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CHOOSE WORDS CAREFULLYWHAT YOU SAY MATTERS

ASK YOURSELF THIS QUESTION....

 What will this sound like when you are on the witness stand at trial telling this story or repeating what you said?

EXTERNAL

- Marketing Material
- Applications
- Medical Forms
- Student Agreements
- Release and Waivers
- Contracts

INTERNAL

- Logs
- Incident Report
- Crisis Plan
- Policies and Procedures
- Witness Statements

Why Words Matter

Fairness

Legal liability

 Misrepresentations can cause contract or Release and Waiver to be non enforceable

 Are you using a term which has a certain connotation in the law?

Legal Words

- Examples:
 - -DANGEROUS
 - -SAFE
 - -DUTY
 - -NEGLIGENT

"SAFE"

- What does "safe" mean
 - Free from risk of harm

- Don't make promises that you cannot keep
- You cannot ensure safety
- There are no assurances of safety
- Avoid absolute words like "safe"

Use the Right Word

There is a word for what you intend to say. Use it

Is there another context?

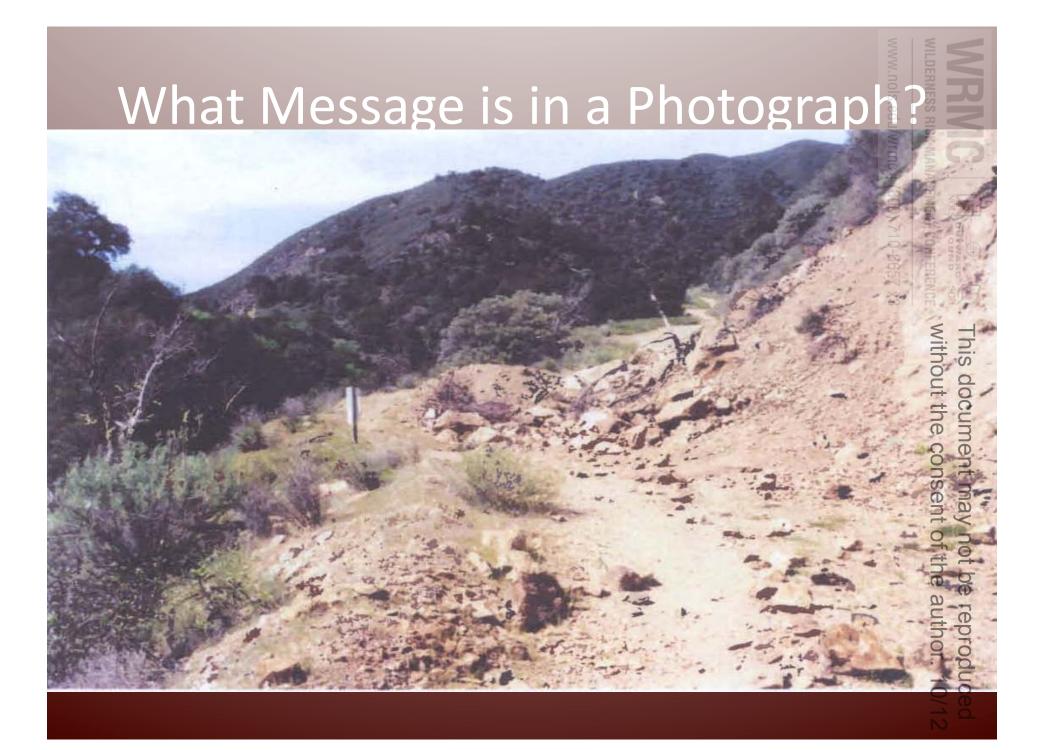
Get it right!

External - Marketing Material

- Website
- Printed pamphlets/brochures
- Telephone contact
- Application/Questionnaire
- Release and Wavier document
- **Medical Forms**
- Orientation packet

Information Disseminated

- Description of activity or program
- Talk about Risks (known or unknown)
- Participant responsibility
- Goals of program
- Objectives for activity
- Expected clients
- Level of activity
- Qualifications of leaders
- Description of emergency preparedness.



Who is your audience

- Who is the intended reader/recipient
- Family member
- Participant



PARENT ORIENTATION PACKET

Please fill out and turn in the attached:

- Orientation Survey
- Involvement Opportunities Survey
- Parent/Guardian/Caregiver Contract

Thank You.

- Location of activity
- Risks known or unknown
- Environmental factors (weather, altitude, rocks, rivers, animals, reptiles)
- Equipment descriptions
- Transportation logistics

Consistent message

- Audience level of understanding.
- Reader's expectation (environment, weather, supervision, medical help, etc.)
- Be consistent
- Beware of different contexts
- Beware of possible misinterpretations
- Eliminate the unknown

Responsibility

- Explain if client is responsible for something.
- Explain what you are not responsible for
- Explain if using a subcontractor
- Explain if staff not supervising activity
- Explain if no medical care

Contracts

- Be clear
- Set out responsibilities
- Get indemnity
- Additional insured

Ask for help with contracts

- Avoid "always"
- Avoid untrue statements
- Avoid saying you "will eliminate danger"
- Avoid "best" or "most"
- Avoid "guarantee"
- Avoid ambiguity
- Avoid "safety record is unmatched"





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Gather Information from Client

- Physical abilities
- Experience
- Disabilities
- Limitations
- Medications
- Fears/concerns
- Expectations
- Personal needs





Legal Terms

 Negligent – The failure to do something which a reasonable person of similar circumstances would do.

Forms of Negligence

- 1. Negligence -
- 2. Negligent Supervision
- 3. Failure to Warn
- 4. Failure to Instruct

Lawsuit – Discovery Standard

- Everything is discoverable!!
- If it is relevant is admissible at trial
- But in discovery if it is reasonably calculated to lead to the discovery of admissible evidence must be produced in discovery

Internal Documents are Evidence

- Broken piece of equipment
- Photographs
- Diagrams
- Maps
- Trip Logs
- Field Resource Guide/Manual

Staff Manual

- Policies and Procedures
- Follow industry standards and practices
- Comply with Accreditation

Ask for help

Field Guide for Staff

- Be consistent with other material
- Be sure that staff follows procedures to the letter, because when in trial a plaintiff's attorney will hold them to it.
- How will you as program director of field staff explain it to a jury if staff did not follow your own procedures.

Policy

Zero Tolerance – be clear on meaning

Avoid Confusion –
 "should" versus "must"
 "are expected to" versus "always"
 "our practice is" versus "our policy is"

What about "staff judgment"?

Staff Documents

- Qualifications of Staff; resumes, job applications, payroll, evaluations, etc.
- Training Records
- Certification Current?
- Clinics held
- Staff manuals, training materials, handouts,
- Log entries
- Internet

Business Records are discoverable and must be kept for years after incident.

Incident Report

- Stick to the FACTS only
- Do not talk about "Cause"
- Gather written statements
 - Facts only
 - Memory fades with time
 - Details are forgotten

Choose your words carefully

- What happened?
- Where it happened?
- When it happened?
- Who was involved?
- Background on program?

Do not Judge

- Do not state a "cause"
- Do not state who is responsible
- Do not speculate about how something happened.
- Do not give an opinion
- Do not give a conclusion

Witness Statements

- Stick to the Facts
- Do not address cause
- Include full name, address and telephone numbers.)
- Describe location of witness
- Describe what saw or heard
- List all details (weather and surroundings)
- SPELLING IS IMPORTANT!



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WORDS TO AVOID

- Avoid "cause"
- Avoid "fault"
- Avoid "guilt"
- Avoid "admission" or "admit"
- Avoid "responsible"
- Avoid "disaster"
- Avoid "catastrophe"

Incident Documents are discoverable

- Incident Report
- Witness Statements
- Policy and Procedures
- Paramedic/doctor report
- Participants original Medical Form
- Medical record which has history of injury

- 1. "We've had problems here before"
- 2. "This horse has been a problem in the past"
- 3. "We had 3 similar accidents last year"

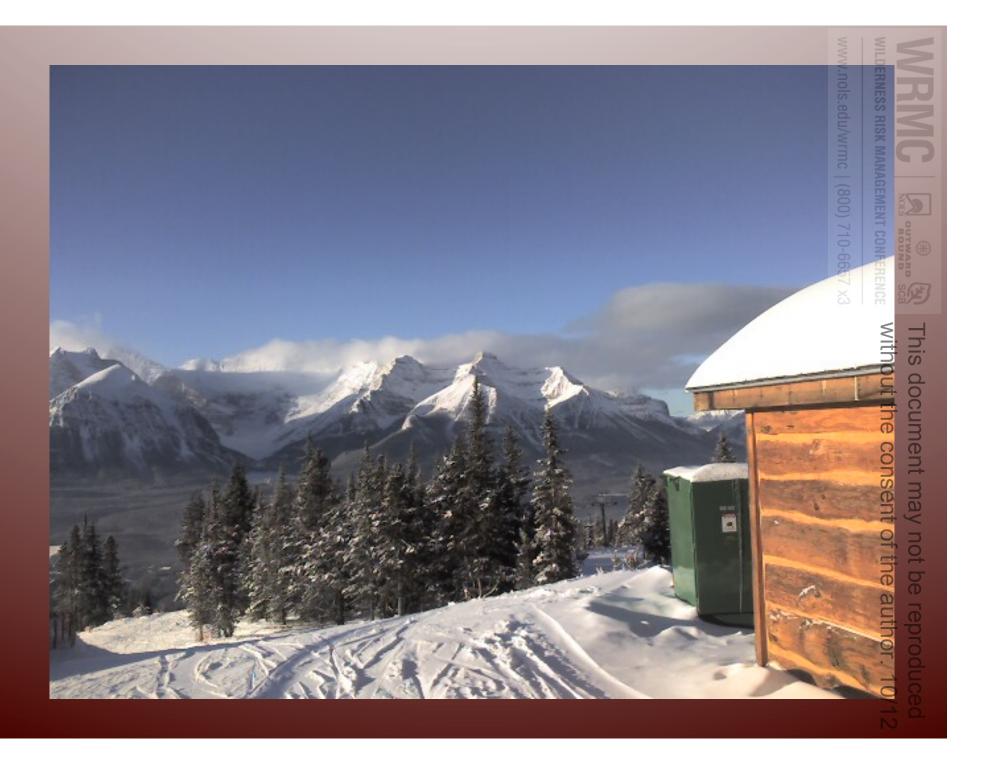
When you leave here...

What words will you change?

 What will you review and rewrite?

Ask yourself

How will this sound when am in a Courtroom in front of a jury???











WILDERNESS RISK MANAGEMENT CONFERENCE Without the consent of the author. 10/12

Analyze this Sample from a Website Message:

"Our program has been conducting adventure based and outdoor learning experiences for schools, adult groups, and other organizations for over 30 years, and holds an excellent safety record. Over 80,000 participants have safely and successfully experienced our premium-quality education programs."

Sample B to analyze

"We are proud of our attention to safety and to the sustained achievements in program safety. Our accident prevention infrastructure ensures that each participant benefits from our extensive risk management systems and that our program offers thoughtfully developed experiential programs that minimize risk and maximize educational impact and value."

Sample C to analyze

"Our programs enjoy specific staff-to-participant ratios. Wilderness programs have multiple staff with each group to help ensure safety, a policy that leads the industry in safety management. Participants receive safety briefings as a regular part of the program."

Sample D - What do these sentences promise?

"We hold insurance coverage with liability and other appropriate insurance policies. Safety policies have been developed for all activities, and we participate in internal and external reviews of our operations to ensure that we continue to excel in both program safety and quality."