law at the time of Elbery's arrest, especially in light of the fact that the amendments to M.G.L. c. 269 were relatively new and had not been interpreted by the Massachusetts courts at the time of Elbery's arrest. In response to this argument, Elbery asserts that "[t]he existing gun laws at 8-5-94 in Mass. made it incontrovertible that the guns in Elbery's E-Z unit were not a violation of C.269-10a or any other law." Elbery Opposition at 4.

Citing a number of cases interpreting the prior version of the relevant statute, Elbery contends that he was not in violation of the statute because the storage area was not a "public" place. Elbery Memorandum at 11. Elbery argues that "if the guns in controversy are in an area within the exclusive control of Elbery there can be no 10a violations/charges." Id. at 12 (citing Commonwealth v. Dunphy, 386 N.E.2d 1036 (1979) ("[T]he unlicenced carrying of a firearm within one's residence or place of business by one having a valid firearm identification card is not a criminal offense." (internal quotation marks and citation omitted))).

Moreover, Elbery asserts that because the storage facility was the equivalent of a residence, the gun charge was incorrect as a matter of law because the statute contained an exemption for "carrying" in one's home or place of business. Elbery Opposition at 12 (attempting to analogize to Commonwealth v. Hamilton, 508 N.E.2d 871 (Mass. App. Ct. 1987) (noting that hotel guest receives

heightened Fourth Amendment protection)).

However, Elbery's arguments, based on decisions rendered before M.G.L. c. 269, § 10(a) was amended in 1991, actually demonstrate the need for expert testimony in this case. Not only has Elbery failed to present such testimony, it is unlikely that any competent attorney would opine that Sheketoff was negligent. Rather, it appears that his views concerning the proper interpretation of M.G.L. c. 269, § 10 were not only reasonable, they were right.

As defendants point out, prior to 1991, the statute prohibited "carrying" a firearm without a license. See Mass. Gen. Laws Ann. ch. 269, § 10, Historical and Statutory Notes, at 552. In 1991, the statute was amended to prohibit possession of a firearm, outside of an individual's residence or place of business, without a license. Id. Previously, an individual without a firearm identification card could possess a firearm, but not carry it - meaning move it. See Commonwealth v. Morse, 425 N.E.2d 769, 771 (Mass. App. Ct. 1981); Commonwealth v. Osborne, 368 N.E.2d 828 (Mass. App. Ct. 1977). The obvious import of the 1991 amendment was to require that a person have a license to possess a firearm anywhere outside his residence or place of business and, therefore, to eliminate the previous qualification that a license was required only if the weapon was in the process of being moved.

Similarly, it is not surprising that no attorney has opined that Sheketoff was negligent in not defending Elbery on the basis that the EZ was part of Elbery's residence. First, the record indicates that Sheketoff originated this theory. Second, while there was no case on point, it is highly unlikely that a judge could have been persuaded to dismiss the case because the EZ constituted Elbery's residence. Generally, "residence" is defined as "[a] personal presence at some place of abode with no present intention of definite and early removal . . ." Black's Law Dictionary at 1176 (5th ed.). An "abode" is "[o]ne's home." Id. at 7. The EZ plainly was not part of Elbery's abode.

In these circumstances, it appears that Sheketoff properly informed Elbery that cases concerning "carrying" that were decided before the 1991 amendment to M.G.L. c. 269, § 10(a) were not applicable to his case. In any event, there were no reported cases on point. In the circumstances, the evidence is insufficient to prove that Sheketoff was negligent in his defense of Elbery.

b. Causation.

In addition to evidence of the appropriate standard of care, there must be evidence of causation to demonstrate legal malpractice, meaning there must be evidence that, in the absence of the alleged negligence, the controversy would have ended with a different result. See Glidden v. Terranova, 427 N.E.2d 1169, 1171