

FIREHOUSE LAWYERS



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LAWYER

DISCLAIMER



"And if you don't have an attorney, we've got millions of them."

Another Disclaimer



We're not here to provide you with any legal advice.....We're merely here to stir the pot!

ANOTHER DISCLAIMER

- *We do not represent any companies in this lecture, nor do we infer representation for you. Seek the advice of your own lawyer!*

Last Disclaimer.....

All of the cases covered here today are real & available via the internet, free domain.

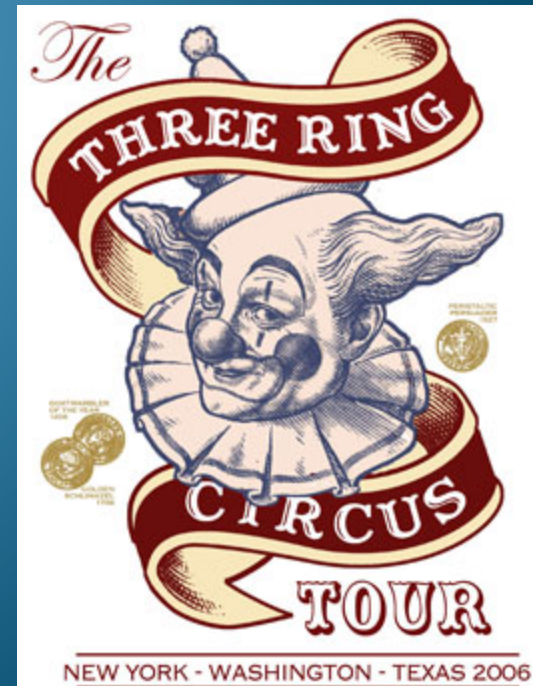
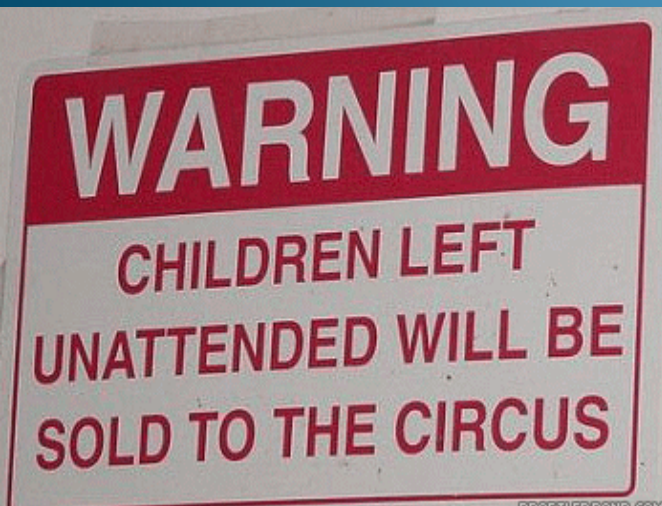
Nothing is confidential, and all cases have been closed.

You may recognize the names of some of the people in some of the cases. They **HAVE NOT been changed. There is no legal reason to.**

Terminology Review

- There are 3 Branches of Government
 1. **Legislative-Elected Officials (Create & make new laws)**
 2. **Executive-Regulatory & Enforcement, reports to State's Highest Officials**
 3. **Judicial-Courts, they interpret the law & can enforce penalties (jail time, fines, restitution, etc.), enforce policies created by Executive Branch of government**

So, It's Like a 3-Ring CIRCUS!



More Terminology

- **Negligence-The failure to use reasonable care. The doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do under like circumstances. A departure from what an ordinary reasonable member of the community would do in the same community (EMS/Fire).**

More Terminology

- **Gross Negligence ~ Is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both. It is conduct that is extreme when compared with ordinary negligence which is a mere failure to exercise reasonable care.**

More Terminology

Willful or Wanton

- conduct implies knowledge and consciousness that an injury will result from the act done
- Willful and wanton negligence is action undertaken in conscious disregard of another's rights or with reckless indifference to consequences with the defendant aware

*You Meant
To Do It*



More Terminology

- Sovereign Immunity-a judicial doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. The doctrine stems from the ancient English principle that the monarch can do no wrong.

“Government
is Never
Wrong”

“You Can’t
Sue City Hall”

More Terminology

- Scope of Practice- Virginia's Scope of Practice is based on the National EMS Scope of Practice released in February 2007 with modifications that specifically address EMS practice in the Commonwealth.
- This National document developed by the National Highway Traffic Safety Administration (NHTSA) supports a system of EMS personnel licensure/certification that mirrors other allied health professions and serves as a guide for states in developing their Scope of Practice legislation, rules, and regulation.

What You Can Do

3 Types of Actions

- Civil Action-Law suit filed where one party believes the other party “did them wrong” & wants re\$olve....\$\$\$\$\$



3 Types of Action (con't.)

- **Administrative Action-** Agency or OMD takes actions against you....re-training, suspension of ability to practice OR action taken by the state or certification body (OEMS or NR) against you (citation, suspension, etc.)



3 Types of Action (con't.)



- Criminal Action-
Felonies,
Misdemeanors
where courts
impose
punishment

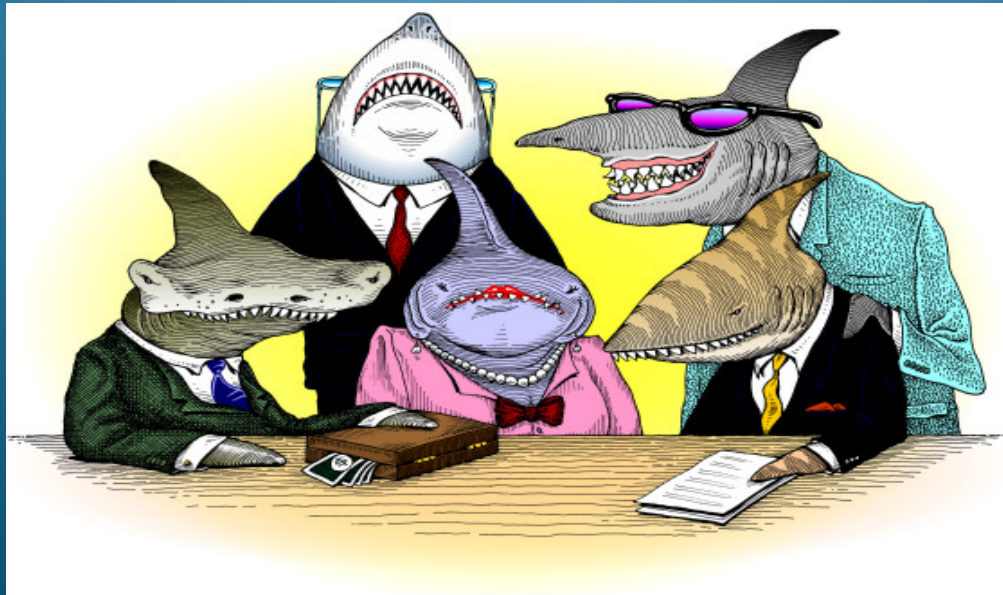
More Terminology

Types of Consent

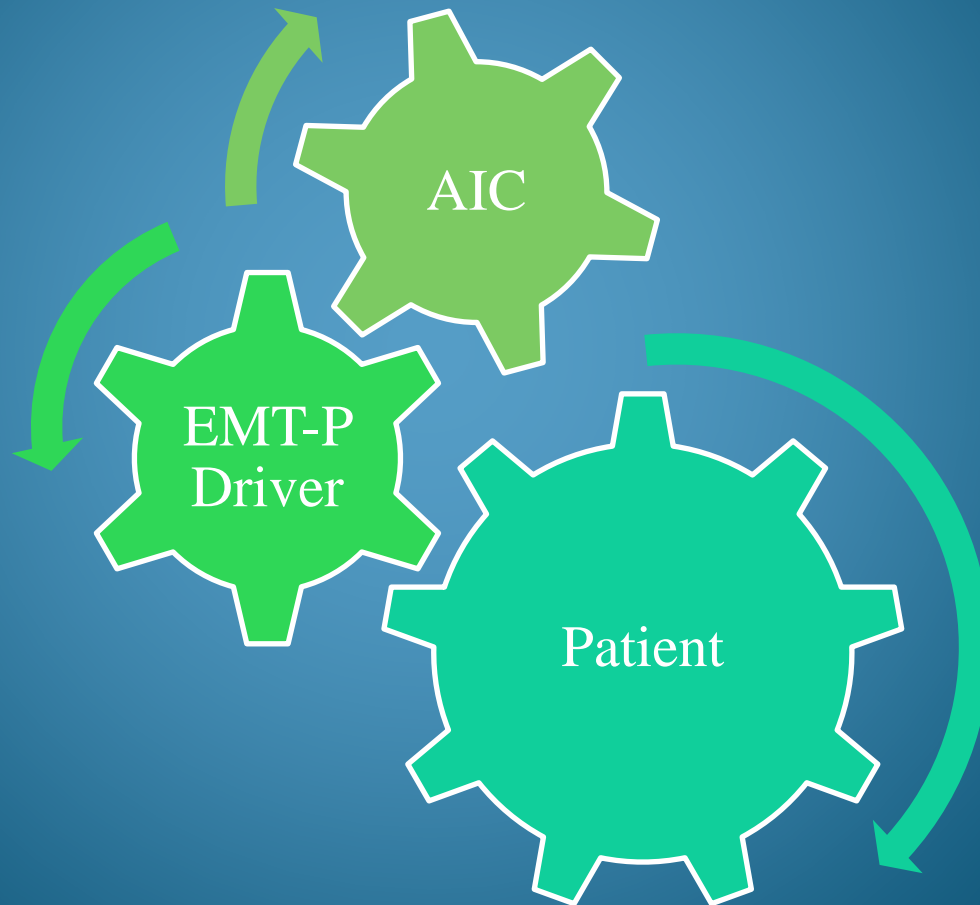
- **Informed / Expressed:** permission to treat or not treat, obtained after detailed explanation of the potential risks involved in receiving or not receiving care
- **Implied:** a legal presumption that permission to provide care is in the best interest of the patient and the patient would be presumed to have given consent

Any Questions on Terminology?

You'll need to have a good understanding of those terms to better understand the upcoming case



CASE #1



Case #1- “I’m Just the Driver”



“I’m Just the Driver”

Case: Irby V. Gill

- Facts of the case



- Circuit Court of City of Alexandria, Virginia
- 1984, Judge Wiley R. Wright, Jr. – Opinion
- Irby v. Mitzi Gill, Ellen Nolan & City of Alexandria

“I’m Just the Driver”

- The Players:
- Mitzi Gill-EMT-Paramedic
- Ellen Nolan-EMT-Paramedic
- City of Alexandria Fire Department
- OMD for Alexandria Fire Department
- Mr. Irby-the Patient (and might I add a “frequent flyer” in the EMS system with this agency)



“I’m Just the Driver”

- So what happened?
- Mr. Irby frequently called 911 for an ambulance, usually for non-emergency things



“I’m Just the Driver”

- City of Alexandria Fire Department in 1984, had a written policy that if any ambulance responded to the same patient, with the same chief complaint, at the same address in a 24-hour period, the EMS crew would provide an assessment, shall contact medical control, & with on-line approval, MAY provide the patient with a list of private ambulance companies they can call to transport them to the ER-Transport Not Indicated.....

“I’m Just the Driver”

Uh, oh!

“I’m Just the Driver”

- **As you suspect, this was the second call of the shift by Mr. Irby.**
- **Mr. Irby was assessed by Paramedic Mitzi Gill (the assigned AIC for this call)**
- **Transaction was witnessed by Paramedic Ellen Nolan, the driver**
- **Crew reported no significant changes from previous call this date where Mr. Irby refused medical care or transport**
- **Mr. Irby & his wife were given a list of private ambulances they could call**

“I’m Just the Driver”

- EMS Crew completes the report that transport was not needed & patient provided a list of private ambulances he could call
- EMS Crew leaves the scene

- *What did they forget?*



“I’m Just the Driver”



“I’m Just the Driver”

- So~~~~~ As you can imagine, Mr. Irby dies as a result of this event
- Mrs. Irby & her team of lawyers sue Alexandria FD, the OMD, the two EMS providers on the call (each named in the suit)
- It is alleged that “gross negligence” caused his untimely demise



“I’m Just the Driver”

- City of Alexandria said “We didn’t do anything wrong as a city” & “we had a written policy in place” & of course we know.....the “government can do no wrong”
- City provided government service of EMS
- Courts held that the City of Alexandria was entitled to Sovereign Immunity and was absolved of any wrong doing



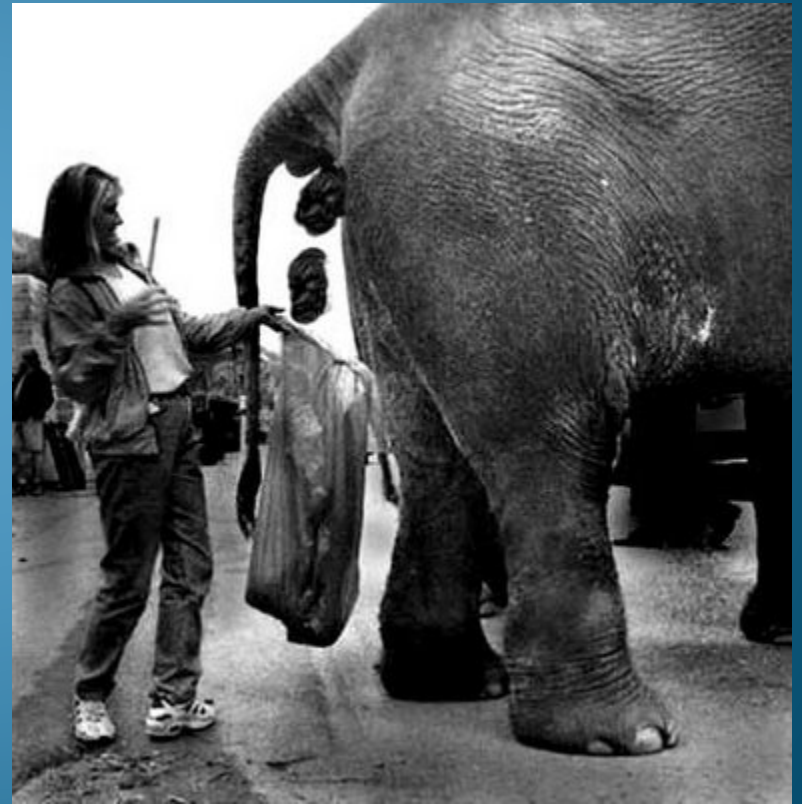
“I’m Just the Driver”

- OMD indicated he had a written & approved policy with the City of Alexandria about these types of calls & that the EMS crew failed to follow that policy as written, they left out one step



“I’m Just the Driver”

- This left two people alone, out there on that limb, responsible for the demise of the patient
- Do you have private insurance for yourself as an EMS provider?
- Should you have it?
Debatable



“I’m Just the Driver”

- So of course the two Paramedics are left with the burden of this case
- So, finally, as our title indicated, Ellen Nolan-EMT-Paramedic claims “I’m just the driver” & asserts she was not the AIC
- Court ruled that the AIC-Mitzi Gill-EMT-Paramedic was primarily responsible, BUT that Nolan, regardless of her driving role that day, was still an EMS provider & should have known better- both were culpable

“I’m Just the Driver”

- *Internal Discipline*
- Disciplinary Action by Charles H. Rule, Fire Chief, City of Alexandria
- Mitzi Gill, EMT-P: 234 hours suspended w/o pay, no leave accrual (vacation/sick, etc.)
- Ellen Nolan, EMT-P: 40 hours suspended w/o pay, no leave accrual (vacation/sick, etc.)

“I’m Just the Driver”

- **COURT’S DECISION-*April 10th, 1984***
- **It is *ADJUDGED AND ORDERED* that ...**
- *The defendants, Mitzi Gill and Ellen Nolan, were guilty of gross negligence, and thus are not entitled to the protection of governmental immunity.....*

“I’m Just the Driver”

- **Court Imposed-**
- **\$30,000 fine to each provider**
- Mitzi Gill
- Ellen Nolan
- Payable by each employee or their insurance
(they did not have insurance for this)
- Released from further liability

Questions? Comments?



**CHARLOTTE E. OVERMAN, Plaintiff-
Appellant,
v.
OCCOQUAN, WOODBRIDGE, LORTON
VOLUNTEER FIRE DEPARTMENT,
INCORPORATED; et al.**



Occoquan - Woodbridge - Lorton

Volunteer Fire Department

“Someone Died..Sue ‘em all”

CHARLOTTE E. OVERMAN, Plaintiff-Appellant, v.
OCCOQUAN, WOODBRIDGE, LORTON VOLUNTEER FIRE DEPARTMENT, INCORPORATED; DUMFRIES TRIANGLE RESCUE SQUAD; DALE CITY VOLUNTEER FIRE DEPARTMENT; GAINESVILLE DISTRICT VOLUNTEER FIRE DEPARTMENT; NOKESVILLE VOLUNTEER FIRE DEPARTMENT; COLES DISTRICT VOLUNTEER FIRE DEPARTMENT & RESCUE SQUAD; LAKE JACKSON DISTRICT VOLUNTEER FIRE DEPARTMENT; YORKSHIRE VOLUNTEER FIRE DEPARTMENT; STONEWALL JACKSON VOLUNTEER FIRE DEPARTMENT & RESCUE SQUAD; EVERGREEN VOLUNTEER FIRE DEPARTMENT & RESCUE SQUAD; BUCKHALL VOLUNTEER FIRE DEPARTMENT, INCORPORATED; WILLIAM H. SPICER, JR.; DONALD R. MERCER, JR.; GEORGE BUCHANAN; PETER PAULIN, JR.; BRIAN W. HICKERSON; RICHARD W. BYRD; ARTHUR A. PROVIANO; DAVID A. SCOTT; SELBY JACOBS; DALLAS SLEMP; WARREN OTIS MARTIN; LISA K. LOVEN; DAVID BATSON; RUSSELL EVANS, Defendants-Appellees.

Case Details

- **UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**
- **November 1, 1991, Argued**
- **December 6, 1991, Decided**
- **Richmond, Virginia**



Case Details-"Sue 'em All"

- Plaintiff wife and personal representative of decedent's estate sought review (appeal) of an order from the United States District Court for the Eastern District of Virginia, which granted summary judgment to defendant fire rescue companies and county personnel in her wrongful death action pursuant to Va. Code Ann. § 8.01-50 (1984) as the rescue companies were entitled to sovereign immunity.



Case Details-"Sue 'em All"

- The decedent fell in the bathroom. At 6:05 a.m., his wife called 911 and requested an ambulance.
- Because of his symptoms, the operator classified the call as one that required advanced life support (ALS).
- The dispatcher called five rescue companies until she located a rescue team available to take the call.
- At 6:34 a.m., the wife called 911 to tell them that the decedent had stopped breathing.
- At 6:37 a.m., a non-ALS rescue team arrived.
- They took him to the hospital where ALS treatment was administered at 6:59 a.m.

The Outcome-”Sue ‘em All”

- On review, the court found that the provision of emergency rescue and medical care for its citizens was a government function of the state and its interest and involvement was demonstrated by Va. Code Ann. §§ 27-23.1, 32.1156(B) (1985).

3 Outcomes of Conflict

- **WIN-WIN**
- **WIN-LOSE**
- **LOSE-LOSE**

The Outcome-”Sue ‘em All”

- The court stated that the act complained of required the judgment of the operators regarding the classification of the callers and whom to dispatch to a particular site.



The Outcome-”Sue ‘em All”



- **The court determined that the control the state and county exercised over the rescue companies was sufficient to entitle the rescue companies to sovereign immunity, especially as the wife failed to demonstrate that their conduct amounted to gross negligence.**

The Outcome-”Sue ‘em All”

- **OUTCOME:** The court affirmed the award of summary judgment to the rescue companies in the wife's action for wrongful death as the rescue companies were entitled to sovereign immunity.



**ANY
QUESTIONS?
COMMENTS???**

LAST CASE



Case #3-FLSA/Workplace Issues



Case #3-FLSA/Workplace Issues

**GREGG ALAN BENSHOFF; ZENO NICHOLS,
JR.; PAUL ROBERT CRISWELL; JEFFREY
L. FLOYD; GEORGE MARSHALL; ALAN
G. TAYLOR; ALAN PAUL WALTERS,
Plaintiffs-Appellants,**

v.

**CITY OF VIRGINIA BEACH, Defendant-
Appellee.**

SECRETARY OF LABOR, Amicus Curiae

FLSA/Workplace Issues

- Details:
- **UNITED STATES
COURT OF
APPEALS FOR THE
FOURTH CIRCUIT**
- **March 2, 1999, Argued**
- **June 8, 1999, Decided**



FLSA/Workplace Issues

- **Plaintiff firefighters appealed the order of the United States District Court for the Eastern District of Virginia which denied their motion for summary judgment and granted summary judgment to defendant city on the claim that defendant violated the Fair Labor Standards Act, 29 U.S.C.S. §201 et seq.**



FLSA/Workplace Issues

- **Plaintiff firefighters were employed in that capacity by defendant city.**
- **As part of their employment they were required to obtain basic life support training and to provide such services until a rescue squad licensed to provide advanced life support (ALS) arrived on scene.**



FLSA/Workplace Issues



- Plaintiffs each decided to obtain ALS certification and to join one of the volunteer rescue squads providing such service.

FLSA/Workplace Issues

- **Plaintiffs filed suit seeking overtime compensation under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (FLSA), for their services as rescue squad members.**



FLSA/Workplace Issues

- The district court granted summary judgment to defendant city.
- The circuit court affirmed because plaintiffs were not acting as employees of defendant for purposes of the FLSA when performing the emergency medical services at issue in the lawsuit.



FLSA/Workplace Issues

- **Plaintiffs volunteered to join the rescue squads and the fact that defendant provided some financial assistance to, and oversight of the service provided by, the rescue squads did not amount to sufficient control over the volunteer operations to render the plaintiffs' volunteer service employment controlled by defendant for purposes of the FSLA.**

Final Decision in Case

- **The order granting summary judgment to defendant city was affirmed because plaintiff firefighters were not employees of defendant for purposes of Fair Labor Standards Act when they performed volunteer emergency services for private non-profit rescue squads.**



Questions??? Comments?



Thank you for attending....

