

Well, Isn't That Predictable?

Whether planning to climb Mt. McKinley or to provide legal services to a client, assaying the possible and probable changes to a plan is key to success.

By Pam Woldow

This week's headlines in Alaska brought a tragic story about four climbers on Mt. McKinley (highest peak in North America). Because the weather had been predicted to be quite good, the climbers chose to leave a lot of heavy equipment behind, e.g., snow shovel, ice saw, so that they could summit and descend more rapidly. During the climb, however, the weather changed for the worse, and those discarded items made the difference between life and death. Without tools for managing ice and snow, the climbers' choices about how to survive were reduced to a pitiful few. Only heroic rescue attempts managed to save the lives of three climbers, but they were horribly frostbitten.

In hindsight, it is so easy to observe the faulty judgment of the climbers. The failure to plan for absolutely predictable events left the climbers with diminished choices about how to protect themselves.

What does this have to do with practicing law? Well, in Legal Project Management sessions with lawyers, we deconstruct matters that did not live up to client expectations. We ask "were the events you experienced in this matter predictable from the outset?" or "have they ever happened before?"

In almost every case, the lawyers readily admit that the events were neither novel nor completely unforeseen. In fact, the lawyers can provide robust lists of events that have occurred in similar matters. So, if the variations weren't unique, why not plan for them? Why do lawyers repeatedly fail to plan for "changes in the weather," so to speak?

Quite simply, they confuse possibility with probability. Although lawyers are not naturally optimistic folks, when it comes to predicting to a client the course of a particular matter, they don the cheery, best-case cloak and assume that things will go swimmingly (low probability of variations occurring), even though any observation of past matters would inform them of their folly (high probability of variation occurring). We don't know if the source of that optimism is expediency or the fond hope that things will go off without a hitch.

Clients need to know both the possibilities that might impact the course of a matter and the probabilities that those variations might occur. The very best attorneys now provide that information, and, as a result, their clients are better able to plan, budget, reserve, and inform management of the likelihood of changes and their impacts on the matters, budgets and outcomes.

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