

# The Protection Ranger

The Newsletter of the U.S. Park Rangers Lodge, Fraternal Order of Police



Vol. XI • No. 5 • 2000

## Report Card On Lodge Recommendations

Some progress has been made on implementing lodge recommendation that followed the murder of Steve Jarrell, though not enough. The Lodge committed itself to following through with these recommendations in memory of Jarrell, and Joe Kolodski. We will not forget.

The Lodge will be communicating these recommendations to the new WASO Operations and Ranger Activities leaders, and urging them to implement them as soon as possible.

Here are the recommendations:

- 1. Give Every Ranger Access to Dispatch** No national action implementing this has occurred. There have been some budget request for improving radio systems as required by law, but they have been inadequate, and have not provided for dispatching -- just updated radio systems. While a good start, any WASO effort has fallen short of meeting a critical safety need. We will be disappointed if we don't see this item play a significant part in the IACP review.
- 2. Stop Abandoning Our Rangers** Give rangers backup on every patrol shift. Nothing has been done to implement this important safety policy nationwide. Again, we expect to see this in the IACP review, and we expect action on this following the IACP recommendation.
- 3. Stop Cutting Ranger Staff Levels** Re-build the ranger workforce with a goal of 3,000 rangers within 5 years. The NPS's own report to congress (a.k.a. the Thomas Bill) set growth recommendations similar to what the FOP recommended several months prior to the NPS project, verifying the accuracy of the Lodge's claim. Sadly, no action from Congress in implementing these increases is underway. NPS leadership continues to focus on hiring more scientists instead of rangers to do "resource protection."
- 4. Stop incompetence in the**

**management of Ranger Activities** New leadership has come to Washington, in Operations and Ranger Activities. With it, hopefully, will come new initiatives in implementing change, and a demand for quality. DO/RM-9 was completed in line with the FOP-requested timeline. The servicewide EMS and SAR coordinator positions have been announced per Lodge recommendations. Much work still needs to be done in the structural fire program, and in a hurry. And it's very clear there are problems in wildland fire as well.

**5. Quit Being Ashamed Of Law Enforcement** The lodge asked that the Service stop de-emphasizing officer safety procedures for the sake of somebody's version of the politically correct. We saw some positive changes, where law enforcement personnel were actually being referred to as "law enforcement." This trend has a long way to go, and could go back the other way in a heartbeat. The recent superintendents' conference with zero emphasis on law enforcement is another setback.

**6. Give Rangers A Field Training Program** The program has been created at FLETC, it has been recommended in several documents and mentioned in the "Thomas Bill" report. Yet implementation has not occurred. We are requesting that Washington move to implement this immediately.

**7. Make The Bosses Responsible** We are unaware of any discipline for chief rangers or superintendents for not complying with DO-RM-9. We are aware of many parks that have refused to implement medical screenings. While we oppose the screenings, we are amazed at how such insubordination is tolerated. We are also quite aware that supervisors have been blessed with a lower medical standard than those in primary positions, although there is nothing in the program that allows this. In other words, not much is happening on this front.

**8. Re-Build the SET and ARM Teams** Nothing has happened to change this either.

**9. Treat Law Enforcement Needs**

**Assessments Seriously** Although a part of RM-9, they are not fully integrated into GPR as the lodge requested. Many parks have not implemented this part of RM-9, and no action has been taken to see that this is accomplished.

**10. Conduct a Formal Review of the National Park Service's Law Enforcement Program** This Lodge recommendation was taken up promptly by Maureen Finnerty, who deserves credit for her prompt action. The IACP review will be completed this month. The Lodge will evaluate it in an upcoming newsletter. Implementation of the IACP recommendations is key, however.

## Pepper Spray: A Burning Issue

by Greg Jackson

Four issues have developed recently with pepper spray.

First, the original RM-9 limited the percent of OC in NPS pepper spray to five percent. This figure was dropped in the recent pen and ink changes, allowing parks to use the percentage of OC that they think appropriate. Keep in mind that the actual heat of pepper spray is measured in Scoville Heat Units, and that it will vary between manufacturers though the OC percentage on the can may be equal. The primary manufacturer of pepper spray for law enforcement is the same company that makes MACE. They don't mark their pepper spray with the MACE label. You may see the letters MSI on it, for Mace Systems International. Remember that pepper spray should be replaced when the warranty on the can has expired, at four years for many manufacturers. It doesn't mean that the OC won't be painful. It just means that the can may not spray reliably.

Second is the issue of effectiveness. Recent studies by the National Institute of Justice and the IACP show that 90 percent of combatants are successfully incapacitated. Other studies of use by the

Los Angeles Police Department show that pepper spray is very effective in incapacitating suspects without causing injuries to either suspects or officers. This was in contrast to other control techniques, such as baton, punches and kicks, the "swarm," etc. These other techniques were effective, but had much higher incidence of injuries to suspects and officers. The one type of force in the study with greater effectiveness (100 percent in the study) and also with fewer injuries (none to either officers or suspects) is the taser.

Next, a recent court case in the 9th Circuit limited, yet helped define, the role of pepper spray in law enforcement. In *Headwaters Forest Defense v. County of Humboldt*, police applied pepper spray with swabs under the eyes of passive resisters in a protest action. The court found that since the suspects posed no risk of any violent action, and better alternatives existed, the use of pepper spray was unreasonable (in this case, waiting the suspects out or negotiations were offered as better alternatives.) "The use of pepper spray on a suspect is not reasonable simply because the police have the legitimate objective of making an arrest. It is only reasonable if such force is needed to make an arrest in the circumstances. Thus, where there is no need for force, any force used is constitutionally unreasonable," according to the Ninth Circuit. The court, in this case, grouped pepper spray under the umbrella of pain compliance. This case will open the door to others second-guessing the use of pepper spray. You can see where it will be increasingly important to articulate in reports exactly why you thought it was reasonably necessary to use the force you did. Last on the list is the issue of whether rangers should be sprayed in training. There certainly are benefits to being sprayed in training. Rangers can testify to the effects of pepper spray, and can personally understand its effects and limitations. Suspects can buy pepper spray over the counter, or take it from an officer, or a fellow officer might spray haphazardly on a windy day. Either way, it's beneficial to know how to continue fighting through the effects of pepper spray to be able to fire your firearm or otherwise control the suspect and protect yourself.

There are two concerns with this exposure, however. First, there are no studies on the

long-term effects of exposure, or multiple exposures, to pepper spray. A small study of short-term effects of pepper spray at the University of Washington showed that the cornea becomes less sensitive 10 minutes after exposure, but is much improved after one hour. It inflames your cornea and conjunctive tissue, but no negative effects were found after an hour or so. There are dangers in being pepper sprayed, however. In one training incident, a student that had been sprayed was using a foam baton to fend off an attacker. The baton lost its soft exterior, leaving the solid core being wielded at the attacking role player. Because the officer could not see the safety hazard, the incident nearly resulted in the loss of an eye to the attacker, who was not wearing eye protection. Another student, temporarily blinded by OC, wasn't watched by a safety monitor. He tripped and broke a leg. Remember what the UW study said about loss of corneal sensitivity? One academy decided to conduct OC training in a wood chip and sawdust environment, telling students to hold the eye open to fight and shoot. Lots of sawdust was kicked in the air, and six students suffered scratched corneas.

In another incident, students were placed in front of fans after exposure to help their recovery. Sadly, the fans had a lot of accumulated dust on them, which ended up in the eyes of the students. In another incident, the fans were placed outside. When a groundskeeper went by blowing dirt and particles off the sidewalk, it entered the fans and the eyes of the students.

If you train with live OC, remember:

1. Before being sprayed, students should remove contact lenses, no matter what. Those with existing eye injuries, or infections, or recent eye surgery, should not be sprayed.
2. Before being sprayed, ample amounts of clean flowing water should be available. The source of the water should be free from possible contamination (i.e. not from a hose that's been dropped in the mud). Standing water, like tubs, should not be used as it will develop a film of contamination on it and will continue to re-expose students.
3. Before being sprayed, if fans are used for rehab, they should first be cleaned, and

placed in a clean, isolated environment, and operated for awhile beforehand to remove any standing dust.

4. Training should occur in an environment as free from dust and contaminants as possible. If you wet down an area, remember the hazards of loose footing.
5. Students should be closely watched by a one-on-one partner after being sprayed until they are stabilized.
6. DON'T RUB YOUR EYES. They will be so inflamed you can't feel small items in them. And your rubbing isn't removing anything, just shuffling it around.
7. Make sure the training is necessary. It's good to know how to fight and shoot when sprayed, but it's tough to justify having to do it several times a year.
8. Document your exposure. Should you develop medical problems later in life, you may wish you had proof of exposure to any irritant chemical.

Many of these same safety factors should be applied to suspects after they have been sprayed. If they have been handcuffed on the ground, they may have been exposed to dirt and dust. Don't let them rub their eyes. Give them only clean water to wash their eyes. If they are standing in the wind or in front of a fan for rehab, make sure the air source is clean. And always, always, take them to a hospital for medical clearance. Even if they seem fine and don't want to go, they may later claim symptoms, or may claim that they wanted to go to a hospital but were denied treatment by you.

### **Assaults on Park Rangers:**

It comes as a surprise to many NPS rangers that they have the dubious distinction of being "most likely to be assaulted" among all federal law enforcement agencies. This fact has recently come to the limelight thanks to an article in *The Washington Post*, a copy of which was disseminated by WASO-RAD in August. I don't know why it should be a surprise at all. The statistics have shown this for at least five years (for the period ending 1995). They've appeared on the Yosemite Jail unofficial website for quite awhile. They've even been used them in in-park training sessions for years. The most recent statistics, from 1998, are available on the web at [www.fbi.gov/ucr/killed/98killed.pdf](http://www.fbi.gov/ucr/killed/98killed.pdf)

While the story of assaults on rangers is

tragic, the fact that the NPS has failed to act on these statistics for five years compounds the tragedy. If the NPS didn't know about the statistics, why not? It's their job, both in the safety office, and in Ranger Activities. If they did know about them, why didn't they take them to Congress years ago in search of better training, or changes in operational policies to protect the workforce. This is especially relevant in light of the recent NPS push on safety. WASO-RAD also recently circulated a note on the personality and behavioral characteristics of officers who are killed in the line of duty. The accompanying note said that these revelations were brought forward at a regional conference. These also came as a shock to some people, including one region's chief ranger who pointed out the irony: "Some of these are the characteristics we look for in rangers." No doubt. Again, this list is not a state secret. To top it off, the source - "Killed In The Line Of Duty"-- was published by the FBI/DOJ in 1992! It has been used it as blueprint for planning training sessions at the Pacific West Region's Advanced Resource Protection Training class for 3 years, and at others where field staff have taken the initiative.

Sadly, it seems as though "the system" and managers that are responsible for overall program management have not been aware of the primary causes of officer deaths - in this, the agency that is most likely to have its workforce assaulted!

## **The Need for Video Cameras in NPS Patrol Cars**

**By Larry W. Johnson,  
Blue Ridge Parkway**

As the National Park Service enters the 21st century, the equipment used by the patrol rangers needs to be comparable with that of other agencies performing the same or similar duties. Video cameras in patrol cars have become standard police equipment in the last several years, and the Park Service needs to give serious consideration to installing the cameras in patrol vehicles when appropriate. Having video cameras installed in patrol vehicles will provide valuable benefits to the patrol ranger, the visiting public, and the federal

government, and can prove to be an invaluable piece of equipment with the increasing needs of law enforcement in our National Parks.

Virtually every major law-enforcement agency in the United States has installed video cameras in patrol cars in the past several years. Television shows like "COPS," and "REAL STORIES OF THE HIGHWAY PATROL", as well as documentaries such as "AMERICA'S SCARIEST POLICE CHASES" have provided the government and the public with an insight into law enforcement never before available, due solely to the installation of cameras in patrol cars. Thousands of vehicle stops, arrests, and other incidents are being recorded on a daily basis, and provide an undeniable record of what takes place during these incidents. This video record is, in fact, a vital record of the incident, which often captures the actual offense on tape, helping ensure successful prosecutions, and documenting the fact that officers are acting professionally and appropriately during the contacts.

Video cameras are typically mounted inside the patrol car on the dash or windshield. The officer wears a radio-microphone which transmits back to the VCR when the unit is operational. The cameras are usually rigged to come on automatically whenever blue lights are activated, and they can also be switched on manually at any time. The cameras are designed so that the tapes cannot be erased, and can only be accessed by supervisors. The tapes are then stored under security to be used as evidence or as investigations requires. Officers quickly adapt to the cameras, and learn to use them to their advantage. They will position the car or the camera in such a way as to provide maximum coverage of the incident, and learn to tactically record information which might otherwise be lost. The officer is always aware that the situation is being recorded, and operates accordingly. It is surprisingly easy to capture a subject making incriminating statements when they don't know they are being recorded. ("70mph in a 45mph zone? Officer, I couldn't have been going over 60!")

This author was fortunate enough to work recently for a couple of years in one of the

newer National Park facilities, where the managers had the foresight to install video-cameras in every patrol vehicle. This particular area had a very high case-load, and virtually hundreds of incidents were recorded on video tape. Countless drug cases, DUI's, hunting violations, and similar incidents were regularly recorded, providing permanent, absolutely accurate accounts of the incidents. I saw numerous cases where defendants had hired attorneys, or originally planned to plead "not guilty" in a case, but when they learned of the video, they pled guilty EVERY time. In fact, they never even asked to see the video; once they learned that the incident was on tape, they decided to plead guilty, rather than have the judge see what they actually said or did. Of course, the use of video does not replace thorough, accurate, and professional police work. The video simply augments this work, and provides an absolute record that is almost impossible for a defendant to beat on a well-made case.

Without a doubt, the primary objection that NPS administrators will voice in the quest to outfit NPS cars with video cameras is cost. The cost however, currently anywhere from about \$2000-\$4000 each, could easily be justified if one considers the potential loss the agency faces in just one case where the camera might make the difference. For example, let's assume that a DUI arrestee successfully beats a conviction on some technicality. (Perhaps the intoxilyzer wasn't calibrated or something.) The arresting officer had seen this guy weaving all over the road, and watched him physically fail a series of field-sobriety tests. Without the video, there is good chance that an attorney could get the case thrown out, because it might be difficult to prove beyond a reasonable doubt that this guy was drunk. The government thus loses all the money invested in this case; the officer's time, the jailer's time, the clerk's time, the judge's time, the U.S. Attorney's time, etc. A video of the case, however, would show the judge, the jury, and everybody else exactly what happened, and almost guarantee a successful outcome of the very same case.

Suppose the case were even more complicated. Suppose it is a (groundless) claim of sexual misconduct by an officer,

or perhaps an accusation against an officer for tempting a bribe. The video camera becomes the officer's salvation as well as the agency's. Cameras also become a supervisor's best friend when checking out the inevitable claims that an officer was rude while issuing a speeding ticket, and in other complaints involving officer behavior. The camera also becomes a citizen's champion in the few cases that actually involve officer misconduct. The camera doesn't lie. The government cost for handling any of these incidents without the camera could far exceed the one-time expenditure for having them installed.

Like other pieces of specialized equipment, not every car, in every park, needs a video camera. The decision to make the installation should be made based on a number of factors including the nature of the site, the number and types of cases regularly handled, and the scope of the general law enforcement program at each site. National Parkways, like the Blue Ridge Parkway and Natchez Trace, Mega Parks like Yosemite and the Grand Canyon, and any other areas where rangers are making vehicle stops on a regular basis should consider video cameras absolutely mandatory.

The unfortunate reality as we move in to the next century is that the national parks are not the Leave-it-to-Beaver, crime free world that we all would like. Perhaps the recent tragic and senseless murder of Great Smoky Mountain National Park ranger Joseph Kolodski can best illustrate this. The facts of that case indicate that if the ranger's cars would have been equipped with video cameras, in all probability the murderer would have been captured on video. Not to suggest that this could have prevented the tragedy, but at the very least it might assist in prosecuting the case. It may also have been of immeasurable value to other officers in learning what they might do to survive if ever faced with a similar situation. Every major police training academy operating today utilizes videos from patrol cars to teach officers what to do and what not to do in various situations. Individual officers will use their own tapes to improve their presentation and correct any problems they might notice during their own stops. Officers will record and review their stops to look for ways to improve their safety

and efficiency. The National Park Service has come a long way in the last several years in outfitting field rangers with equipment they need to do the job at hand, such as providing body armor and semi-automatic firearms. Video cameras in patrol cars are the next major piece of law-enforcement equipment needed to keep the NPS professionally comparable with other agencies as we move into the future. I strongly encourage administrators and supervisors at every level to seriously consider installing video cameras in targeted patrol vehicles as soon as possible, where they can be of benefit to the rangers, the public, and the National Park Service.

### **The Federal Rules of Evidence**

**Richard J. Larrabee, J.D., National Park Ranger(LE)**

The Federal Rules of Evidence (FRE) are a collection of rules that all federal courts must abide by when administering justice with respect to the federal laws of this country, including the United States Code (USC) and the Code of Federal Regulations (CFR). The following is an analysis of a select group of FREs which all protection rangers should be familiar. This analysis is not a substitute for training with respect to collecting evidence or ensuring the integrity of the chain of custody once it has been collected. This work should be considered only as a supplement to those skills in hopes that rangers become more aware of what may be pertinent in a courtroom setting once their case reaches that step of the judicial process.

#### **RELEVANCY**

In order to begin to understand the philosophy behind having rules about what evidence should be admissible and what evidence should not, the term "relevancy" must be understood. Before the advent of structured courts of law, many argued that the best way to find the truth of a matter would be to consider all of the evidence introduced, from whatever source. More reasonable minds prevailed, however, in understanding that some types of evidence should be excluded because they are either untrustworthy in nature, inherently prejudicial, or simply stated, not relevant to

the matter at hand. The determination of relevancy is the first step any judge must consider before moving on to analyze the other factors (prejudicial or untrustworthiness) via application of the FREs. Indeed, beyond the determination of relevancy, the FREs were developed in order to "weed" out evidence that is inherently untrustworthy or prejudicial.

FRE 401 defines "relevant evidence" as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The key phrasing in this definition is "any tendency....more probable or less probable," which ultimately addresses the evidence's probative worth. If the judge deems the evidence being brought forth possesses this probative worth (i.e. is relevant), he will then rely on the FREs in order to decide whether or not to admit it into the record (i.e. not too prejudicial or un-trustworthy).

There are two types of relevant evidence; Direct and Circumstantial. Direct evidence will resolve the area of dispute, whereas circumstantial evidence needs additional evidence to resolve the area of dispute. Direct evidence, by definition, cannot be irrelevant. Circumstantial evidence however can be irrelevant, thus the presenting party must demonstrate the relevance of the evidence. Examples of circumstantial evidence that the courts have historically deemed irrelevant are evidence of similar prior negligence (i.e. car accidents) or conversely, any absence of prior negligence (clean driving record). A pertinent example of circumstantial evidence that has been historically deemed relevant is "evidence of flight," including the refusal to take a breathalyzer test for DUI. These historically settled examples are important to remember, yet a ranger must keep in mind that evidence is usually case specific. Accordingly, a ranger should not fail to note certain events or occurrences in the administration of a case simply because the ranger may believe it is not relevant.

#### **UNFAIR PREJUDICE**

Once a piece of evidence is deemed relevant, the remainder of the FREs must then be considered. FRE 403 is a specific rule which provides for the exclusion of

otherwise admissible evidence due to unfair prejudice, amongst other reasons. The deciding factor being whether the probative worth of the evidence is "substantially outweighed" by the danger of unfair prejudice.

The traditional use of this rule to exclude evidence has been to bar the admission of extremely graphic photographs of crime scenes. A ranger should be cognizant of this rule when photographing a scene. This does not suggest that accurate photography is not pertinent to your case, but rather the ability to be discreet may allow certain important photographs to be admitted whereas they might not otherwise be if a judge deemed them too "harsh or gory," and thus unfairly prejudicial for the jury to observe. A wide range of photographs, from the highly discreet to the extremely graphic, including back & white photographs, would probably be the best course of action. This would allow the judge to decide which level of visual stimulation is appropriate for the jury to make a learned decision without subjecting them to a gut wrenching ordeal.

## HEARSAY

Another FRE which may exclude otherwise admissible evidence and should be considered by an astute ranger in execution of his/her duties is FRE 801, concerning the legal notion of "Hearsay." The definition of Hearsay is: a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. The statement concerned could be an oral or written assertion, or non-verbal conduct that is intended as an assertion (i.e. pointing, shrugging shoulders, sign language, etc.). Note that evidence-of-flight, use of a false name, markings or tags are not statements, since they are not intended to be assertions, and therefore can never be considered Hearsay.

The reasons for excluding hearsay is threefold; 1) absence of cross-examination, 2) the fact finder (jury or judge) cannot witness the demeanor of the person making the statement, and 3) absence of an oath at time of statement. The absence of cross-examination is the most important of these reasons and thus, was the weightiest consideration when Congress legislated the exceptions to the Hearsay rule.

## Not Hearsay

Prior to considering the exceptions to the Hearsay rule pertinent to rangers, brief coverage of two types of statements enumerated in FRE 801 which are not to be considered Hearsay is in order. FRE 801(d)(1)(C) holds that a statement is not Hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is one of identification of a person made after perceiving the person. This includes identification statements made at a police line-up, photograph throw-down, police sketch, etc. In other words, as long as a ranger witnessed the declarant state "That's him!" at one of these events, the ranger may testify in court that the declarant did in fact identify the subject. The ranger's testimony can only occur however as long as the declarant testifies in court and is subject to cross-examination.

This type of subject identification verification by the ranger in a courtroom setting can have a powerful affect on a jury. Accordingly, any ranger should sedulously pay attention to, and make copious notes of any statements made by a declarant during a identification process such as a photograph throw-down or line-up. The ranger's testimony may sway the jury enough to win the day for the prosecution.

The second type of statement which FRE 801 considers not to be Hearsay is that of a coconspirator regarding a conspiracy with the defendant. These types of statements represent a prosecutor's goldmine. A coconspirator's statements can be used against a defendant in order to combine multiple complaints under a conspiracy count. Hence, they are relied upon heavily in the successful prosecution of many defendants and should be duly noted by any ranger. There are three requirements to allowing these statements to be introduced in a court of law; 1) the declarant conspired with the defendant the statement is being offered against, 2) the statement was made during the conspiracy, and 3) the statement was made in furtherance of the conspiracy. The ranger should be aware of the importance of such statements when interviewing others concerning the events leading up to an offense potentially involving a conspiracy. If a witness can

provide a statement made by a coconspirator, and it falls within the three requirements listed above, the statement may be vital to the prosecution's case against the defendant.

## Hearsay Exceptions

In addition to the types of statements articulated above which are not considered Hearsay, in FRE 803 Congress has granted several exceptions to the Hearsay rule. These exceptions were incorporated because Congress deems these types of statements as being traditionally trustworthy. These exceptions allow Hearsay statements to not be excluded, even though the declarant is available as a witness. Of the twenty-four exceptions listed in FRE 803, the following are the most pertinent to protection rangers; FRE 803(1) - Present Sense Impression, FRE 803(2) - Excited Utterances, FRE 803(5) - Recollection Recorded, and FRE 803(8) - Public Records and Reports.

FRE 803(1) - Present Sense Impression. This exception is important to remember by all rangers. Often in emergency situations, declarants make statements "on the scene" that are later vital to a prosecutor's case against a defendant, and thus need to be noted and recorded by the ranger observing such statements. There are three requirements to allowing these types of statements; 1) The statement must have been made while perceiving an event, or very shortly thereafter, 2) the declarant must have perceived the event, and 3) statement must describe or explain the event or condition. An example of such a statement would be a declarant, at a recent assault scene, state after perception "My god, that's the vehicle I saw her (the victim) talking to right before I heard the screams." A ranger observing this type of statement may then repeat this in a court of law, regardless of the availability of the declarant.

FRE 803(2) - Excited Utterances. This type of statement can make or break a case against a defendant. The requirements of this type of statement are: 1) some external stimuli/event, 2) there is an excited reaction, and 3) the statement must relate to the event. These statements are different than those described above in FRE 803(1) in that these statements need only relate to an event and do not have to explain or

describe an event. Additionally, time is not as critical of an element; an excited utterance can take place several days after an event as long as a surprise or shock is present (i.e. a declarant being shown a picture of defendant days after an incident exclaims "Oh dear, that's him!"). A ranger would be able to testify as to any such statements he/she observed.

FRE 803(5) - Recollection Recorded. This exception includes statements a witness/declarant may make when being interviewed by a ranger at the scene of an incident. As long as the statement was based on personal, first-hand knowledge of the declarant, the statement was adopted by the declarant (i.e. signed by declarant after ranger wrote it down) and the matter was fresh in the declarant's mind when he/she made the statement, the recorded statement may be admitted as evidence if the declarant has insufficient present memory to testify fully and accurately in court. In other words, any statement offered by a witness regarding a very recent event should be dutifully recorded by a ranger and adopted by the witness (signed), inasmuch as it may very well be the only evidence the prosecution may rely upon if the witness fails to remember the events at the time of the trial.

FRE 803(8) - Public Records and Reports. This exceptions deals primarily with incident reports filed by rangers. Accurate report writing is always an important aspect of the law enforcement profession, but even more so when it involves an ranger's personal observations. Generally, the rule excludes an ranger's report in lieu of live testimony except to the extent which the report incorporates firsthand observations of the ranger. These observations in a ranger's report are still not admissible when the ranger is available to testify in court. However, they are admissible if the ranger is "unavailable" and thus should be accurately recorded in case this occurs. Unavailability is defined as death, then existing physical or mental illness or infirmity, or not being successfully subject to legal process. The final exception to the Hearsay rule to be discussed involves statements made by a dying individual, a.k.a. a dying declaration. FRE 804(b)(2) allows for the admissibility of a dying declaration recorded (i.e. by an ranger) as long as: 1) the statement was

made with the belief of imminent death, 2) it concerned the cause or circumstances of what the victim believed to be his impending death, and 3) the declarant must have personal observation of matter observed. A statement such as "Bill has been out to get me for years, it must have been him that set this trap that broke my leg" does not satisfy the requirements of this exception since the victim does not believe he will die imminently, nor is his statement based on personal observation (he is simply surmising it was Bill who performed the act). Whereas, a statement such as "I saw him at the last moment, I looked right into Fred's eyes before he stabbed me in the chest, tell my wife I love her" would satisfy the three requirements; his belief of impending death, the statement concerned the cause of his belief (stabbing), and is based on his own personal observation. Such a statement would be admissible as a dying declaration if observed and reported by a ranger.

As mentioned above, an understanding of the FREs covered in this article are not a substitute for the necessary, practical skills of collecting evidence at crime scenes or securing its chain of custody. Rather, it is the author's intent to heighten rangers' awareness of certain "potential evidence" that may be overlooked if not recognized for its value.

### **Firefighting in the Corps of Engineers**

The article in our spring edition "Visitor Assistance and the Corps of Engineers" drew a higher than average response and led more COE rangers to join the Lodge. The Executive Board wants to hear from field rangers from the Corps about their immediate concerns and priorities. Some of the issues raised so far include:

**Fire Management:** The summer of 2000 was called "the worst wildfire season in 50 years." The combined acreage burned equaled an area larger than the states on Connecticut and Rhode Island. The US Park Rangers Lodge of the FOP is concerned about COE fire management policy. We have received reports from more than one project that Corps personnel are engaged in both prescribed burning and wildfire suppression without formal

training or personal protective equipment (PPE). We have also heard reports of Corps personnel not receiving hazardous duty pay for wildfire suppression. One member, who had been a trained wildland firefighter with another agency, describes his encounter earlier this year with a prescribed burn administered by a Corps of Engineers forester:

"Nowhere did I see any written plan or any fire weather instruments in use. The only mechanized equipment on hand was a farm tractor with a farm disk rather than a regular fire plow. The line it plowed was neither very 'clean' nor was it wider than the height of the closest trees. Campers parked within 15 feet of the area to be burned had not even disconnected their RV utilities or hooked up their tow vehicles. The "firefighters" present had not taken such basic precautions as parking their vehicles pointing away from the fire zone.

"None of the rangers planning to take part in the burn had hard hats, goggles, bandanas, or gloves. Instead of Nomex and fire boots they wore their regular short-sleeved field uniforms with steel-toed boots. The main reason I didn't speak up was that I knew from past experience that conditions were such that the burn was unlikely to ignite.

"At a later meeting the forester asked for volunteers for the next attempted burn. One ranger with formal fire fighting training asked, "You going to supply Nomex?" The forester shot back, "Hey, that stuff's expensive!" (It should be noted that this past March a volunteer firefighter in South Dakota died on a wildland fire because he didn't want to take the time to go home and get his PPE.) The FOP sincerely hopes that the incident described above is an isolated one. As we go to print, the Corps of Engineers has failed to adopt the same wildland fire policies as other federal agencies. Moreover, it is violating existing Corps policy as stated in its Safety and Health Requirements Manual EM 385-1-1 09.K.03 that "Wildfire control teams and operations shall be organized and conducted in accordance with the requirements of NFPA 295 [National Fire Protection Association Standard 295]. This COE manual goes on to specify minimum training, equipment, and medical surveillance standards for firefighters.

Certain Corps projects are already training and equipping their fire crews to the standards of the US Forest Service. The US Park Rangers Lodge is willing to advise the Army on bringing all its wildland fire activities up to nationally recognized standards. Regular Army soldiers, Marines, and National Guardsmen assigned to "mop up" on wildland fire receive the same training and equipment as employees of the federal land management agencies. Do not civilian employees deserve the same consideration? Yes, wildland fire training and equipment are very expensive. But nowhere near so as the cost of a single fatality or permanent disability.

Technically, since the COE has only proprietary jurisdiction both structural and wildland fire suppression is a state or local responsibility. Therefore the agency's regulations and policies address only prescribed fire. We don't find this reasoning reassuring after reviewing the "Common Denominators of Fire Behavior on Tragedy Fires." This year's Cerro Grande (Los Alamos) Fire graphically demonstrated how easily experienced fire professionals could miscalculate a prescribed burn. Since 1926 more than 300 wildland firefighters have lost their lives. So-called "controlled burns" have led to fatalities. We don't want to see it happen again.

The Rangers Lodge is not asking that the Corps of Engineers detail its firefighters to other agencies' fires. (Although it might be more cost-effective than training regular Army troops from scratch or importing foreign firefighters. It would also be little different from sending COE personnel on disaster relief missions.) We do ask that the Army follow the same training, testing, and equipment standards as other federal agencies. We ask this both for the sake of their protection and to reduce the U.S. Government's liability. The Lodge has already requested a copy of the recommendations of the COE's national Fire Management Task Force. The recommendations should be released this fall. Do you have experience in fire management? If so contact the Lodge if you are willing to help review the recommendations as part of our own "Fire Management Task Force!"

**Authority and liability:** Is it ethical for a park ranger to refuse the request of a law enforcement officer for assistance in making arrests? That is what current Army policy requires. We suggest that park rangers have as much civic responsibility as civilians to aid law enforcement personnel in emergencies. Some states provide specific legal protections for citizens coming to the aid of law enforcement. Why doesn't the Army? The Lodge does not ask that COE rangers be required to assist police. We ask that a ranger who feels compelled to intervene be able to do so without jeopardizing his/her job. The Lodge is also concerned that the current blanket prohibition against intervening in domestic disputes may create as many liability problems as it solves.

**Soft body armor:** Two different panels within the agency recommended that rangers with citation authority be provided vests. They were overruled on the grounds that there is "no proof that they would have saved anybody." We find this reasoning troubling. As a compromise we propose that the Army either set up "reimbursable accounts" to permit rangers to purchase vests from GSA with personal funds, or that the Army provide at least a partial allowance to purchase vests elsewhere (as it does for steel-toed boots).

**Outsourcing:** The Corps of Engineers has already contracted out much of its campground operation and maintenance. They also have visitor centers staffed entirely by contract personnel. Far from merely staffing the information desk some of the contract employees are presenting the project's interpretive programs. Even some visitor center supervisors are, or soon will be, contract employees. How can people who don't work for the agency effectively represent the agency before the public? One sample VC operation contract recently posted on the COE's unofficial ranger network specified that the contract attendants wear uniforms from Horace Small including campaign hats, shirts with permanent military creases, and commando-style sweaters.

**Affirmative Action:** As it has with other agencies, the Lodge has received complaints of preferential treatment for

minority and female job applicants, including reimbursement for moving expenses not available to other new employees. Our goal is hiring and promotion based on experience and education, without regard to either quotas or "who you know."

How about it Corps rangers? Let's hear your input on priorities. Have conditions improved for you since the last employee satisfaction surveys?

## LE Pay for Seasonals Update

During the 1999 visitor season, superintendent Mike Finley of Yellowstone National Park was the only superintendent to refuse to pay the law enforcement supplement that federal law mandated be paid to federal officers. The Lodge verified from WASO that money was specifically allotted to Mr. Finley to pay all the law enforcement seasonals.

The Lodge wrote to the WY senators as well as the Director of the National Park Service complaining about this situation at Yellowstone. I believe that Director Stanton was genuinely surprised the Mr. Finley had withheld this money to the seasonals and apparently gave the order to pay them. Beginning in late July of 1999, the commissioned seasonals started to get the supplement. However, Finley made no effort to pay them the back pay they were clearly meant to receive. To this date, management of Yellowstone has not paid the back pay willingly.

Seasonal rangers have been forced to file grievances or appeals to get what they deserve. Perhaps this is what Finley wanted all along: he knew that few would take the necessary steps to file and follow through with an appeal because the process is slow and cumbersome. The Lodge thinks this anti-law enforcement stance on the part of Mike Finley and others in upper management has gone on for far too long and we want it stopped. To deny this supplement to GS-5 seasonals, who have to pay for their own LE training and transportation to the park, is really insulting. *Randall Kendrick, Lodge Secretary*

---

### **Insert Panels In Ballistic Vests...Need Your Input**

---

I understand there may still be metal inserts or trauma plates in use for ballistic vests. I am attempting to compile anecdotal and study evidence of bullets being deflected off these inserts, due to the anatomical bend, into the throat or chin. Responses from fellow refuge officers has ranged from never hearing of it being a problem, to knowing of incidents where this has happened (mainly through discussions with other law enforcement agencies). I have received names of relevant institutions and agencies and will do an inquiry.

But in the meantime, if any one knows of any definitive studies or cases, please send me the information. And, yes, I am getting a flexible insert.

**Carleen Gonder**  
Refuge Officer/US Fish and Wildlife Service  
26010 S. Smith Rd.  
Cheney, WA 99004  
carleen\_montana@yahoo.com

---

### **A Summary of My Case: Jim Culver, SAMO**

---

6/99 - Tested by Public Health Service in Los Angeles 8/99 - More information requested/received by Dr. Miller in Atlanta 2/00 - My commission was suspended under NPS-9, as a result of my vision, because the local officials were not given training on what to do in case of a finding of "not medically qualified?" 4/00- NPS-9 Board of Review took place since no further guidance was provided by WASO on how to proceed. The Board found in my favor and recommended the return of my commission only. The park retained my weapons.

5/00- NPS Medical Screening Board . I presented my case to the Board. I had an advocate and my wife as witnesses. 9/1/00- My commission was ordered revoked. My appeals denied. 9/7/00- I met with the regional personnel and LE officials. We worked out a possible accommodation. I asked about my appeal rights from here. I was told I could file a complaint through EEO, MSPB or civilly. I could initiate complaints on all three

fronts, but the merits of the case would probably determine which process will serve me best. I understand the process has sped up, and a ruling would not be far away.

So far, 15 months have passed. I think I have worked out an accommodation that will take me where I need to go, in order to be able to fight the 9/1/00 decision without losing the ability to feed my family. I've gone through this to highlight the length of time some rangers might go through. Noticeably absent in my chronology is any effort on behalf of the NPS to accommodate me or resolve my issues. No one in WASO lifted a finger further than absolutely necessary to move this case along. The region and the park did as much as legally possible to make this easier for me. It became obvious very quickly the park and region was similarly hand-tied, since no guidance was offered by the Human Resources people in WASO.

My opinion, which I have shared with officials at every level, is this: Any employee subjected to medical disqualification must be contacted immediately, but not removed from duty, except in cases of dire emergency. When an issue arises, the employee must begin a negotiation with the NPS to mitigate the damages. If the medical technology permits, put a program together with the employee that he/she will follow.

Contact employee career counselors to work with the employee to maximize their options. Any lack of effort to aid the employee is a violation of the trust employees place in the NPS. Employees in remote locations must receive a priority consideration, and a special effort must be made to get them access to appropriate resources. Too many times employees are the last to be notified that their career is in jeopardy. The stress associated with these actions can cause family distress, financial hardship and personal trauma like substance abuse or workplace hardships.

Overall, I think I will come out of this on top but I'm not sure what I'll be on top of yet; however, I will continue to take the initiative to keep the NPS working for me. I encourage all the rangers to do the same. My recipe for success in the RM-57 battles is: Learn the regs. - Being uninformed is not an excuse. Learn what is and is not

acceptable under the RM-57 standard; be forewarned/forearmed - If you think you might have an issue with RM -57, get your personal physician to check it out. Get all the paperwork in order before you are examined by the Public Health Service (PHS). Take copies of your physicians report to the PHS for inclusion in your file. Also get all the supervisory commendations you can in support of your work history in spite of the standard.

Prepare! - Prepare your family for a possible rocky road. Investigate other career options that will suit your situation. Think about methods of reasonable accommodation the park can take. Be prepared to fight back. Let's make the NPS understand times are changing. Employees must be respected and treated fairly. Keep strong and we will overcome the bureaucracy!

---

### **ATTENTION INREACH SUBSCRIBERS**

---

The Lodge cannot send emails to inreach.com. We don't know why but it seems to be impossible. Please contact your server and report this problem.  
Thanks. Randall

---

### **U.S. Park Rangers Lodge Letter to the Editor**

---

*Over the years, I have read The Protection Ranger newsletter with the desire to understand the Lodge's point of view. Each time I read it I ask myself the same question "where do these people work that their lives are so miserable?" I have worked for the National Park Service for 18 years and I have never had an experience that triggers the amount of animosity and anger that I hear in the articles of the newsletter. I too see things about the organization that I believe need fixing but it's because I believe in the mission and I want to see us succeed. My comments for correction would be made to make the NPS better.*

*The Lodge's comments seem to be stated to find as much fault in the agency as possible. In fact, the Lodge seems to delight in finding fault. I began my career as a GS-3 seasonal fee collector in Grand Tetons, I am now a Superintendent. You are not my enemy, though I feel as though*

you think I am yours. When I read the newsletter I feel attacked and want to shift into defense mode. If the Lodge really wants the leadership of the NPS to listen to their views and to act upon them I suggest a switch in tactics. Until the Lodge stops trying to blame and starts trying to work towards resolution, the NPS leadership is not going to be very responsive. So I suggest you ask yourselves, what do you want here? Is the goal to fix the NPS or vilify the NPS?

If you want to vilify us, then continue on as is. If you want to fix us, then come to the leadership of the NPS with an attitude of finding resolution rather than blame. I suspect you will get far better results.

Sincerely,

Barbara Goodman  
Superintendent  
Timucuan Ecological and Historic Preserve  
13165 Mt. Pleasant Road  
Jacksonville, Florida 32225

Response: from a Lodge Member of long standing:

Nice to read an opinion from management. Now I understand how they think.

Why is it that when someone rises through the ranks they develop the "I've got mine" attitude? How soon they forget how difficult it has become for the rank and file to progress and maintain. Seems those that become the most defensive are usually the most guilty?

Of course it is not so bad for Superintendents! They are not scrutinized annually for medical and physical anomalies, their butts are not on the line as solo response units to serious or dangerous incidents, they do not have to drive embarrassing rust buckets with 110,000+ miles on them as a high visibility patrol car that are in the shop more than in use, they do not get called back to duty in the middle of the night, they do not live in sub-standard housing, they do not have to stay on overtime to get reports finished, mosquito and tick bites, potential HIV exposures, shall I go on?

One thing that irks me the most with

management attitude is the failure to move into the future....or at least progress to the present! One of the courses supervisors and above attend is "Managerial Grid". This program, to those who are not aware of it, is something that was developed in the 1970's! It seems to me that by blindly following ideas of those gone before us we do not view things in the present tense. Everything revolves around "this is the way we have always done it." Sure our forefathers had some great ideas. If this were not so our great country would not have come as far as it has. But some things need to be reviewed and updated!

Example.....increased visitation, decreased staff, increased serious crimes, no ranger available to investigate or deter, shall I go on? We all know that as soon as someone leaves the rank and file and becomes a supervisor or manager they do not see the "field" operation in the same light. The field is always exaggerating. We are overreacting. We are incorrect. We are second guessed. Why is that? They were not there. How can they believe they would have done anything differently?

The field rangers ALL believed in "the mission" long before even applying for a job. We feel we are not being permitted to support our end of that mission out of design. To me this has become more apparent since ranger careers. Rangers are NOT security guards, but are made to feel and appear like that because of old ways of thought. Give us more ancillary jobs to justify paying us GS09? How is that resource protection?

The bad guys and criminals do NOT come to programs and educational outings. Only the curious. But they certainly find safe havens in our parks. We need more of us to be out there looking for and stopping those that would cause degradation of our parks and resources.

How many of you have gotten projects formerly done by supervisors? Have the supervisors been given additional projects to justify their promotion? I don't think so!! In fact many have had responsibilities taken away and given to patrol rangers. This is not a slam at supervisors. Rather a slam at the system and the way management allows it to continue. We feel the most emotional angst from hearing

things from our managers that do not support our cause. The FOP has supported our cause from the beginning. We have no voice individually. If it were not for the FOP we probably would not have access to ballistic vests, semi-autos, paid stand-by status, shall I go on?

What I believe overall is that as soon as someone is promoted through the ranks they begin to initiate changes from their past career observations. The only problem with this is that those things are no longer happening. They are in the past and mostly irrelevant. Where is the progress?

Our FOP and remaining rangers do not need to develop tactics for dealing with management. Management needs to get out of their air-conditioned offices and see what is going on in the parks, not just hear sanitized or censored versions of it in the morning reports.

They need to communicate with the peons and find out what is taking place in their individual jobs so they can effectively manage the parks. What is on paper does not always communicate an accurate image. In fact sometimes it is sugar coated so as not to appear graphic.

Example.....we read in the morning reports of a ranger rescuing someone stuck on the side of a mountain. What is not said is how long it took, how much training and practice went into the safe rescue, the same goes for any other incident.

Rangers are taken for granted anymore. Because we are neglected in budget and staff we are actually being taken advantage of in the sense of giving us ancillary projects just because we are viewed as available. Ask the public how they would feel knowing that rangers are not "out there" as much as they think they are out there! The truth is the public does not know they are pretty much on their own compared to what things used to be.

In closing.....all the rangers comments in the FOP newsletter are also designed to make the NPS better. Not just better for management. So when someone says they have never had an experience that triggers animosity and anger it only tells me they have not had the opportunity to experience things other than an easy going career.

## Lodge Website

Brother Duane Buck has built and maintains the Lodge website. We keep it updated with notices and links to other sites that we think are interesting and/or helpful to resource based law enforcement officers. Visit it often between issues of the Protection Ranger to keep current on things that affect you and your job. The address is: [www.rangerfop.com](http://www.rangerfop.com)

## Application for Membership

I, the undersigned, a full-time regularly employed law enforcement officer, do hereby make application for active membership in the U.S. Park Rangers Lodge, FOP. If my membership should be revoked or discontinued for any cause other than retirement while in good standing, I do hereby agree to return to the lodge my membership card and other material bearing the FOP emblem.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

DOB: \_\_\_\_\_

Permanent Rangers: \$52/year

Seasonals and Retired Active Members: \$35/year

Associate (non-Commissioned) Membership (Newsletter only): \$35/year

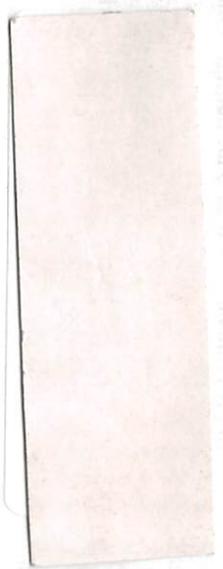
Renewals: You do not need to send in this form to renew. Enclose a copy of your Commission (new members only).

Agency & Work Unit: \_\_\_\_\_

Mail to: FOP Lodge, POB 151, Fancy Gap, VA 24328  
Phone: 1-800-407-8295 10am-10pm Eastern Time, or email [randallfop@ls.net](mailto:randallfop@ls.net)



**U.S. Park Rangers Lodge**  
Fraternal Order of Police  
POB 151  
Fancy Gap, VA 24328



33 USA

92277X6640 67

