

Evidence, Understanding Its Importance to You

By Kim Douglas Sherman, Esquire

The simplest definition for the word “evidence” found in the law dictionary is: “All the means by which any alleged matter of fact, the truth of which is submitted to investigation is established or disproved.”

As a lawyer who regularly goes to Court, evidence is my stock in trade. As you will learn from this article, your understanding the concept of “evidence” is important and useful. You are certainly familiar with the most popular kind of evidence called “testimony.” Testimony is someone speaking about what they actually know regarding the matter to be decided. If the person testifying does not have personal knowledge—they, themselves, did not see or hear what they want to testify about, then their testimony is called “hearsay.” Hearsay is generally not considered as evidence because, in our Court system, there is a right to cross-examine the person who actually was the witness to the event in issue. My evidence professor used the example of an ugly, toad-like witness, who saw everything and knows everything, but is so repulsive that you want to keep him in the basement. [They have basements in the mid-west.] Instead, you would like a handsome, well-spoken person to give the testimony. You would like to ask the good-looking witness to go and ask the “toad”, “what did you see?” Then you would like the good-looking witness to come back into the Court and testify as to what the toad witness said. Under our legal rules, that is called “hearsay.” You have to bring the toad to testify himself. There are exceptions, but then, that would take a much longer article to discuss.

Testimony given by a witness with actual knowledge is good evidence, however, people do not always remember or see things the same way. I am not suggesting that people lie in Court, but the way that they see or remember can be selective and biased. This brings me to my next point about evidence. If you can have the testimony of a disinterested person, someone who has nothing to gain or lose, that is the best kind of witness. If you think that you are going to need that kind of testimony, try to have the witness write down what they saw as soon as possible after the event in question. Such a writing, itself, may not be admitted as evidence, but it can help the witness remember exactly what they saw or heard long after the events have happened. This is a technique we call “preserving” evidence. If you are going to need to present evidence, knowing about preserving evidence is important to you.

A picture is said to be worth a thousand words, and we all know that is true. When it comes to preserving evidence, take the picture and take it before there is any change in the subject matter of the photo. Take a photo of the accident scene, the skid marks on the pavement, the crashed cars, the black and blue marks, and the wounds. Take the photo of the over-flowing sewage or the moldy, collapsed ceiling. You get the picture? If you do, then make sure that you keep the photo secure and preserved to use as your evidence.

Finally, preserve the actual thing that is in issue. If something broke and caused injury or damage, try not to discard it. Instead try to maintain and secure it in the same condition so you can present it to the Court and say, “this is it!” Along the same line, put your agreements into writing signed by the agreeing parties. That is called a “written contract” and it is the best evidence of the parties’ intentions.

Understanding “evidence” will help you prove your case, and can even keep you out of Court.

For more information about Mr. Sherman, please go to: www.ShermanLegal.com