

# Managing Legal Issues After a Serious Incident:

## What Do You Do? What Do You Say?

WRMC 2014

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# What we will cover

- Investigation process
  - Collecting evidence
  - Taking witness statements
- Managing communications
- Litigation issues
  - What the other side can find out
  - Your internal investigation and report
- Other legal issues
  - Land managers
  - State agencies
  - Criminal charges
- How to work with the injured and their families



# What to take to site

- Pen and paper to write out witness statements (and statement logs)
- Camera/video camera
- Form to track statements
- Form to track collection of evidence



# Collecting evidence

- Collect physical evidence
  - Tag or put identifying mark on item
- Create detailed inventory
- Document condition at the time
  - Take photographs
  - Describe conditions, especially those not captured by photos
- Preserve evidence in same or substantially same condition
- Store in secure location with limited access

EVIDENCE LOG

Evidence should be preserved in the same condition as it was at the time of the incident as much as possible. Any items collected should be kept in a location where access can be controlled and limited.

Evidence collected (describe item and its contents):

MSR Pocket Rocket Stove & MSR fuel bottle

Collected by: Matt Greene

Date collected: 10/15/09

Original location of evidence (where collected from): camp site at Willow Rock

Describe any characteristics (i.e. weight, hot/cold, wet, pertinent smells, sounds, etc.)

Fuel bottle was half full.  
Stove was hot - had just been used for cooking dinner.

Where evidence is to be kept:

Skerry Winstan's office

Who has access to the evidence:

only Skerry

Attach any relevant photos, inventories, etc.

Transfer Log

The above evidence was transferred

from: \_\_\_\_\_

to: \_\_\_\_\_

on (date): \_\_\_\_\_

Where evidence is to be kept: \_\_\_\_\_

Who has access to the evidence in this location: \_\_\_\_\_



# Witness Statements

- Need statements from:
  - Students/participants
  - Staff
  - Witnesses, etc.
- Process and format:
  - Two systems:
    - Taken by interview
    - Written in witness's own handwriting
  - Document signed by person saying it is a true, accurate, and complete reflection of their statement

## STATEMENT LOG

The purpose of a statement is to document factual information. Witnesses should be asked to describe what they saw and heard. Avoid statements analyzing the incident or speculating about causes.

Statement given by: Jasmine Johnson

Date statement given: 10/14/09

Location where statement taken: In field, at Willow Rock Campsite

Staff member collecting statement/conducting interview: Jason Beckworth

Attach copies of the statement and any revisions made to the statement by the interviewee to this form.

Hand written stmt attached -

\* If a witness is interviewed, a written statement should be created. The person interviewed should then review the statement and make any changes, corrections, or additions to the statement to ensure that it is accurate and complete. The proposed revisions should be kept but a new statement that includes the revisions should be created, if possible. The following sentence should then be added at the end of the statement.

**“This statement is a true, accurate, and complete representation of the information I provided.”**

The interviewee should then sign and date the statement below that sentence.



# Collect pertinent documents

- SOAP notes
- Enrollment documents
- Medical forms
- Course description
- Other information provided to participant
- Incident report form
- Liability release form





# Who is involved in an incident?

- Injured party
- Family of injured party
- Organization (instructors, staff, Board, etc.)
- Rescue personnel/medical personnel
- Law enforcement
- Land Managers
- Media
- Insurance Company
- State Agencies
- Other students (in that group and other groups)



# Form to track communications:

- Who communicated
- What
- To whom
- When
- How (written, by phone, in person, etc.)
- Any promised follow up
- Attach any materials provided (incident report, description of incident, statements, etc.)

COMMUNICATIONS LOG

This form is intended to track communications with participants, a participant's family, law enforcement, land managers, the media, state agencies, insurance companies, etc. Attach copies of any written materials, correspondence, emails, or other documents given to any party.

Incident: 10/9/09, Levi Westminster Brokeback Mtn  
 (Injured party, date, location)

Date of contact: 10/10/09 10:20 a.m.

Staff member communicating with outside party: Mary Abernathy

Method of communications: (circle one)  
 Phone call     Letter     Email     In person discussion

If conversation, how long did conversation last? 10 min

Person talked to and affiliation:  
 Name: Joe Reporter

- Affiliation: (circle one)
- Injured party
  - Other Participant
  - Family member of participant
  - Family member of another participant
    - Name of other participant: \_\_\_\_\_
    - Relationship to participant (mother, brother, etc.): \_\_\_\_\_
  - Law Enforcement
    - Name of Agency: \_\_\_\_\_
  - Land Manager
    - Name of Agency: \_\_\_\_\_
  - State agency
    - Name of Agency: \_\_\_\_\_
  - Insurance representative
    - Company Name: \_\_\_\_\_
  - Media
    - Name of newspaper, magazine, etc.: Times Herald

Documents given (incident report, description of incident, statements, etc.):  
 \_\_\_\_\_

Substance of communication (describe the communications including any pertinent comments by the person, any representations or promises by the staff member, etc.)

- Wants details about incident
- Wants to interview instructor
- 4:00 pm deadline

Follow up to be completed: Told we wld call him back - (919) 555-0104

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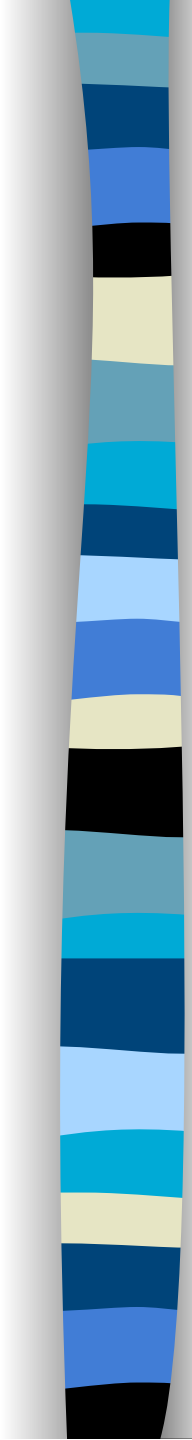
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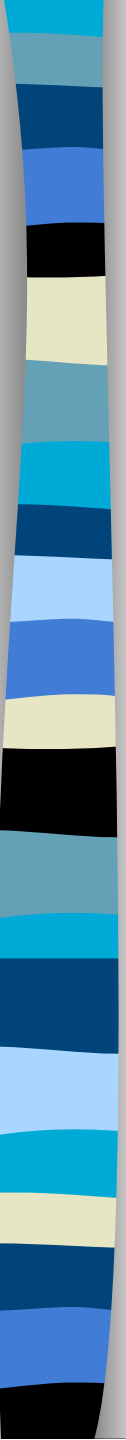
“I really don’t think we are going to have a problem with the family. We are getting along great. The mother has been very appreciative of all we have done for her son.”



# Litigation Issues

- False sense of security
- Extended statute of limitations period for minors
- Litigious society
- Don't assume that because you haven't done anything wrong that you won't get sued

“We blew it...”







# Discovery

- Must produce documents including email, reports, notes, etc.
- Potential protection by attorney-client privilege
- Potential protection by work product doctrine (limited)



# Internal Investigation

- Likely discoverable
- Mea culpa mindset
- Give context, explain what report doing/not doing
- Get attorney involved before an incident to discuss your process



# General advice

Assume whatever you say  
and whatever you write, will  
be heard or read by someone  
suing you.



# Land Managers

- Review permit, concessionaire's agreements, etc. for reporting requirements after an incident
- Information may be available to public under FOIA
- Information may be used by land manager against you



# State Agencies

- Violation of regulations could be negligence per se
- Incident could result in:
  - Penalties from State Agency
  - Loss of license
  - Being required to be licensed
  - New regulations



# Criminal investigation

- Charges could be against:
  - Organization
  - Individuals
- Hire counsel
  - Evaluate potential conflicts of interest
- Consider implications of negligence per se



# Communications with the family

- The impact of “I’m sorry”
- Provide logistical and financial support
- Give facts/description of what happened
- Take to site?
- Inform doing an investigation
- Follow up with additional information when you have it



# Take Home Action Steps

- Create forms to help you track (evidence, statement, communications)
- Identify person in organization responsible for collecting, documenting, and preserving evidence, documenting statements, and collecting pertinent documents (medical form, liability release form, etc.).
- Educate staff about the discoverability of internal communications and the need to be thoughtful about what they say about an incident.
- Confer with an attorney about your incident report process and potential protections