

Up Or Down: High Tech? No Tech?

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Every program brings "gear" a/k/a "stuff" into the field. This gear has a variety of purposes (providing shelter, medical treatment, communication, etc.). Deciding what to carry and what *not* to carry into the field is as important as many decisions made in the field. It requires an awareness of your clients, the environment, reasonably anticipated needs, and of course, what you and your client expect to accomplish.

With the explosion of technological devices available for everyday use, a growing segment of the consuming public has developed expectations about the availability and reliability of this technology, even on remote outdoor programs. Participants may expect that certain technology will be on hand and available. Expectations may extend to radios, cell and satellite phones, first aid kits and medications perhaps even avalanche recovery devices and global positioning systems.

In light of consumer expectations, is an outdoor program's conscious decision *not* to carry these aids reasonable? Ethical? Presumably such a program has decided that the benefits of being "out of touch" and utterly self-reliant justify the potentially increased risks. While a decision not to carry these aids may be reasonable, growing public expectations make it prudent for programs that choose this approach to make that fact clear to their clients.

Therefore, an important challenge to the administration of a responsible program is to anticipate the client's expectations in terms of technological support, and to accurately disclose what will and will not be available on the trip.

The starting point in a discussion of gear - including gear, which may relate to safety or medical issues - is the mission of the program and its purpose. What the program wishes to accomplish will guide its approach to what it provides, and what it withholds, from the field experience. It would be fair and reasonable, for example, to greatly reduce gear even emergency response gear if the mission is served by doing so.

In some programs, maps, compasses, climbing aids, perhaps even synthesized medicines and water purification systems would not be expected by a person who understands the goals of those programs. At least one very good outdoor school in a Western state offers an orientation in which clients travel with little more than basic clothing, a blanket, a knife and a water bottle. Clients are told there will be no cell phones or radios, limited medications and only sparse water and food. This program teaches survival skills, self-reliance, and confidence. This minimalist approach to resources is important to its mission. Other outdoor adventure or Wilderness Risk Management

education-based programs may have equally logical reasons for not carrying certain technological aids. The importance of a truly remote wilderness experience may be so imbedded in the culture or mission of a program that it chooses, for example, not to carry a radio or cell phone.

Those programs that decide they will have certain equipment in the field should, of course, disclose the limits of that equipment. In the case of communications gear, for example, equipment performance cannot be guaranteed, communications can be misunderstood, and small groups may not have access to the equipment at all times. In addition, staff and in certain cases clients, must be trained in the use of cell phones, radios, and other safety gear. The gear must be in good working order and its location and availability known to those who might need to use it.

Thoughtful programs will anticipate the "risk homeostasis" phenomenon which can be associated with having these technical supports at hand—the notion that the ability to summon help quickly, for example, might allow or encourage clients to expose themselves to risks in a way that might not be tolerated without these devices. In an article in the *Denver Post* this spring entitled "Snow Deaths Adding Up" (March 24, 2002), Hal Clifford highlights a new piece of equipment called the "Avalung," designed to provide oxygen to backcountry adventurers buried in an avalanche. The victim can breathe for a short time while searchers locate him through use of yet another piece of high tech equipment, the Tracker beacon. Through use of such equipment, adventurers may be enticed to go further and further into more questionable terrain. He writes: *...all of this equipment and education creates a false sense of security in a natural environment that, unlike culture and technology, has not changed.... I think the biggest factor is the human factor...the same accidents are happening over and over again. Instead of thinking about what the mountains will allow us to do, we are thinking about what we want to do.*

On another note, some gear is heavy, and its inclusion in the field may slow the movement of the group, sap energy and enlarge the potential for injuries. If you carry it, you should be trained to use it— training time and attention that might be used for more important matters. And inclusion, as mentioned above, can create complacency. Consider a guide who doesn't take the appropriate preparation time to understand his or her routes in the backcountry, reasoning that there will be access to a cell phone "just in case."

A program believing its mission justifies or mandates the absence of expected gear should carefully disclose the reasons for this reduced support and the potential additional risks posed by the absence of such gear. In addition, the program should reasonably assure that the client understands and agrees to assume the enlarged risks. A program may find itself in a difficult position if

the client expects and assumes that certain equipment will be available and it is not.

A program whose mission does not justify reduced technological support should have a good reason for not having this support available. An injured client, his or her family, and a judge and jury may not take well to the defense of: "we couldn't afford it" or "we didn't consider it." Consider again the Avalung, mentioned above. You likely would not carry an Avalung unless you anticipated crossing very fragile slopes. One might ask: "Why are you crossing those slopes anyway?" Still, if there was a slide, and the victim suffocated...what do you tell the parents?

Whether or not a program believes its mission justifies reduced technological support, satellite or cell phones, avalanche beacons and GPS devices may assist in managing an emergency in the field, and if a program decides not to employ these aids, clients who might reasonably expect them to be available should be clearly advised of that decision, and of the potential risks created by those aids not being available.

Interestingly, at the time of the September 11th crises, some programs carrying communication devices allowed clients to talk to their families from the field. This was done to provide security and comfort at a time of unique stress and anxiety. By policy, such programs had reserved use of the phones for only the most extreme emergencies. The 9/11 crisis was considered such an emergency. However, the reservation of use for "emergencies only" may be undergoing some scrutiny. At least one fine program is experimenting with allowing telephone or radio communication between the field and "home base" to seek advice regarding safety and other issues. In addition, young students struggling with their first outdoor experience are allowed to talk to parents who offer encouragement to stay in the field, thus avoiding evacuation. It will be some time before we know the effect of such expanded use of technology on the wilderness experience, and on the development of judgment and coping skills in the field. Again, it's all about mission and addressing expectations.

A word about standards: In the Winter 2002 issue of the *Law Quarterly* we discussed the *T. J. Hooper* case. The question before the Court was whether the absence of radios on most vessels in an area represented a

"standard in the industry." Such a standard might have justified the absence of a radio on defendant's vessel (whose cargo was lost in a storm) and a finding of "no negligence." The Court found that the ultimate decision regarding reasonable conduct—in this case, whether or not to outfit boats with radios—was the court's, not the industry's, and found the vessel liable. In essence, the Court found the entire "industry" was negligent in not choosing to outfit boats with radios.

So, while "the way most folks do it" may influence a court decision regarding the reasonableness of, for example, carrying a satellite phone into the wilderness, the last word belongs to the courts. A court may decide that even though most programs don't carry them, a reasonable program should, and a program is negligent in failing to carry communications gear for emergencies. Faced with this prospect, a program should carefully weigh a decision not to carry such gear. Importantly though, the program should understand that disclosing to clients the intent not to carry certain gear (including potentially increased risks), and an announced mission which prioritizes the remote and self-reliant wilderness experience, may very well justify the unavailability of the gear.

In conclusion, organizations should examine their mission and practical program needs, and think carefully about decisions to carry—or not carry—certain equipment. Whether or not certain equipment is taken on the trip, appropriate disclosure to clients (and their understanding and assumption of increased risks and/or equipment limitations) is a vital step in addressing client expectations and potential liability exposure, and in minimizing potential problems on the program. Importantly, a program which discloses to clients the intent not to carry certain gear (including disclosure of potentially increased risks), and whose mission is clearly understood to prioritize the remote and self-reliant wilderness experience, will be better able to defend an accident that might have been avoided or mitigated by, the presence of such gear. As always, these are general thoughts, not intended to provide specific legal advice, and organizations should consult with their legal counsel to address these matters in their own operations.