4) Full preparation for testimony



Consider this....



Be willing to recommend another possible expert...

Offer to teach...

LEARN

TEACH

The expert can prove to be of great value if they are allowed to teach...What can you teach?

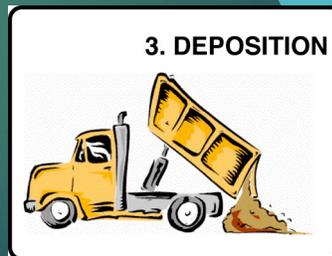
Three things that you will do...

- 1) Review, evaluate, prepare opinion and teach.
- 2) Testify at a deposition
- 3) Testify at a trial



Are you ready to testify?

- 1) Testimony for a deposition
- 2) Testimony for a trial



Deposition Testimony

- 1) Answer only the question
- 2) Watch for hypotheticals
- 3) Do not volunteer
- 4) Practice on video



How to Testify

- Watch eye contact
- Clear, concise, plain language
- Conversational manner
- Step down and teach
- Know how to use demonstrative evidence



How does one prepare?

- 1) First, know your material.
- 2) Learn how to handle hypotheticals.
- 3) Do you understand the theory of the litigation?
- 4) Have you practiced your testimony?



When do you rest?

You rest whenever you need to rest. Also be ready the day before.



What happens when you become tired?



If you are tired, you can start to volunteer information.

Great Quote



An expert witness has the potential to be both powerful and quite misleading.

Questions



Frank W. Nagorka
fnagorka@gmail.com
312-560-1087