

# Lessons Learned from Being an Expert Witness

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# Why projects end up in court

1. **Project is way over budget, schedule, etc.**
2. **Failure to deliver to scope**
  - Ever changing requirements
  - Uncontrolled scope expansion
  - Unclear acceptance criteria
3. **Poor quality deliverables**
  - Serviceability
  - Performance
4. **Diverging objectives**
5. **Personality conflicts**
6. **Fraud**
  - Known inability to deliver
  - Bait and switch
  - Hiding problems

**The real reasons...**

**Significant  
Monetary Damages**



**Executive Egos**



# Our legal system in action: The process

Typical Timeline	Major Step	Project Manager Responsibilities	Applicable Areas
Day 0	<b>1. The Project Fails</b>	* Accountability for results	* Project management practices
Up to 3 years	<b>2. Attempts to Resolve</b>	* Develop story * Calculate damages * Participate in negotiations	* Contract * Sales literature * Project documentation
3 to 6 Months	<b>3. Initial Legal Volleys</b> - Complaints - Rebuttals	* Assist legal team	

# Our legal system in action: The process

Typical  
Timeline

Up to  
2 years

1 to 2  
Months

	Major Step	Project Manager Responsibilities	Applicable Areas
Up to 2 years	<b>4. Discovery</b> <ul style="list-style-type: none"> <li>- Data collection</li> <li>- Depositions</li> <li>- Expert evaluations</li> </ul>	<ul style="list-style-type: none"> <li>* Assist legal team</li> <li>* Gather information</li> <li>* Research issues</li> <li>* Get deposed</li> <li>* Review expert reports</li> </ul>	<ul style="list-style-type: none"> <li>* Contract</li> <li>* Sales literature</li> <li>* Project documentation</li> <li>* Project practices</li> <li>* Project deliverables</li> <li>* Related records</li> <li>* <b>Your background</b></li> </ul>
1 to 2 Months	<b>5. Trial Preparations</b> <ul style="list-style-type: none"> <li>- Evidentiary rulings</li> <li>- Mock Trials</li> </ul>	<ul style="list-style-type: none"> <li>* Prepare testimony</li> <li>* Testify in the Mock Trial</li> <li>* Revise testimony</li> </ul>	

# Our legal system in action: The process

Typical Timeline	Major Step	Project Manager Responsibilities	Applicable Areas
In Parallel	<b>6. Settlement Talks</b>	* Participate in negotiations	
Several weeks	<b>7. The Trial</b>	* Testify at the Trial	
Several Years	<b>8. Appeals</b>		



# Our legal system in action: The results

1. **Significant direct expenses** (lawyers, paralegals, experts, consultants, travel, document management, tools, etc.)
2. **Diversion of management and staff attention**
3. **Large quantities of time spent on unproductive activities**
4. **Potential loss of reputation** (your company and maybe you!)
5. **If your company wins:** financial gains, perceived vindication
6. **If your company loses:** payment of financial claims
7. **If the case settles:** claims of vindication, secret terms and likely financial costs

***The final costs often greatly exceed the costs that would have been needed to complete the failed project!***

# The three “P”s for legal defense

## 1. Prevention

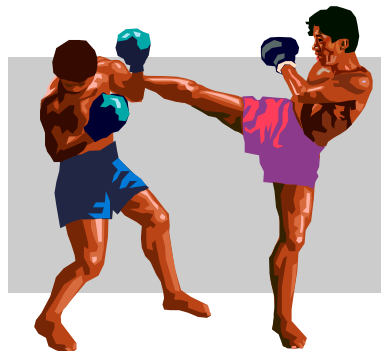
*Don't end up in court in the first place!*

## 2. Protection

*Build strong defenses before you need them*

## 3. Prosecution

*Make the best possible case if you can't avoid court*

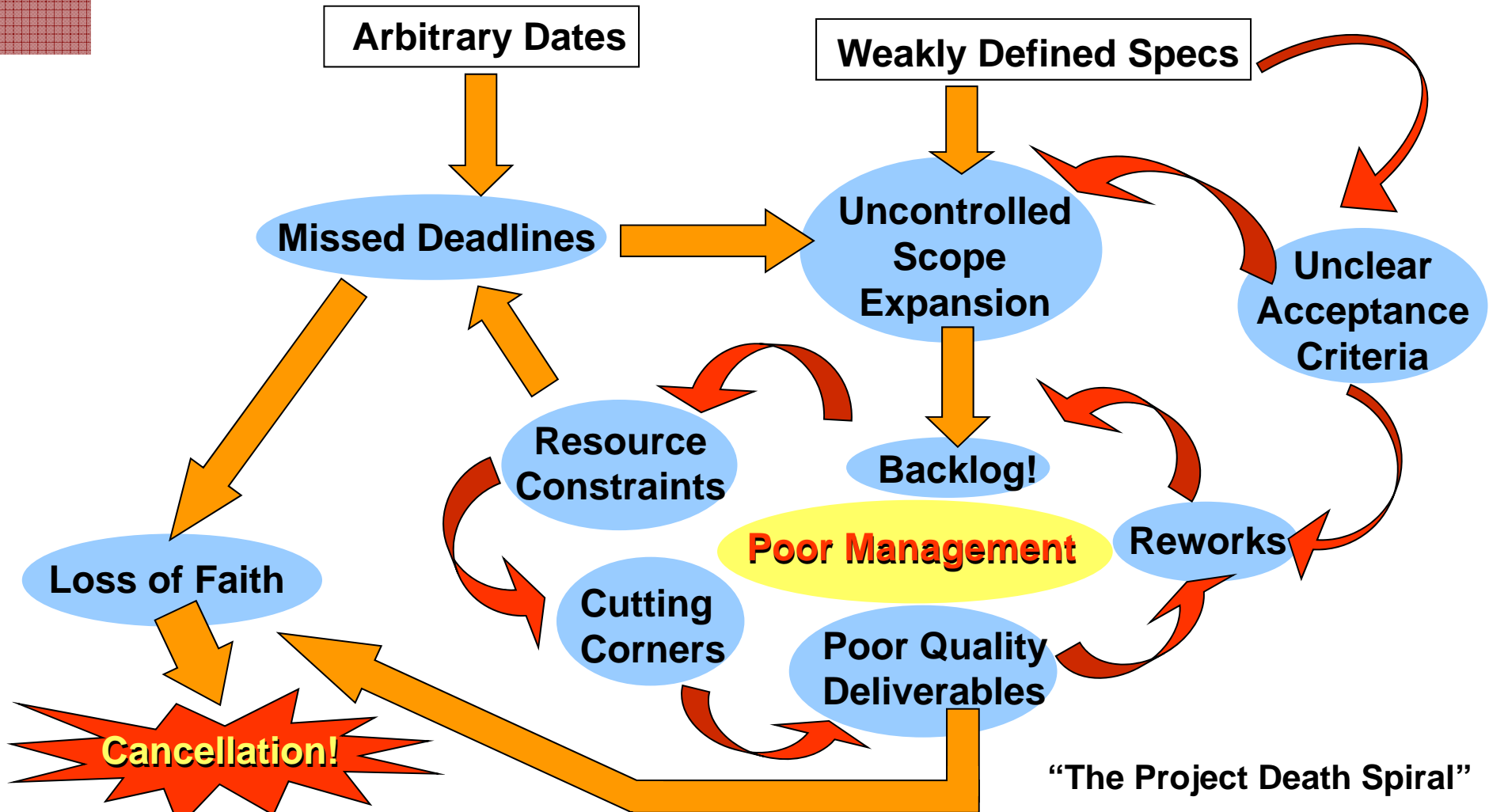


# Prevention Case Study: a story of a troubled project...

- **Initial excitement!** *“It’s an aggressive schedule, but our team will meet the challenge!” - CEO*
- **The players:** management, users, IT, consultants and a package vendor
- **Honeymoon period** – developing the specs
- **High expectations** – the prototype demo
- **Major disappointment** – the first test release
- **Downward spiral** – cutting corners to meet subsequent releases
- **This project can’t fail!** – turnaround attempts
- **But it does** – the cancellation
  
- **The inevitable result** – *“See you in court!”*

**Do any parts sound familiar to you?**

# Prevention Case Study: What went wrong? (A partial view)



# Prevention

## Rule 1: Define a winnable project

- **Make sure the project is reasonable** (Budget, schedule, **scope**, objectives)
- **Pick the right partner** (Due diligence!)
- **Ensure everyone gains from a successful conclusion**

## Rule 2: Know the contract *(It's not just for lawyers!)*

- **The contract governs future legal remedies, not the proposal or what the sales person says**
- **Ensure you have the flexibility to make changes**
- **Understand your obligations and performance standards** (ex: what happens if we upgrade to dual processor chips?)
- **Pay attention to interpretations of terms** (ex: what is a site?)
- **Understand issue resolution and termination clauses**
- **Strike everything that doesn't apply** (watch the boilerplate!)

# Prevention

## **Rule 3: Build a foundation for problem resolution**

- Define a process that encourages raising issues
- Focus on team-building efforts
- Maintain a strong relationship between executives

## **Rule 4: Manage the project!**

- Align to the desired objectives, not arbitrary delivery targets
- Control scope creep!

## **Rule 5: Resolve issues early**

- Learn to recognize the signs of trouble before they reach impending doom
- Concentrate on people issues

## **Rule 6: Finish the project!**

# Protection Case Study

## Actual remarks from a program...

```
000005  REMARKS .
000006
000007  PREFACE
000008
000009  BEFORE ENTERING THIS PROGRAM, IT IS ONLY FAIR TO WARN
000010  YOU THAT DURING TESTING PHASES THE DEFINITION OF THIS
000011  MESS HAS CHANGED CONSIDERABLY, SO ENTER AT YOUR OWN
000012  RISK.  IF PROBLEMS ARISE AND THE LOGIC OF THE PROGRAM
000013  DOES NOT CORRESPONDENT TO THE REMARKS, DO NOT PANIC,
000014  JUST TAKE A 10-MINUTE BREAK TO THE HEAD, GET YOURSELF A
000015  DRINK, LIGHT UP A CIGARETTE, IGNORE THE REMARKS, AND TRY
000016  AGAIN.  IF STILL IN DOUBT, CONTACT XXXXXXXXXXXX.
000017
000018  KEEP YE ALSO IN MIND THAT THIS TURKEY IS A PART OF A DAILY
000019  JOB STREAM SCHEDULED TO RUN IN THE WEE HOURS.  AN ERROR
000020  IN LOGIC OR CODE WILL LIKELY ROUSE YOUR TAIL FROM ITS
000021  WARM BED.
```

# Protection Case Study: Why Cases are Really Won or Lost

- **Flamers**
- **Loose Cannons**
- **Crude Comments**
- **Fear of Commitment**
- **Magically changing agreements**
- **Re-appearing project documentation**
- **Performance to standards**
- **Personality**



*And you thought it was about the merits of the case...*

# Protection

## **Rule 1: Ask how will my actions look in posterity?**

- Make major decisions carefully
- E-Mail is forever – reconsider how you blow off steam
- Skeletons in the closet may come out and dance!

## **Rule 2: Keep accurate and consistent project records**

- Keep records in a central location
- Status reports are especially important

## **Rule 3: Establish and follow document retention policies**

- Documents include handwritten notes, e-mails, CDs, diskettes, source code versions, etc., etc.
- Track important documents, don't let them get scattered
- Watch out for “personal” copies that end up at home

# Protection

## **Rule 4: Memos to the File**

- Respond to flammers and loose cannons
- Document “verbal” changes
- Note ethical disagreements
- Explain significant changes in strategy



## **Rule 5: Follow accepted standards**

- You will be judged against industry standards
- If you say you’ll do, do it!
- If you are traveling off the beaten path, document
- If it isn’t working, get documented agreement to change

## **Rule 6: When in doubt, get sign-offs**

- Acceptance for deliverables
- Acceptance for changes
- Keep sign-offs in project logs

# Prosecution Case Study

## Jury awards Perelman additional \$850 million in damages from Morgan Stanley

“Revlon chairman Ron Perelman won a second victory against investment banking firm Morgan Stanley in a lawsuit that has given new meaning to the term “paper trail” after a Florida jury awarded Perelman \$850 million in punitive damages Wednesday.”

- *Bo Susan Rosser Court TV May 18, 2005*



# Prosecution

**Rule 1: Follow the Prevention and Protection guidelines**

**Rule 2: Assemble a proactive “paper” trail as early as possible**

- Project details and recollections get lost over time
- A project timeline with issues and responses is especially valuable

**Rule 3: Tell your lawyer everything good and bad (no surprises!)**

**Rule 4: Don’t help the other side make its case against you**

- Do not destroy or alter documents (remember Andersen?)
- Comply with all discovery requests (as guided by your lawyers)
- Follow your lawyer’s recommendations scrupulously on all issues and especially confidentiality (stay off chat boards!)



## In conclusion

- **The best defense is never to go to court in the first place**
- **Prevent and Protect and hopefully you'll never have to Prosecute**
- **It's always darkest before the dawn; think carefully before killing a large scale project**
- **Make your decisions with an eye to posterity**





# Thank You!

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