Law Enforcement

CONTENTS

Chapter 1: General ........................................... 1
Chapter 2. Jurisdiction ........................................ 13
   Section 1. General ....................................... 13
   Section 2. Types of jurisdiction ....................... 15
Chapter 3. Law enforcement authority—
   laws and regulations .................................. 23
   Section 1. General ....................................... 23
   Section 2. Authority to arrest ......................... 25
   Section 3. Relation to areas of the
   National Park Service .................................. 32
   Section 4. Felonies and misdemeanors ............... 35
Chapter 4. Arrests ............................................ 39
   Section 1. The arrest—defined ......................... 39
   Section 2. Arrest by force ............................. 43
   Section 3. Use of weapons .............................. 45
   Section 4. Self-defense ................................. 46
   Section 5. Warrant of arrest ........................... 47
   Section 6. Issuance of warrants ....................... 48
   Section 7. Arrests without warrant—
   General .................................................. 53
   Section 8. Arrest without warrant for
   misdemeanor committed
   in officers presence ................................ 55
   Section 9. Arrest without warrant for
   felony .................................................... 57
   Section 10. Arrest without warrant when
   ordered to do so ........................................ 58
   Section 11. Duty of officer after arrest ............. 59
   Section 12. Detention as distinguished
   from arrest .............................................. 60
   Section 13. Citation or summons ....................... 61
   Section 14. Release of person without
   hearing ................................................... 63
Beginning with the establishment of Yellowstone National Park in 1872, the United States has evolved a system of national parks and monuments which includes the finest of the Nation's scenery, as well as sites distinguished for their historic importance or scientific interest. The act of August 25, 1916, as amended, was designed to correlate the administration of the national parks and monuments then under jurisdiction of the Department of the Interior. This act created the National Park Service as a bureau of that Department and stated the purpose of that Service as follows:

* * * to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

To this general statement of purpose may be added several excerpts from the remarks of National Park Service Director Newton B. Drury delivered on February 17, 1945, before the Committee To Study National Park Standards and Reclassification. Mr. Drury stated that "these areas are established primarily for the purpose of holding intact natural landscapes, areas of scientific value, and scenes of evidences of American history, of such national importance as to justify their preservation in order to serve the best national interests. They are one of the finest expressions of the American ideal of conservation. To them people go for inspiration, relaxation, and a deeper appreciation of the superlative natural resources and of the significance of important historical scenes and events of
our country.” Moreover, Mr. Drury stated that “the objective of the National Park Service * * * is to so administer these areas as to maintain their integrity of purpose. Development and use of these areas must follow a pattern that will afford to visitors the deeply satisfying experience that such area is capable of giving, without material impairment of natural and historical characteristics * * *. The enjoyment envisioned in the act creating the National Park Service is refreshment of mind and spirit, as well as physical refreshment.”

With these purposes in mind, it is the duty of law enforcement officers to help preserve a national park atmosphere that is one of dignity and restraint, and, therefore, one that is in keeping with the high purposes of the National Park Service. The rights of visitors must be preserved by preventing prohibited activities on the part of overexuberant, thoughtless, or selfish persons.

Duties generally

Law enforcement is now a primary duty in the successful operation of the areas administered by the National Park Service. In order to perform this duty efficiently, it is desirable for a law enforcement officer of this Service to familiarize himself with the laws and regulations covering the area to which he is assigned. Upon reporting to an area for duty, it is suggested that enforcement personnel read and reread the following essential material:

1. The general legislation relating to the National Park Service, as found in the 1933 compilation of Laws Relating to the National Park Service, the National Parks and Monuments, as supplemented in 1944, and as further supplemented in pamphlet form.
General

Chapter 1
Section 1
Page 3

2. The general rules and regulations relating to National Park Service areas. These may be found in volume 20 of the National Park Service Administrative Manual.

3. Such special rules and regulations as may apply to the area to which the ranger or personnel may be assigned. These are also contained in volume 20 of the Administrative Manual. It would be well for personnel in reporting to an area for duty to check with the Superintendent's office to ascertain whether there are additional special regulations applicable to his area which may not yet have been published in the manual due to time limitations.

A further source of important material to a law enforcement officer of this Service are titles 18 and 28 of the United States Code covering Crimes and Criminal Procedure, and the Judiciary and Judicial Procedure. While these titles are somewhat lengthy, and in part may seem quite technical, it would be desirable to read the titles from time to time so as to be generally familiar with their contents. In the final analysis, the law enforcement officers of an agency cannot hope to be efficient and effective in the performance of their duties if they do not possess a well-grounded understanding of the laws and regulations applying to the area or areas to which they are assigned.

While the National Park Service ranger represents the first line of law enforcement within the Service, it should nevertheless be recognized that this duty to a smaller degree devolves upon every Service employee charged with the responsibility of enforcement of Service rules and regulations. The broad subject of law enforcement consists mainly of three parts: (a) the prevention of violations, (b) the protection of persons and property, and (c) the detection of violations and the appre-
hension of violators. While these subjects will be treated generally in this chapter, they will, however, be dealt with in more detail in subsequent chapters.

Prevention of violations

The ability and value of a law enforcement officer are generally shown most effectively by his success in anticipating probable sources of violations and removing them. To prevent such violations, a courteous but firm approach to persons who appear to be about to commit a violation is required. This attitude toward the public will generally bring about the proper and desired response. Typical examples of violations that may be anticipated and prevented are those that relate to the control or prevention of fires, vandalism, the unauthorized feeding of wild animals, and the improper operation of motor vehicles.

Protection of persons and property

The law enforcement officers within each area are the visible representatives of the National Park Service and as such their basic duty is to protect the public and the area to which they are assigned. In faithfully performing this duty, they promote the welfare and enjoyment of the areas of the National Park System. This objective may be accomplished, for example, by regulation of traffic to prevent delays, by maintaining safe conditions upon the roads and trails, and by assisting persons in difficulties. Accident prevention requires continual alertness and recognition of potential hazards that must be removed. It also requires the installation of warnings at the proper places. Prompt and efficient first aid must be rendered to all injured persons, and medical assistance should be obtained as soon as possible.
Protection of Government property located in the area from physical damage and theft is also a very important duty of each law enforcement officer. This includes the safeguarding of natural and historic features, vegetation, and wildlife. A further duty is the protection of the personal property of visitors.

Detection of violations and the apprehension of violators

Law enforcement officers are required to detect violations of criminal laws and regulations that have occurred in their areas. They must apprehend, arrest, or cause the arrest of violators. Thereafter, they shall act as witnesses or render other proper assistance in judicial proceedings. In this connection, it is well to point out here that in many instances violations of Service regulations may be minor in nature and frequently unintentional. In cases such as these a proper attitude toward the violator will very often make a lasting friend for the Service and result in the correction of the situation with a minimum of time and effort. The violator should be informed of the nature of the offense and in the discretion of the officer, depending upon the seriousness of the violation and the attitude of the offender, he should be advised as to a proper course of conduct within the area and warned against further infraction of the laws, rules, and regulations.

Observations, investigations, and reports

In addition to specific law enforcement duties, rangers of this Service are required to perform a number of related duties which are of equal importance in their field. Officers may be assigned and required to observe, to investigate, and to report upon a wide variety of subjects. These may include fire-control problems; policing problems; insect, dis-
ease and other problems of forest and wildlife; range conditions; weather observations; snow surveys; stream flow; conditions of roads, trails, telephone lines, signs, campgrounds, sanitation; potential hazards, and others. A more complete treatment of the field of investigation will be found under chapter 6 hereof.

Emergencies

Having acquired a broad understanding of the basic information, law enforcement officers and their superiors should be trained and otherwise prepared to act efficiently to prevent or control a wide variety of emergency conditions. For example, each law enforcement officer should know what he is expected to do in the following situations: Occurrences of forest, building, or vehicle fires; persons reported lost or drowning; robbery or theft reported or observed; persons injured by wild animals; persons injured by or thrown from horses; automobile accidents; death from known or unknown causes; breakage of telephone or other utility lines. These and a great variety of other emergencies occur in Service areas. Consequently, it is the duty of supervisors to provide the necessary facilities and to issue clear, individual instructions for the purpose of training their men fully in advance concerning these matters. Advice, assistance, and instructions from superior officers should be sought whenever there is a need therefor. Superior officers and officers of long experience should render all possible assistance to those of recent appointment, or those recently transferred to an area, and should give them concise and complete instructions to enable them to perform their duties properly. These instructions should be repeated and reviewed frequently. Time, of course, is of the utmost importance in emergencies, and advance preparation is essential in saving of time.
as well as in the handling of such emergencies properly. Officers have an excellent opportunity to be of great service during emergencies.

**Courtes y**

An attitude of genuine courtesy should be maintained at all times, even in irritating circumstances and especially when enforcing regulations. The policy and attitude of the Service with respect to courtesy are too well known to require enlargement here. The drilling in courtesy should be thorough and adequate in order to insure that this requirement is understood and met in all dealings with visitors and local residents.

**Uniform**

There should be definite instructions as to what constitutes the correct uniform for the season and how the uniform should be worn, with emphasis on cleanliness, neatness, completeness, and wearing it smartly.

**Local Service organization**

The local Service organization should be thoroughly explained on the ground so far as possible. Each employee should know to whom he is responsible at all times and the lines of authority from him to the Superintendent.

**Local information**

The new employee should be drilled in all essential information about the area in which he is employed, visitor objectives within the area, services offered by the Government, accommodations, internal roads and trails, etc. He should have sufficient information about the surrounding attractions, main highway routes, etc., to answer the usual questions concerning them. He should, also, have reasonable familiarity with the National Park Service areas
on or adjacent to main highway routes commonly used by visitors leaving the area in which he is employed.

National Park Service policies

Each seasonal employee whose duties require him to deal with the public should be familiar with the Service policies most frequently asked about by visitors to the area. Particular care should be taken to make sure that seasonal rangers and ranger-naturalists are able to explain generally the Service's concessions policy, the grazing, wildlife, and predator policies, and the land control and acquisition policies, as well as the differences between our policies and the policies under which nearby national forests or other Government reservations are administered.

What matters should be referred to others

All employees should understand that they are not expected to have all the answers and that there are decisions or explanations which they should not make. They should understand clearly what types of questions and situations should be referred to their immediate supervisors or, in some cases, to the superintendent, park naturalist, or other. Above all, they should be warned not to bluff in any situation. It is urgent that we should avoid giving misinformation to any visitor, whether it be about routes, accommodations, Service policy, or any other matter.

Tact

All seasonal employees who deal with the public, and particularly ranger-naturalists who address groups of visitors, should be instructed to take special pains not to make statements which may offend or criticize, or imply criticism of, sections of the
public, other Federal agencies, or officials of the State and local government; for example, the lumber industry, stockmen, miners, the United States Forest Service, the Bureau of Indian Affairs, State fish and game commissions, etc. Particularly to be avoided is any direct or implied criticism of the Congress, either with respect to action taken by the Congress or failure on the part of the Congress to provide funds or take other action. It should go without saying that anything which might be interpreted as a personal expression of opinion on current political and religious questions should be scrupulously avoided. The old guide that we should regard park visitors as our guests, which in fact they are, and treat them with the tact and courtesy which we would accord to guests in our homes is a good one and in accordance with strong Service tradition. However, it does not follow that we must entertain park visitors as we do guests in our homes.

Loyalty

It is essential that all employees should present a loyal and united front in their dealings with park visitors and residents of the communities in which the National Park Service areas are located. Personal grievances that involve other Service personnel and intraservice matters should be brought to the attention of the proper Service officials, not to the attention of our visitors and the community. It follows, of course, that all officials should give careful sympathetic attention to legitimate grievances.

Political activity

Political activity on the part of law enforcement officers of the Service in violation of any of the provisions of the acts of Congress will not be tolerated.
This is not to be interpreted as depriving any officer of his right to cast his ballot or to exercise his other rights of citizenship. Excerpts from Section 1181, Title 5, United States Code, 1946 edition, Supplement III, are quoted below for the information and guidance of all concerned.

"Section 1181. Executive employees; use of official authority; political activity; penalties.

"(a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, * * * shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of this section the term 'officer' or 'employee' shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

"(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any act of Congress for such position or office shall be used to pay the compensation of such person."
General

Cooperation

Law enforcement officers should cultivate and maintain cordial relations with the United States commissioners, United States attorneys, and with law enforcement officers of other Federal, State, and local agencies. Suggestions made by such other officials frequently will be of assistance. Cooperation first freely given usually inspires cooperation in return.
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooperation</td>
<td>11</td>
</tr>
<tr>
<td>Courtesy</td>
<td>7</td>
</tr>
<tr>
<td>Duties generally</td>
<td>2</td>
</tr>
<tr>
<td>Emergencies</td>
<td>6</td>
</tr>
<tr>
<td>Information, local</td>
<td>7</td>
</tr>
<tr>
<td>Investigations</td>
<td>5</td>
</tr>
<tr>
<td>Loyalty</td>
<td>9</td>
</tr>
<tr>
<td>Matters referred to others</td>
<td>8</td>
</tr>
<tr>
<td>Observation</td>
<td>5</td>
</tr>
<tr>
<td>Policies, National Park Service</td>
<td>8</td>
</tr>
<tr>
<td>Political activity</td>
<td>9</td>
</tr>
<tr>
<td>Prevention of violations</td>
<td>4</td>
</tr>
<tr>
<td>Protection of persons and property</td>
<td>4</td>
</tr>
<tr>
<td>Purpose of National Park Service</td>
<td>1</td>
</tr>
<tr>
<td>Reports</td>
<td>5</td>
</tr>
<tr>
<td>Service organization, local</td>
<td>7</td>
</tr>
<tr>
<td>Tact</td>
<td>8</td>
</tr>
<tr>
<td>Uniform</td>
<td>7</td>
</tr>
<tr>
<td>Violations, detection and apprehension of violators</td>
<td>5</td>
</tr>
</tbody>
</table>
The term "jurisdiction" is used to denote a number of things. Of prime importance to our law enforcement personnel is the jurisdiction or authority which the United States has, or may exercise, over an area. As used in this sense, the term "jurisdiction" means the power or right to exercise legislative authority over an area. Stated differently, jurisdiction is controlling authority; the right of making and enforcing laws and regulations; the capacity of determining rules of action or use, and exacting penalties; the function or capacity of judging or governing in general; the inherent power of decision or control. The type of jurisdiction vested in the United States and which may be exercised over an area is determinative of the laws—Federal or State, or both—which may be enforced within a national park area or on the Federally owned lands within a national park area. In reporting for duty to a Service administered area a ranger or law enforcement officer should ascertain at park headquarters the jurisdictional status prevailing in the area.

There are many court decisions, some of them seemingly conflicting, in the jurisdictional field. In this manual only generalized statements can be made on this subject. Therefore, it should be borne in mind by readers of this chapter that in some cases a slight change in facts, circumstances, or laws may bring about different results when courts rule on the very complex problem of jurisdiction over an area. In setting forth general principles herein, no attempt will be made to draw the many fine distinctions to be found in the reported cases on this subject.
TYPES OF JURISDICTION

There are three types of jurisdiction exercised by the United States over areas administered by the National Park Service, namely: proprietary, concurrent, and exclusive. The meaning of these terms and how such jurisdiction is acquired are described below.

Proprietary jurisdiction

Whenever the United States owns or has title to land within an area administered by this Service, it has at least proprietary jurisdiction over such land by virtue of ownership alone. This simply means that regardless of whether the State within which such land is located cedes or grants to the United States jurisdiction of any type or form over the area, the State cannot affect the title of the United States or interference with the protection, use, and control of the area by the United States.

Accordingly, the United States may take such action and establish such regulations as are reasonably necessary to protect Federal property and control and regulate its use for the purpose to which such property is dedicated. Federal laws and regulations prescribed for the reasonable protection, control, and regulation of the property of the United States are paramount to those of the States. Such power or right to protect, control, and regulate is commonly called the police power of the United States. States also have police power or police jurisdiction over lands within their borders, unless such power is ceded to the Federal Government.

An example may best serve to illustrate the meaning of proprietary jurisdiction of the United States. Suppose that the United States owned and admin-
istered a large tract of land in State X as a national monument. Due to overbrowsing by deer, the land was in danger of being rendered valueless for the use to which it was being devoted by the Federal Government. The State law prohibited the killing of deer and prescribed a fine and imprisonment for violation thereof. Any private citizen found hunting or killing deer upon the Federal land in question would be subject to arrest by the State law enforcement officers and to a fine or imprisonment under the State law. Notwithstanding the State law, Service officers could lawfully hunt, kill, or remove deer from the lands of the United States in accordance with such instructions or regulations of the administrative officials as might be issued for the purpose of insuring that the Federal lands would be protected for the purposes to which they were being devoted. Our officers would be immune from the penalties of the State law in such a situation. The United States, acting through its agents, would thus have a power or right which no other private landowner within the State possessed. The converse of this situation would also apply. Suppose the State law permitted hunting. The Federal Government as a private owner endowed with sovereign powers could prohibit hunting on its lands and could fine and imprison violators. No other private owner in the State would have such criminal redress against a person for hunting, although a trespass action may be brought by the owner against the hunter in accordance with applicable State laws.

To illustrate further: If the Federal Government had no law or regulation against hunting on Federally owned lands within a monument, the State law enforcement officers could legally arrest persons hunting on such lands in violation of the State law.
The action would be conducted in the State courts and State penalties would be applicable. Again, the converse would be true. If the Federal Government prohibited hunting, while no State law prohibited it, any violator of the Federal law or regulation would be subject to arrest for violation of the Federal law or regulation. The proceedings would be conducted in Federal courts.

While no State may exercise its jurisdiction so as to interfere with the Federal Government in the use of its property, it is often extremely difficult to determine conflicts between the two sovereignties. In doubtful cases affecting the administration of areas administered by the Service, it is desirable to take the matter up with the local United States District Attorney’s office, or, if time will permit, refer the matter with a full report to the Regional Director’s office for answer or referral to the Washington Office, as the case may be.

Concurrent jurisdiction

This type of jurisdiction results from the cession by the State to the United States of certain limited regulatory or controlling power as defined in the State cession act. The effect of such a statute is to enlarge the proprietary jurisdiction of the United States by granting to it authority to control activities which would otherwise be outside its field of authority. Concurrent jurisdiction, however, is invariably substantially less than exclusive jurisdiction as hereinafter described. For example, a State might convey to the United States an area traversed by a segment of a State highway. Should the State cede to the United States the right to exercise concurrent traffic control over the portion of the highway within the park area, the United States would have what is termed concurrent jurisdiction thereover. State laws would still be applicable to
the highway to the extent that they did not interfere with the enlarged scope of the special regulations promulgated by the United States to govern use of the highway.

Accordingly, in addition to its proprietary jurisdiction over the area, the United States would also have concurrent traffic control jurisdiction ceded by the State. Examples of such jurisdiction are found in the George Washington Memorial Parkway and the Blue Ridge Parkway, Va.

**Exclusive jurisdiction**

This is the broadest type of jurisdiction vested in the United States. It should be noted that in some areas under the exclusive jurisdiction of the United States, the State cession statute cedes exclusive jurisdiction over the entire area, regardless of ownership of the land. In such instances State laws, as such, have no application or effect within the area. In a few instances, however, the statutes are so framed that the cession is applicable only to lands owned by the Federal Government or acquired by the Federal Government in a prescribed manner. This point is extremely important and must be considered in law enforcement, since the State laws are still applicable in a large measure to the privately owned lands within an area covered by this latter type of cession, but are not applicable, as such, to the Federally owned lands. Moreover, in some instances the park boundary has been extended since the original State cession, and in the case of Rocky Mountain National Park, for instance, no cession of jurisdiction has been made over the land included in the extension.

Exclusive jurisdiction is acquired by the United States, where an area has once been subject to the sovereignty of a State, (1) by its purchase with the
consent of the State pursuant to article I, section 8, clause 17 of the United States Constitution, or (2) by a cession of exclusive jurisdiction to the United States by a State. In the latter case, the State may reserve in the cession certain powers with respect to the area. Most of the areas in the National Park System subject to exclusive jurisdiction are dependent upon State cession acts for such jurisdiction. Moreover, most of the State cession statutes applicable to such areas contain the reservation of the right by the State to serve civil and criminal process within the limits of the park, the right to tax persons and corporations, right to vote, etc. While, technically speaking, such cession statutes do not cede "exclusive" jurisdiction to the United States since it is less than a full and unequivocal cession, nevertheless, for practical purposes, and by long use of the term, areas are said to be under the exclusive jurisdiction of the United States despite such limited and relatively inconsequential reservations in State cession statutes.

Prior to 1940, it was customary for States to pass cession statutes, and for the Federal Government to accept such cession by special acts. Under the act of February 1, 1940, acceptance of exclusive jurisdiction may be made by the head or other authorized officer of any department or independent establishment. Notice of such acceptance is generally published in the Federal Register.

A few national parks, such as a portion of Yellowstone, Mount McKinley, and Hawaii, are under the exclusive jurisdiction of the United States as a result of the United States retaining such jurisdiction over the area at the time the State or territory within which the park is located was created.

Subject to boundary extensions after the State cession of jurisdiction, the national parks over
which the United States has exclusive jurisdiction are as follows:

1. Exclusive jurisdiction over area, including private lands therein if any:
   - Crater Lake National Park, Oreg.
   - Glacier National Park, Mont.
   - Lassen Volcanic National Park, Calif.
   - Mesa Verde National Park, Colo.
   - Mount McKinley National Park, Alaska.
   - Mount Rainier National Park, Wash.
   - Olympic National Park (part), Wash.
   - Rocky Mountain National Park, Colo.
   - Sequoia and Kings Canyon National Parks, Calif.
   - Yellowstone National Park, Wyo.
   - Yosemite National Park, Calif.

2. Exclusive jurisdiction over area, except for private lands therein:
   - Big Bend National Park, Tex.
   - Great Smoky Mountains National Park, N. C. and Tenn.
   - Hawaii, National Park, Hawaii, T. H.
   - Hot Springs National Park, Ark.
   - Mammoth Cave National Park, Ky.
   - Shenandoah National Park, Va.

3. Exclusive jurisdiction over areas, no private lands involved:
   - Isle Royale National Park, Mich.
   - Platt National Park, Okla.

This service is now responsible for the administration of a number of historic areas, particularly in Region One, which were once under the control of the War Department. In many such cases an examination of the facts and the laws relating to such areas would establish that they are still under the exclusive jurisdiction of the United States. In many of these instances exclusive jurisdiction was ac-
quired by the United States as a result of the purchase of the areas for forts, arsenals, and other military installations with the consent of the States, pursuant to article 1, section 8, clause 17, of the United States Constitution.

Generally speaking, once exclusive jurisdiction is acquired in this manner, a State cannot "recapture" its jurisdiction unless the United States consents thereto. There are a few State cession acts applying to some of our historic areas which might be construed by the courts to be conditional in nature. That is, the exclusive jurisdiction ceded by the State may be dependent upon the continued use of the area for military purposes by the United States for the purposes contemplated by the cession act of the State. When this Service assumes administration of the area for historic park purposes, it is possible that the exclusive jurisdiction might thereupon be converted to proprietary jurisdiction since there are plausible grounds in such a situation for holding that the original purpose contemplated by the State act has ceased.

From the foregoing two paragraphs it will undoubtedly be apparent that often a complicated, or even delicate, problem is involved in determining the jurisdictional status of some of the areas transferred to this Service from the War Department. This same situation applies to portions of War Department reservations that may now be administered by this Service. A fundamental difficulty in determining jurisdictional status in many of these cases is found in the fact that the records transferred to us may be extremely sketchy. In fact, in many cases we have inadequate land records of such areas and are unable to obtain full title data relating to them. Likewise, it is often practically impossible for us to ascertain how the area was
originally established and came under the control of the War Department.

When necessary, this Service will make every reasonable effort to secure full data and review the circumstances relating to establishment of the area in an effort to determine its jurisdictional status. Such a determination is frequently of prime importance if a major crime, such as murder, arson, or robbery, is committed on land under our jurisdiction. For instance, in connection with a murder committed in 1934 on lands comprising a part of Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, it was the view of the Department of Justice, later sustained by the Federal District Court, that the United States had exclusive jurisdiction over the tract of land on which the crime was committed. It follows that, if the land involved is still under the exclusive jurisdiction of the United States, the State authorities are completely without authority to prosecute an offender. Conversely, if the land is under the proprietary jurisdiction of the United States, the State authorities prosecute the offender for such crimes where no Federal interest is involved. Fortunately, however, it will be found in our administration of such areas of doubtful jurisdictional status, that in most of them we will have occasion to be concerned only with violations on Federally owned lands of our rules and regulations which clearly can be prosecuted in Federal court or before United States commissioners.
The law enforcement officers of the National Park Service are charged by the Department and the Service with the primary responsibility for enforcing the laws pertaining to, and the rules and regulations promulgated by the Secretary of the Interior for the administration and protection of, the various areas of the National Park System. The responsibility for enforcement of these laws and regulations naturally carries with it the right and duty to arrest violators when the occasion arises. It also involves in certain cases the desirability of Service officers being depoputized as State law enforcement officers. The authority to arrest and to accept appointments as State law enforcement officers is not found in the acts and proclamations creating the various areas, but the Congress and the President have otherwise specifically provided for such functions by officers of this Service.
AUTHORITY TO ARREST

The authority of law enforcement officers of the Service to make arrests is derived from several sources as follows:

National parks

The act of February 6, 1905, an act for the protection of the public forest reserves and national parks, initially provided authority for persons of this Service to make arrests. Similar authorization is contained in the act of March 3, 1905. The provisions of the latter act are now incorporated in section 10, title 16, United States Code 1946 edition, reading as follows:

All persons employed in the National Park Service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the national forests and national parks, and any person so arrested shall be taken before the nearest United States commissioner within whose jurisdiction the national forest or national park is located, for trial; and upon sworn information by any competent person, any United States commissioner in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws and regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said laws and regulations.

National military parks

The act of March 3, 1897, an act to prevent trespassing upon and providing for the protection of the national military parks, provides in part as follows:
That the superintendent or any guardian of such national military park is authorized to arrest forthwith any person engaged or who may have been engaged in committing any misdemeanor named in sections 413 and 414 of this title, and shall bring such person before any United States commissioner or judge of any district court of the United States within either of the districts within which the park is situated, and in the district within which the misdemeanor has been committed, for the purpose of holding him to answer for such misdemeanor, and then and there shall make complaint in due form.

The misdemeanors named in the foregoing act are listed as follows:

1. Every person who willfully destroys, mutilates, defaces, injures, or removes any monument, statue, marker, guidepost, or other structure, or who willfully destroys, cuts, breaks, injures, or removes any tree, shrub, or plant within the limits of any national military parks shall be deemed guilty of a misdemeanor, punishable by a fine of not less than $10 nor more than $1,000 for each monument, statue, marker, guidepost, or other structure, tree, shrub, or plant destroyed, defaced, injured, cut, or removed, or by imprisonment for not less than fifteen days and not more than one year, or by both fine and imprisonment (16 U. S. C. 1946 ed., sec. 413).

2. Every person who shall trespass upon any national military parks for the purpose of hunting or shooting, or who shall hunt any kind of game thereon with gun or dog, or shall set trap or net or other device whatsoever thereon for the purpose of hunting or catching game of any kind, shall be guilty of a misdemeanor, punishable by a fine of not more than $1,000 or by imprisonment for not
less than five days or more than thirty days, or by both fine and imprisonment (16 U. S. C. 1946 ed., sec. 414).

Miscellaneous areas

The act of March 2, 1933, providing for the protection of national military parks, national parks, battlefield sites, national monuments, and miscellaneous memorials under the control of the War Department, provides as follows:

That the commissioners, superintendents, caretakers, officers, or guards of such national military parks, national parks, battlefield sites, national monuments, and miscellaneous memorials, or any of them are authorized to make arrests for violations of any of the regulations prescribed pursuant to section 9a of this title, and to bring the offenders before the nearest commissioner, judge, or court of the United States having jurisdiction in the premises.

Under section 405 of the act of March 3, 1933, the foregoing statutory authority with respect to areas transferred to this Service from the War Department remains in effect. The areas in question are those which were transferred from the War Department to the Department of the Interior for administration by the National Park Service pursuant to Executive Orders Nos. 6166 and 6228, dated June 10 and July 28, 1933, respectively.

The acts mentioned above, relating to the authority to arrest for violation of the regulations covering military park areas, were necessary when such areas were under the administrative jurisdiction of the War Department or other agencies prior to their transfer to this Service. Such transferred areas are now administered by the National Park Service under the 1916 Organic National Park Act. As the 1905 act, supra, authorizes employees of the
National Park Service to make arrests, such arresting authority appears to supplement the arresting power of military park personnel which is confined to certain types of cases and is somewhat more limited in scope than the 1905 act.

Firearms

It is generally recognized that a necessary incident to proper performance of the law enforcement officer's duties may be the carrying of such weapons as may be required to enforce his commands and accord him essential protection. Office Order No. 316, dated January 9, 1936, issued by the National Park Service, as quoted below, authorizes law enforcement officers of this Service to carry arms in the performance of their duties.

The act of Congress approved February 6, 1905 (33 Stat. 700), provides that all persons employed in the National Park Service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the national parks and monuments. The Solicitor of this Department, in his opinion rendered on September 9, 1931, held that police officers and persons empowered to make arrests are entitled to carry firearms as a means of personal protection, as well as to aid in enforcing their commands. The Secretary has, therefore, promulgated the following regulation:

“(g) The Superintendent or Custodian of a park or monument may, in his discretion, permit the carrying of firearms by employees under his administrative jurisdiction when such possession is deemed necessary in the performance of official duties.” (See sec. 2.11 (b), General Rules and Regulations, National Park Service.)

Superintendents and Custodians, in the exercise of their discretionary powers, as provided
in the regulation, shall give careful considera-
tion to the established policy that only such dis-
play shall be made of constituted authority as
is necessary with good park management. There-
fore, unnecessary display of arms should be
avoided.

In order that there may not be unauthorized or
unlawful exercise of authority, employees shall be
permitted to use their firearms only in extraor-
dinary cases such as in the actual defense of
their own or another's life; when attacked with
deadly weapons, or in actual pursuit of escaping
criminals charged with such crimes as murder,
rape, housebreaking, arson, or kindred felonies,
and then only when circumstances make such
action necessary, or when necessary to effect law-
ful arrest.

In authorizing the carrying of firearms under
the foregoing regulation, a written permit shall be
issued in duplicate, one copy to be retained by the
Superintendent or Custodian as a memorandum
and receipt for the weapon and other equipment
assigned, and one copy to be retained by the per-
mittee and carried on his person at all times when
carrying firearms in accordance therewith. Pos-
session by permittee of a permit as herein pro-
vided will furnish evidentiary proof of Federal
authority to carry firearms should the permittee
be required to go outside the boundaries of the
park or monument with firearms in his possession
in the performance of his official duties. Such
permit shall be revocable at the will of the Super-
intendent or Custodian. (See also sec. 1.11
General Rules and Regulations, National Park
Service.)

Deputy State fish or game wardens

Executive Order No. 1991 of July 9, 1914, author-
izes employees of the National Park Service to
accept, with the approval of the Secretary of the Interior, appointments as deputy State fish or game wardens, if no compensation is attached to the position, and if the duties do not interfere with, or are not inconsistent with, their duties in the Government service.

Deputy sheriffs

Executive Order No. 7332 of April 3, 1936, authorizes employees of the National Park Service to accept, with the approval of the Secretary of the Interior, appointments as deputy sheriffs under the laws of the States or territories in which such employees may be on duty; Provided, That their services as such deputy sheriffs shall be without compensation and shall not in any manner interfere or conflict with the performance of their duties as employees of the National Park Service.

Effect of appointments

Acceptance of an appointment under authority of the above Executive Orders will confer an official status under the government of the State or county, and empower the appointee to enforce the applicable State laws or regulations within the particular Federal area, provided that the jurisdictional status of the Federal area is such that the State or county laws are applicable therein. In many cases, especially where the United States has only proprietary jurisdiction within the area concerned, it will be found advantageous for the law enforcement officer of the area to hold an appointment as provided above. Such an appointment normally confers the right to make summary arrests without a warrant for a misdemeanor committed in the presence of the officer and for a felony. In some jurisdictions, however, the right to make summary arrests for misdemeanors is limited to
those involving a breach of the peace. It will be necessary, therefore, for those who may be so deputized to ascertain what State criminal laws are in force within the particular area, and the authority to make an arrest, with or without a warrant, for a particular offense.

It must be borne in mind by Service law enforcement officers that when they are acting as deputized State or county law enforcement officers, their authority stems solely from the State or county laws and no Federal statutes or regulations may in such instances be enforced while acting in that capacity and when making an arrest for an offense against State or county laws. There are, however, instances where an offense is a violation of Federal law as well as a violation of State law. In such a case, the Service law enforcement officer, who has been deputized by a State or county, may proceed with prosecution under the Federal law before a Federal commissioner or in Federal court, or he may proceed under the State or county law in the State or county courts. In certain cases it would be possible to utilize both the Federal and State tribunals. Generally speaking, however, where such a dual offense has been committed, it is the best policy to proceed under the law and in the court where the convenience of the offender and the law enforcement officer is best served. In general, it is important to reach an understanding with local enforcement officers to be sure that it is understood that our deputized rangers will perform State law enforcement work only in connection with our administration of the park area.
RELATION TO AREAS OF THE NATIONAL PARK SYSTEM

Procedure in doubtful cases

In order that our law enforcement officers may have a reasonable understanding of the types of cases in which they should act—without a warrant of arrest, or with one, when properly deputized—a general discussion of the laws and regulations relating to Service administered areas follows. In discussing these subjects, however, it should be remembered that it is impossible to anticipate all of the situations that may arise, or to draw fine or technical distinctions such as are made at times by the courts. Therefore, when the general principles hereinafter set forth do not seem to cover a situation, the cautioning advice is given that the counsel of the United States attorney or the State, county, or local prosecutor should be sought before action is taken. After all, warrants of arrest or summons may be obtained even after some slight delay and inconvenience.

Source and reference material

By referring to the "General Legislation" portion of the Service publication *Laws Relating to the National Park Service, 1933*, as supplemented, it will be noted that there are certain general acts relative to injuring the public lands of the United States, or aimed at protecting such lands, which have application to many areas of the National Park System notwithstanding the fact that such areas are not specifically mentioned. Some general provisions of the Criminal Code of the United States (Title 18, U.S.C., 1946 ed., Supp.) also may be construed to apply to areas administered by the
Service. Where this is the case, an arrest without a warrant would be proper by our Service law enforcement officers in misdemeanor cases, as well as felonies. Moreover, in almost every instance of this nature, some provision in the Secretary's rules and regulations would undoubtedly cover the offense and the arresting officer would be on the safest ground to arrest thereunder and thus be assured of the protection of the regulations if any doubt exists or should develop as to the applicability of the law to areas under Service administration. In addition to the laws mentioned above, section 13, title 18, United States Code, 1946 edition, supp. II, adopts as Federal law, for areas under the exclusive jurisdiction of the United States certain State laws covering acts or omissions made punishable by the State law if committed outside the Federal area. This provision of law is known as the Federal Assimilative Crimes Statute and is invoked only if there is no Federal law or regulation covering the act or omission within the area which, if done or omitted outside the area, would be punishable under the State law. Acts or omissions punished under the provisions of this section of the Code are not punished as violations of the State law, but as violations of Federal law.

Regulations and punishment

Congress has given the Secretary of the Interior the power to make such regulations as he deems necessary to meet conditions in the areas under Service administration and to protect the areas from depredations and harmful uses. It has been frequently determined by the courts that such regulations have the force and effect of law. The regulations are subject to frequent amendments, however, to meet changing conditions. Accordingly, law enforcement officers should familiarize them-
selves with current regulations in force within the respective areas in which they are serving. Not only is this necessary from the standpoint of knowing what acts constitute violations of the regulations, but this knowledge of the regulations is also necessary from the standpoint of giving intelligent information to visitors. A violation of the Secretary's rules and regulations for the maintenance of law and order in areas under Service administration is a misdemeanor and may be punished by a fine of not more than $500 or imprisonment for not exceeding 6 months, or both, and the offender may also be required to pay all costs of the proceedings.
FELONIES AND MISDEMEANORS

Distinction between felonies and misdemeanors

The distinction between felonies and misdemeanors is found as a general rule in the penalties which may be imposed. Section 1, title 18, United States Code, 1946 edition, supp., provides, however, that "Notwithstanding any act of Congress to the contrary:

1. Any offense punishable by death or imprisonment for a term exceeding one year is a felony.
2. Any other offense is a misdemeanor.
3. Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

Felonies, crimes, and petty offenses defined

Generally, then: Felonies are serious crimes for which the punishment is death or confinement for a period of more than 1 year; Misdemeanors are less serious offenses for which the punishment by confinement is less than 1 year; and Petty offenses are misdemeanors of minor gravity for which the punishment by confinement may not exceed 6 months and the fine may not exceed $500. In each instance, punishment by fine may be given in the alternative for the punishment by confinement, or in addition thereto. Violations of the rules and regulations prescribed by the Secretary of the Interior for the government of Service areas fall within the classification of petty offenses.

Federal crime

A crime has been defined as an act committed, or omitted, in violation of a public law either forbidding or commanding it to be done, or a wrong which
the Government notices as injurious to the public and punishes in what is called a criminal proceeding. There are no common law crimes against the United States, except where the Assimilative Crimes Act makes an offense under State law a Federal offense in an area under the exclusive jurisdiction of the United States. It must always be kept in mind, therefore, that Federal officers and courts have no power or jurisdiction to arrest, try, or punish a person unless the act or omission with which he is charged violated a Federal statute, or a regulation issued pursuant to a Federal statute. In this respect their power is subject to limitations not imposed upon state officers and courts having authority and jurisdiction to arrest, try, and punish for what are generally known as common law offenses.

Breach of the peace

A breach of the peace may be defined as an act of public turbulence or indecorum in violation of the common peace and quiet, of the invasion of the security and protection of any law enacted to preserve peace and good order, or of acts such as tend to excite others to break the peace. The acts involved must be voluntary, unnecessary, and contrary to ordinary human conduct.

Misdemeanors and petty offenses—Federal and State

From the foregoing it will be seen that it is relatively easy to define a crime under the Federal Criminal Code and to identify misdemeanors and petty offenses. This may not be true under State law. Checks should be made with local State and county prosecutors to determine what distinction is made by the law applicable to their area. Deputization as a State or county law enforcement officer is generally desirable in areas where State criminal
laws are effective so that National Park Service officers need not rely solely upon their rights as a private citizen to make an arrest. The line between State felonies, breaches of the peace, and misdemeanors is often a hazy one and, therefore, acting as a private individual under State law may not be without some risk.

Summarization

To summarize, the classification of misdemeanors into petty offenses, breaches of the peace, and ordinary misdemeanors, is important for two reasons. The first is that where a law enforcement officer of this Service might officially lack authority to make an arrest, he may make an arrest in a breach-of-the-peace case as a private citizen. The second is that petty offenses may be tried by United States Commissioners. An analysis of the felony or type of misdemeanor involved need not be made, of course, when a law enforcement officer of this Service has been deputized as a United States Marshal or a State or county officer and he has legal arresting authority in situations involving other than park law or regulations. In such instances, he obviously will not rely upon, or even mention, the arresting authority reposed in him as a private citizen.
Arrests

Chapter 4
Section 1
Page 39

THE ARREST—DEFINED

Definition

In criminal procedure, an arrest is the taking or seizing of the person of another, or touching or putting hands upon him in the executing of process, or any act indicating an intention to arrest. An arrest is synonymous with the actual deliberate legal restraint of the person of another against his will, and signifies a restriction of his freedom of movement.

How an arrest is made

An arrest is made by an actual restraint of the person of the accused or by his submission to the custody of an officer. It is usual to place the hand upon him and say, "I arrest you," or words to that effect. The prisoner is usually, and on demand must be, informed of the cause of the arrest and the authority to make it, and shown the warrant as soon as possible when acting under a warrant. It is advisable for an officer who makes an arrest to state who he is and show his badge, if not in uniform, and to state why the arrest is being made. If the prisoner is arrested in the act of committing or attempting to commit a crime, or if he is pursued immediately after its commission, or after his flight from the scene, it is not necessary to give him any such information. The arrest may be made merely by apprehending and taking him into custody.

Formalities of an arrest

In normal circumstances the officer is required to inform the accused of the cause of the arrest prior to the actual arrest. In unusual cases, however, the explanation by the officer need not be given immediately if such explanation would imperil the
Arrests

Chapter 4
Section 1
Page 40

Arrests

officer or the arrest. For example, a known felon who may very likely be armed could be “covered” by the officer and the intention to arrest and the cause of arrest declared to the felon at gun point.

Alternate basis for making arrests

If there exist two causes which will justify an arrest—one definite and one indefinite—only the definite one need be given. For instance, if an officer has reason to believe a certain person has committed a certain crime, but is not sure enough of the facts to make the arrest without a warrant, and the suspect is likely to leave the vicinity, the officer could (and should) keep the person under observation. If the suspect should commit any infraction of the regulations such as speeding, throwing lighted matches or cigarette butts onto the ground, etc., the officer could then arrest him for this lesser violation, and while the accused was being processed on the petty charge, the more serious charge could be developed to a point where that charge could also be lodged against him. Such a procedure should only be used when absolutely necessary to accomplish justice.

Arrest for lesser offense where several grounds exist

Many instances occur in which an officer is called to the scene of active violations where it develops that several separate offenses have been committed. It is preferable to arrest for the lesser offense committed in the officer’s presence so that the facts of the more serious charge may be fully developed before the charge is lodged.

Informal questioning

Ofttimes it happens that an officer may request a person to go with him for informal questioning
in connection with an alleged violation. In such instances he would usually say, "We'd like to talk with you down at the office," or words to that effect. If the person complies, there is no arrest. However, if the officer has no cause for an arrest and accosts a person in such an officious manner that it leads the person to believe he is being taken into custody and the person submits to the authority, then the officer is liable for false arrest. In any event, where it is desired to get a person to accompany the officer to the office, to the crime scene, to be confronted by witnesses, etc., be sure and make a friendly approach; be conversational. Where sufficient grounds for arrest do not then exist or are not known and the person refuses to go without arrest, the safe practice would be to leave him alone and later when the facts are known get a warrant for his arrest.

Arrest for subsequent developments

If the person goes with the officer and as a result of later events while he is with him, it is determined that there are reasonable grounds to believe him guilty of a felony, he may be arrested without further delay. If the crime of which the officer believes him guilty is only a misdemeanor, he may not legally arrest him. In such case, it would be necessary to lay the facts before the commissioner or justice of the peace and procure a warrant for his arrest.

Avoidance of unnecessary unpleasantness in making arrest

It cannot be stressed too strongly that in all dealings with the accused unnecessary officiousness or unpleasantness should be avoided, since much more information usually can be obtained from a prisoner who is well treated, and there will be no
grounds for charges of bulldozing by his attorney afterwards.

Arrests valid even when accused establishes innocence

Innocence of the accused, established after the arrest, does not make the arrest illegal if the statutory requirements governing the arrest were fulfilled.
ARREST BY FORCE

Use of force

An officer making an arrest may orally summon as many persons as he deems necessary to aid him, and refusal to render such aid is a punishable offense. A United States Commissioner may summon any necessary county, State or Federal assistance to apprehend the person or persons for whom his warrant is issued. When an arrest is made, the person arrested should be searched when the circumstances warrant such action. Generally, the question of whether a person arrested should be searched is one for individual determination based upon the known or suspected character of the accused, and also the nature of the offense. It should be pointed out that, in the ordinary work of Service law enforcement officers, the value of the search is not so much the uncovering of dangerous weapons, as (1) the procuring of articles which may afford evidence; and, (2) for the effect of impressing the suspect with the gravity of the offense. An additional aid, in respect to the second point, is the taking of a personal description of the suspect, which may well be done at the time of the arrest. Search of a person under arrest requires no separate search warrant.

Civility in making arrests

While an officer may exercise reasonable force when necessary in effecting an arrest, he should be as considerate as possible. This is particularly true where relatively minor infractions of Service regulations occur. There will, however, be times when an officer must act swiftly and forcibly. If criticized for his act in such cases, his reputation for tact, civility, and courtesy will sustain him. Many of us have experienced a feeling of disgust when an over-
officious police officer has used the brow-beating tactics in stopping or arresting us for some minor traffic offense. Treat visitors to park areas in a manner you would consider reasonable if circumstances were reversed.

**Limitation on use of force in making arrests**

An officer who is making a lawful arrest, or who has made an arrest, is justified in using such force as is reasonably necessary to secure and hold the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm; but he is never justified in using unnecessary force or treating his prisoner with wanton violence, or in resorting to dangerous means when the arrest could be effected otherwise. Within reasonable limits, the amount of force permissible to effect an arrest and the means employed are necessarily left to the sound discretion of the officer and it has been held that this discretion is not subject to review by a court or jury unless wantonly or maliciously abused. In this connection, a Federal court has held:

Officers do not have absolute license to use any force they may choose in making arrests. There must, of course, be a discretion in an officer as to the force necessary to be used on such occasion, but officers are sometimes inflated with a high conception of their office, and exercise power in an unreasonable, arbitrary, and unjustifiable manner. Officers are not relieved from the ordinary dictates of humanity. While they are clothed with great power, they have no right to abuse the same. An officer who intentionally uses more force than is reasonably necessary in making an arrest is oppressively discharging the duties of his office.
USE OF WEAPONS

Use of weapons in effecting arrests

Firearms, where authorized, are furnished to officers as a means of self-protection to be carried when on active duty, and they must not be used unless there is impending danger, such as in the actual defense of life, or in actual pursuit of escaping criminals charged with felonies, etc. An officer would not be justified in using a weapon to compel an offender to obey his command to halt when he is actually not charged with a felony, and the only offense with which he could be charged is a minor infraction of the rules and regulations. It should be pointed out that to shoot a fleeing misdemeanant and miss is assault; to shoot at him and hit is assault and battery; and, to shoot and kill him is manslaughter. In serious cases involving felonies, such as murder, rape, etc., a fleeing felon may be shot at after he has been commanded to halt, even if such shooting results in death to him.

This is a matter that involves the utmost responsibility on the part of law enforcement officers, and one that must be handled judiciously at all times. Officers should bear in mind that they may become subject to serious administrative or judicial actions if they misuse their authority. The Federal Government requires restraint, coolheadedness, and sound judgment in the handling of weapons. Firearms should be removed from holsters only when it is the intention of officers to use them in the execution of their duties. They should never be displayed in order to impress other persons.
SELF-DEFENSE

The preceding sections have set forth the distinction between the amount of force which is proper in effecting an arrest in a misdemeanor case and in a felony case; that the officer should abandon the attempt to arrest in misdemeanor cases rather than inflict death or great bodily injury. However, if the person who is to be arrested resists in such a way as to threaten the officer with death or serious bodily injury, the officer is entitled to a right of self-defense which may, in an extreme case, justify injuring or killing the other person. This right arises only when the other person becomes the assailant. Spoken threats against the officer do not give rise to the right of self-defense unless there is apparent ability to carry them out.

The right of self-defense on the part of officers of the law is broader than that which is accorded to private persons. A private person may not advance against his assailant, nor even stand his ground, but must retreat unless retreat will increase his danger. An officer of the law is not obliged to desist from his purpose to make an arrest, and may stand his ground, or even advance, while still entitled to oppose force to force as a matter of self-defense. Nevertheless this right of self-defense is subject to the rule that the force employed must be no more than necessary, and, in case death or serious bodily injury results, the burden is on him who inflicts either to justify his action.

Statutory reference to offense of resisting Federal law enforcement officers

For penalties for resisting Federal law enforcement officers see sections 111, 1114, and 2231, title 18, United States Code, 1946 edition, current supplement.
A warrant of arrest is a written order directing the arrest of a certain person named in the warrant issued by a justice, judge, United States commissioner, justice of the peace, police magistrate, or other official having authority to issue warrants of arrest. If the name of the person sought to be arrested under the warrant is not known, any name, together with any description by which he can be identified with reasonable certainty, will suffice. In such instances it is customary to obtain a “John Doe” warrant, the name “John Doe” being a fictitious name representing the unknown person upon whom the warrant is to be served. A warrant of arrest for a felony may be executed, i.e., the arrest made, at any time, day or night. For a misdemeanor, however, arrest may be made only in the daytime unless night service is specifically authorized in the warrant. Daytime, for such purposes, is defined as from sunrise to sunset. Any close question concerning these times would be settled by the times shown in the (U. S. Nautical) almanac, which would, of course, be in terms of true sun time, not standard time (nor “daylight saving” changes).
ISSUANCE OF WARRANTS

General—probable cause

Warrants of arrest may be issued only upon probable cause supported by oath or affirmation naming and/or describing the person to be seized. Probable cause has been defined to mean a cause based upon grounds which would satisfy the mind of an ordinary prudent and cautious individual that a crime has been committed and that the person for whom the warrant is sought committed it. The responsibility is upon the officer seeking the warrant to furnish, by himself or through witnesses, or both, sufficient sworn facts to convince the issuing officer that probable cause exists for the issuance of the warrant. The question as to whether probable cause exists is decided initially by the issuing officer.

To whom directed

State warrants of arrest, generally, are directed to a peace officer of the State. A National Park Service ranger may be deputized as a peace officer (deputy sheriff), and thereupon is authorized to serve a warrant issued under the authority of the State, but not otherwise.

Federal process

Federal process, generally, is directed to the United States marshal, or his deputies of the district wherein the process is issued. National Park Service rangers deputized as deputy United States marshals have authority to serve such Federal process pursuant to the authority vested in the marshal and his deputies by the statutes.

Limitations

The limitations upon the authority of Service law enforcement officers to serve process generally, as
stated above, should not be interpreted as limiting any Service officer in appearing before a proper court officer and procuring the issuance of any necessary warrant that will be directed to an appropriate officer for service.

Service of process

A warrant of arrest may be executed (served) only by the person to whom it is directed. If, however, it is directed to an officer who has deputies, a deputy may serve it in the name of the officer to whom it is issued and whom he represents.

Jurisdiction in which served

If any question exists in the mind of any officer to whom a warrant has been issued as to the extent of the jurisdiction wherein it may be served, the question should be thoroughly answered to the officer's satisfaction by the court issuing the warrant, before the officer attempts to serve it.

Who may be arrested

Only the person named or described in the warrant may be arrested. A warrant gives no protection to an officer who arrests a person not so named or described. Of course, an officer would not be liable for false arrest if the person whom he did arrest actually and deliberately deceived the officer into believing that he (the individual arrested) was the person named or described in the warrant. A person using two names or an alias may be arrested on either appearing in the warrant.

Possession of warrant

Generally, the warrant of arrest should be in the hands of the officer making the arrest, or possessed by one of the officers participating in the arrest. It often happens that a warrant will be directed to the office held by the officer, such as to a marshal.
or a sheriff and he will have the warrant. Any officer of his organization, however, may make the arrest. Thus, where a warrant is directed to the sheriff, any deputy of his office may make the arrest; or if a Federal warrant is directed to a marshal, any deputy of his office, including depu­tized rangers, may make the arrest. The warrant in all instances should be in the possession of the officer in the field and not in his office, because on making the arrest the officer should, upon demand, show the warrant to the accused as soon as possible, unless such action would endanger the life of the officer or hazard the arrest. Thus, in the case of a vicious character it would be entirely proper to arrest him at gunpoint and then after he is bound and secured, show him the warrant. The warrant need not be given to the accused, but may be read to him by the officer making the arrest.

Return on warrant

In cases of arrest on warrant the accused should usually be taken without unnecessary delay before the officer issuing the warrant. This does not mean, however, that this must be done within the hour or that other operations must be halted in order to get the prisoner before a court officer. On the other hand, it does not mean that the accused should be held over a period of 24 or 48 hours to await the convenience of the persons concerned. Discretion must be used in order to insure that the prisoner will be taken before the proper officer within a reasonable time after his arrest. In all cases it is necessary that receipt of and return of the warrant be noted on the warrant by the officer executing it. In all cases where any doubt exists as to the proper procedure to be followed under the warrant, complete information should be secured from the court officer issuing the warrant, prior to its execution.
Validity of the warrant

An officer who properly executes a valid warrant of arrest is fully protected under the law. The validity of the warrant does not hinge on the final determination of guilt of the accused, but rather on compliance with the legal requirements of its issuance, of which the following are the more important:

1. Was it issued upon probable cause adequately shown to the satisfaction of the issuing officer?

2. Does the warrant name and/or adequately describe the person to be arrested?

3. Does the issuing officer have authority to issue the warrant for the crime which is charged?

4. Does the issuing officer have jurisdiction of the person if arrested within the limits of the area over which the court has judicial authority? (For example, the court would not have jurisdiction of the person of a member of Congress while going to and from his home and the Capital for the purpose of attending sessions, except, of course, in case of treason, felony, and breach of the peace.)

5. Is the warrant in writing and is it signed by the issuing officer?

6. Is it issued in the name of either the United States or one of the several states?

7. Does it allege a specific offense in words that adequately describe the offense for which the person is to be arrested?

8. Does it command that the person be arrested?

9. Does it direct that the person to be arrested be brought before the issuing officer?

10. Does it state the date of the offense?

Of course, the officer to whom a warrant is directed will not inquire into all circumstances sur-
rounding the issuance of the warrant. The foregoing are merely given for the information of law enforcement officers to enable them to check the validity and regularity of a warrant on its face—which is the real question. If the warrant is regular and valid on its face, issued by competent authority, and the arrest is properly made, then the officer executing it has proceeded properly and is protected. If the warrant is not signed by the issuing officer, for example, the officer executing it would not be protected against a charge of false arrest.

Period warrant is valid

A warrant of arrest is valid until executed or recalled by the issuing officer, unless in the particular jurisdiction its life is limited by statute.

Rights of officer

An officer executing a warrant of arrest, in order to make an arrest, may break into the house or building in which the accused is located, or in which the officer has reasonable grounds to believe that he is. Such force, however, may be used only after the officer has identified himself and stated the purpose of his mission, and he has been refused admittance, or there has been no response to his raps or other notice of his desire to enter. In like manner, he may liberate himself from any building in which he has been detained after he has lawfully entered therein.
ARRESTS WITHOUT WARRANT—GENERAL

Under the provisions of the act of March 3, 1905 (see ch. III), Service law enforcement officers are authorized to make arrests of persons taken in the act of violating the Federal laws and regulations pertaining to Service areas. Moreover, in addition to the authority to arrest pursuant to warrant (sec. 6, supra), Service law enforcement officers may also arrest without a warrant (1) for a misdemeanor committed in the presence of the officer amounting to a breach of the peace; (2) when the person arrested has committed a felony, although not in the presence of the officer; (3) when a felony has, in fact, been committed and the officer has reasonable cause to believe that the person arrested committed it; (4) for a felony committed in the presence of the officer; and (5) when orally ordered by a magistrate or other proper court officer to arrest a person committing or attempting to commit an offense in the presence of such court officer. In making arrests without a warrant the entire responsibility for the lawfulness of the arrest is upon the officer making the arrest. Since this type of arrest is frequently made by officers of this Service, it is imperative that each responsible officer be conversant with the rights and duties which he may exercise and discharge.

Civil suits against National Park Service employees

Persons subjected to false arrest or arrested unlawfully have recourse to legal action against the officer. Such a suit is directed against the officer personally, and no provision of law exists under which the Federal Government may reimburse the officer for any recovery or judgment obtained against him. There are, however, provisions for representation by the Department of Justice of Government Employees and Servicemen who are sued civilly or
charged with violation of local or State criminal laws as a result of the performance of their official duties. (See Memorandum to All Field Offices (FO-925), of January 17, 1951, quoting Department of Justice Circular No. 4122 of May 11, 1950, to all United States Attorneys.) In cases where an appearance or answer date is sufficiently in the future and the circumstances permit of delay, a request for representation by the Department of Justice should be forwarded through usual channels for handling on a Departmental level. In situations where time does not permit communication through Department heads in Washington, a local officer of the Service may forward a request for counsel and representation directly to the local United States attorney, to be confirmed subsequently by an exchange of correspondence between the Department heads. It should be understood, however, that the United States attorneys may in their discretion decline to make court appearance on behalf of employees in trivial cases, such as minor traffic violations, unless specifically authorized to do so by the Department of Justice. The privilege of requesting representation by the United States attorney should, therefore, be used with circumspection.

Generally speaking, a law enforcement officer's authority to make an arrest is confined to the limits of the geographical area over which the Federal, State or municipal sovereign on whose behalf he acts has jurisdiction. There are circumstances where an officer in fresh pursuit of a felon may arrest outside of his jurisdictional area. Since most of our law enforcement activities involve only minor infractions of our rules and regulations, it is doubtful that fresh pursuit would be warranted to any appreciable extent, especially since warrants may be obtained and the same ultimate end accomplished, even if in a less spectacular manner.
ARREST WITHOUT WARRANT FOR MISDEMEANOR COMMITTED IN OFFICER’S PRESENCE

Illustration of offenses committed in officer’s “presence”

For an officer to arrest an accused for a misdemeanor committed within the “presence” of the officer amounting to a breach of the peace, the officer must necessarily see the offense committed, or see one or more of a series of acts constituting the offense, which coupled with the aid furnished by his other senses would enable him to determine that such an offense has been committed. Thus, to illustrate the first case, the officer may arrest for a fist fight taking place in his presence; and, in the second case, should he hear loud talking or other noises beyond his view which would lead him to believe that an offense “amounting to a breach of the peace” is being committed he may investigate the source of the disturbance and if he can determine from the acts, or one of a series of acts, which he sees upon his investigation that an offense is being committed, he may arrest the accused.

Detention pending arrival of “presence” officer

Instances occur within a park when an officer on duty at a checking station is called over the telephone and told to hold a certain car or certain persons on a charge amounting to no more than a misdemeanor. Clearly, there is no legal authority for complying with the request since the misdemeanor even though “amounting to a breach of the peace” did not transpire within the presence of the officer who has been requested to make the arrest. However, if a fellow officer should call and state that a misdemeanor has been committed in his presence
and that he is actively engaged in pursuit of the accused, and request is made of the officer on the checking station to cooperate in the arrest, in such cases the officer to whom the request is directed may direct the car to pull to one side for further inspection of the permit to enter the area, or to check the driver's license, or for any other justifiable cause, and thus detain the accused until the pursuing officer had arrived and is able to make the arrest. To detain a car or person to inquire further concerning a justifiable matter within the province of the officer does not amount to an arrest, but is merely the exercise of a privilege conferred on the officer by reason of the duties which he is required to discharge with reference to the office which he occupies. In every instance, such procedure should only be resorted to when the circumstances fully justify such action.

**Delay between time of offense and arrest**

While the law allows a reasonable time between the commission of an offense in the officer's presence and the arrest, there must be a continuing active interest by the officer in accomplishing the arrest; otherwise, the right to arrest on this theory is lost. For instance, should an officer witness the commission of a misdemeanor one day and take no action, he cannot summarily arrest the accused at some later time for the same offense as one committed "in the presence" of the officer. His only recourse would be to have a warrant issued for the arrest of the accused.
ARREST WITHOUT WARRANT FOR FELONY

Offense and offender certain

An arrest for a felony which has been committed, although not in the presence of the officer, may be made when the officer knows for a fact that a specific felony has been committed and that the person whom he is arresting is the person who committed it. This knowledge constitutes personal knowledge acquired by the officer through his own investigative efforts. In addition, however, the knowledge may be acquired through official advice from fellow officers within the same organization engaged in the same undertaking. For instance, an officer would be authorized to arrest a felon upon advice from a fellow officer that a felony has been committed and that before he could arrest the felon he escaped.

Offense certain—accused believed to be felon

An officer may also arrest for a felony which has, in fact, been committed, although not in his presence, when he has reasonable cause to believe that the person arrested committed it. For instance, another law enforcement officer sends a telegram or telephones that he has a warrant for the arrest of a certain person, whom the officer describes and states to be a felon, then pursuant to such information the officer may arrest the felon.

Felony committed in presence of officer

An officer may also arrest an accused for a felony committed in the presence of the officer. To arrest on this theory, however, the officer should see either the commission of the entire felony or one or more of a series of acts constituting the felony, which coupled with the aid furnished by his other senses would enable him to determine that such an offense has been committed. The right to arrest a felon in cases of a felony committed in the presence of the officer is well established.
ARREST WITHOUT WARRANT WHEN ORDERED TO DO SO

The right of an officer to arrest an accused when ordered to do so by a magistrate or other proper court officer for an offense committed in the presence of such court officer is provided by law, and is so obvious as to require no elaboration.

It must also be remembered that at common law and in most jurisdictions a private citizen, who is not a law enforcement officer, has the right and duty to make an arrest without a warrant, just as a law enforcement officer has, in the following situations:

1. When the offender is committing, or is attempting to commit, a felony in his presence.
2. On fresh pursuit, when he knows the offender committed a felony.
3. To prevent the commission of a felony.
4. When acting in good faith, in cases where an offender has committed a treason or felony on an occasion already past.
5. When an offender commits a breach of the peace, or threatens to commit a breach of the peace, in his presence.

When our law enforcement personnel are outside of a Service-administered area, they have the same right and duty to make an arrest as any private citizen. In other words, our personnel should bear in mind that their official position does not preclude them from making arrests as private citizens when circumstances warrant.
DUTY OF OFFICER AFTER ARREST

As in the case of an arrest made on warrant, the duty is upon the officer promptly to take the accused before the proper judicial officer having jurisdiction under the law and there to file a charge against the person arrested. This does not mean that the accused must be taken before the officer within the hour or any other definite period of time—only that the accused must be taken before a proper officer within a reasonable time. In some cases one hour is a reasonable time, and in other cases, for example, where the accused is totally incapacitated by the effects of alcohol, holding him overnight before taking him before a proper officer would not be an unreasonable time. Sound discretion must be used by the officer.
DETENTION AS DISTINGUISHED FROM ARREST

This is an important distinction which all officers should know in the proper discharge of their duties. To hold a car at a checking station to insure that a proper permit is secured, or to require the driver of the car to submit his car to a proper brake, weighing, or light test, or to require witnesses found at the scene of a serious crime just committed to remain a reasonable time for questioning and the securing of names and addresses, is detention. This detention is a proper exercise of a privilege incident to the office which the officer occupies. Detention is usually with the consent of the person detained and in all instances is temporary in nature. In detention, which is simply a delaying tactic, care must be exercised so that the party detained is not led to the belief that he is under arrest or sufficiently restrained to constitute imprisonment. On the other hand, as has been stated in section 1, an arrest is the deliberate legal restraint of the person of another without his consent and signifies a restriction of his freedom of movement. Moreover, an arrest usually implies restraint of the person for an indefinite period of time, and certainly for a longer period of time than does detention. A citation or a summons commonly issued for minor infractions of the law is not an arrest.
CITATION OR SUMMONS

There is no specific statutory authority for the use of either the citation or the summons in areas administered by this Service. One, and perhaps both of the above, are used extensively, however, in practically all of our areas in connection with our law enforcement activities, and unless there is objection thereto by the United States commissioner or the United States attorney, their use may be continued. A citation, forms of which may be obtained from the park office, is usually given for a minor violation, such as an infraction of the rules and regulations. Normally, it will request the person to whom issued to appear before the Chief Ranger or other designated person for further disposition of the violation, although in some instances the person may be cited to appear before the Commissioner. In connection with our law enforcement activities it is believed that the former procedure is preferable to citing the person to appear before the Commissioner, since the offense is usually of a minor nature and may often be disposed of by an admonition by the Chief Ranger or Superintendent.

The issuance of a citation or summons by a ranger does not constitute an arrest and the appearance of the person ordered to report cannot be required as a matter of law on the basis of the citation since it is not a writ issued by a court of competent jurisdiction. Moreover, complete disregard of the citation or summons by the person to whom it is issued does not constitute contempt.

When a citation is issued, where possible, the person is requested to sign acknowledgment of it and normally he reports to the park officer as agreed. At that time the Chief Ranger or other designated person decides whether further action with refer-
ence to prosecution of the case in court is warranted, or whether the person should be apprised of the rules and regulations and warned that further violation will result in charges being preferred. In the event that a person fails to report as agreed, he should not be allowed to go free, but rather a follow-up system should be maintained in the park office of all citations or summons issued and warrants of arrest should be obtained for persons who do not appear. The warrant in this case will not allege that the individual failed to respond to a citation issued by a ranger, but rather the warrant will charge the specific offense for which the citation was initially issued. An individual who failed to respond as a result of a citation could not be arrested without a warrant for the offense for which the citation was issued since the officer did not pursue his efforts to effect an arrest. Therefore, the officer’s recourse now is through a warrant of arrest pursuant to the procedure outlined above.
RELEASE OF PERSON WITHOUT HEARING

It sometimes happens that arrests are made without warrants and, before a hearing on the matter is had, the innocence of the accused is established, or further developments in the case make it appear unwise or futile to press the charge. In such cases it is proper to release the accused without the necessity of taking him before a judicial officer, provided that this procedure is agreeable to the accused and he consents thereto. It would not be amiss, however, to have the accused execute a written waiver prior to his release. In any case where it appears that the accused may later prefer charges against the officer, he should be taken before a judicial officer and his dismissal ordered by such judicial officer.
There is no statutory authority under which our law enforcement officers may require the posting of collateral, as is sometimes the case in other jurisdictions, such as cities. Accordingly, collateral should not be accepted. Of course, if the United States commissioner before whom an offender is taken sets bail with the tacit understanding that it may be forfeited without further proceedings in the event the offender does not appear for trial, there is no objection.
A "juvenile" is defined by section 5031, title 18, United States Code, 1946 edition, Supplement, as "a person who has not attained his eighteenth birthday," and "juvenile delinquency" is defined as "the violation of a law of the United States committed by a juvenile and not punishable by death or life imprisonment."

The disposition of cases involving juveniles should be discussed by interested law enforcement officers with the United States commissioner and the United States attorney, within whose jurisdictions the violations occur, to insure that such matters are handled according to local procedure. No general statement concerning all juvenile delinquencies can be stated with any degree of certainty in this Manual. Sections 5032, 5033, and 5035 of title 18, supra, are quoted below, however, as general information:

"Sec. 5032. Proceeding against Juvenile delinquent.

"A juvenile alleged to have committed one or more acts in violation of a law of the United States not punishable by death or life imprisonment, and not surrendered to the authorities of a state, shall be proceeded against as a juvenile delinquent if he consents to such procedure, unless the Attorney General, in his discretion, has expressly directed otherwise.

"In such event the juvenile shall be proceeded against by information and no criminal prosecution shall be instituted for the alleged violation."

"Sec. 5033. Jurisdiction; written consent; jury trial precluded.

"District Courts of the United States shall have jurisdiction of proceedings against juvenile de-
Arrests

linquents. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The proceeding shall be without a jury. The consent required to be given by the juvenile shall be given by him in writing before a judge of the District Court of the United States having cognizance of the alleged violation, who shall fully apprise the juvenile of his rights and of the consequences of such consent. Such consent shall be deemed a waiver of a trial by jury."

"Sec. 5035. Arrest, detention and bail.

"Whenever a juvenile is arrested for an alleged violation of any law of the United States, the arresting officer shall immediately notify the Attorney General.

"If the juvenile is not forthwith taken before a committing magistrate, he may be detained in such juvenile home or other suitable place of detention as the Attorney General may designate for such purposes, but shall not be detained in a jail or similar place of detention, unless, in the opinion of the arresting officer, such detention is necessary to secure the custody of the juvenile, or to insure his safety or that of others.

"In no case shall such detention be for a longer period than is necessary to produce the juvenile before a committing magistrate.

"The committing magistrate may release the juvenile on bail, upon his own recognizance or that of some responsible person, or in default of bail may commit him to the custody of the United States marshal, who shall lodge him in such juvenile home or other suitable place of detention as the Attorney General may designate for that purpose.

"The juvenile shall not be committed to a jail or other similar institution, unless in the opinion
of the marshal it appears that such commitment
is necessary to secure the custody of the juvenile
or to insure his safety or that of others.

"A juvenile detained in a jail or similar insti-
tution shall be held in custody in a room or other
place apart from adults if facilities for such
segregation are available."
# INDEX

**Law Enforcement**

## CHAPTER 4—ARRESTS

<table>
<thead>
<tr>
<th>A—B—C</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrest, alternate basis</td>
<td>1</td>
<td>40</td>
</tr>
<tr>
<td>Arrest, avoidance of unpleasantness</td>
<td>1</td>
<td>41</td>
</tr>
<tr>
<td>Arrest, civility in making</td>
<td>2</td>
<td>43</td>
</tr>
<tr>
<td>Arrest, duty of officer</td>
<td>11</td>
<td>59</td>
</tr>
<tr>
<td>Arrest, definition</td>
<td>1</td>
<td>39</td>
</tr>
<tr>
<td>Arrest, formalities of</td>
<td>1</td>
<td>39</td>
</tr>
<tr>
<td>Arrest for subsequent developments</td>
<td>1</td>
<td>41</td>
</tr>
<tr>
<td>Arrest, how made</td>
<td>1</td>
<td>39</td>
</tr>
<tr>
<td>Arrest, several grounds</td>
<td>1</td>
<td>40</td>
</tr>
<tr>
<td>Arrest valid when accused innocent</td>
<td>1</td>
<td>42</td>
</tr>
<tr>
<td>Arrest without warrant</td>
<td>7</td>
<td>53</td>
</tr>
<tr>
<td>Arrest without warrant for felony</td>
<td>9</td>
<td>57</td>
</tr>
<tr>
<td>Arrest without warrant when ordered</td>
<td>10</td>
<td>58</td>
</tr>
<tr>
<td>Arrested, who may be</td>
<td>6</td>
<td>49</td>
</tr>
<tr>
<td>Authority, limitations</td>
<td>6</td>
<td>48</td>
</tr>
<tr>
<td>Citation or summons</td>
<td>13</td>
<td>61</td>
</tr>
<tr>
<td>Civil suits against employees</td>
<td>7</td>
<td>53</td>
</tr>
<tr>
<td>Collateral</td>
<td>15</td>
<td>64</td>
</tr>
</tbody>
</table>

| D—E—F                                      |         |      |
| Delay between time of offense and arrest   | 8       | 56   |
| Detention                                  | 8       | 55   |
| Detention as distinguished from arrest     | 12      | 60   |
| Federal process                            | 6       | 48   |
| Force, use of                              | 2       | 43   |
| Force, limitation on use of                | 2       | 44   |

<p>| G—H—I                                      |         |      |
| J—K—L                                      |         |      |
| Juvenile delinquencies                     | 16      | 65   |</p>
<table>
<thead>
<tr>
<th>Index</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>M—N—O</td>
<td></td>
</tr>
<tr>
<td>Misdemeanor, arrest without warrant</td>
<td>8 55</td>
</tr>
<tr>
<td>Officer, rights of</td>
<td>6 52</td>
</tr>
<tr>
<td>P—Q—R</td>
<td></td>
</tr>
<tr>
<td>Process, service of</td>
<td>6 49</td>
</tr>
<tr>
<td>Questioning, informal</td>
<td>1 40</td>
</tr>
<tr>
<td>Release of person without hearing</td>
<td>14 63</td>
</tr>
<tr>
<td>S—T—U</td>
<td></td>
</tr>
<tr>
<td>Self-defense</td>
<td>4 46</td>
</tr>
<tr>
<td>Summons or citation</td>
<td>13 61</td>
</tr>
<tr>
<td>V—W</td>
<td></td>
</tr>
<tr>
<td>Warrant, issuance of</td>
<td>6 48</td>
</tr>
<tr>
<td>Warrant, jurisdiction in which served</td>
<td>6 49</td>
</tr>
<tr>
<td>Warrant of arrest</td>
<td>5 47</td>
</tr>
<tr>
<td>Warrant, period valid</td>
<td>6 52</td>
</tr>
<tr>
<td>Warrant, possession of</td>
<td>6 49</td>
</tr>
<tr>
<td>Warrant, return on</td>
<td>6 50</td>
</tr>
<tr>
<td>Warrant, to whom directed</td>
<td>6 48</td>
</tr>
<tr>
<td>Warrant, validity of</td>
<td>6 51</td>
</tr>
<tr>
<td>Weapons, use of</td>
<td>3 45</td>
</tr>
</tbody>
</table>
GENERAL

The Fourth Amendment of the Constitution of the United States declares:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. While the courts have held that search and seizure without a warrant is not unreasonable in certain exceptional circumstances discussed herein, warrants must be obtained as a general rule. It would obviously be a reflection upon this Service if our law enforcement officers violated this constitutional guaranty. In deciding what constitutes a reasonable search and seizure, the courts must base their decisions on all the facts and circumstances involved in the particular case under consideration. For this reason, it is not possible to give here a definition of what would constitute a reasonable search and seizure that would have application to all circumstances which may conceivably arise in connection with the enforcement of the laws and regulations governing the various areas of the National Park Service. Considered judgment must be exercised by law enforcement officers in making searches and seizures, whether with or without a warrant. Moreover, as a general proposition, it would be wise to obtain a search warrant whenever practicable to do so.

The various conditions under which a search may be conducted have been grouped under the following four topics in order to facilitate discussion.
With search warrant coupled with warrant for arrest

An officer may have sufficient facts upon which to obtain a warrant for arrest, yet may find it advisable to procure a search warrant at the same time. Circumstances of this type present the least complicated situation inasmuch as the facts which would be used to obtain the issuance of a warrant for arrest could likewise be used to establish the probable cause upon which a search warrant could be issued. The procedure for obtaining a search warrant set forth in the following paragraph would also be applicable to situations of this type.

With search warrant but without warrant for arrest

Even though an officer does not possess sufficient facts to justify an arrest, he may, nevertheless, have probable cause to believe that a person possesses instrumentalities of a crime which may be used to establish the grounds for the arrest. In these circumstances, he may procure a search warrant in accordance with the procedure set out in Rule 41 of the Federal Rules of Criminal Procedure. (See title 18, United States Code, 1946 edition and supplements.)

"(a) Authority to issue warrant. — A search warrant authorized by this rule may be issued by a judge of the United States or of a state or territorial court of record or by a United States commissioner within the district wherein the property sought is located.

"(b) Grounds for issuance. — A warrant may be issued under this rule to search for and seize any property (1) Stolen or embezzled in violation of the laws of the United States; or (2) Designed or intended for use or which is or has been used as
the means of committing a criminal offense; or
(3) Possessed, controlled, or designed or intended for use or which is or has been used in violation of title 18, U. S. C., sec. 957.

"(c) Issuance and contents.—A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant. If the judge or commissioner is satisfied that grounds for the application exists or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the district judge or the commissioner to whom it shall be returned.

"(d) Execution and Return with Inventory.—The warrant may be executed and returned only within 10 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the
property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge or commissioner shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

"(e) Motion for Return of Property and to Suppress Evidence.—A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. * * *

"(f) Return of Papers to Clerk.—The judge or commissioner who has issued a search warrant shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

"(g) Scope and Definition.—This rules does not modify any act, inconsistent with it, regulating
search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term 'property' is used in this rule to include documents, books, papers and any other tangible objects.”

**Service**

A search warrant may in all cases be served by any of the officers mentioned in its direction or by an officer authorized by law to serve such warrant, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution (18 U. S. C., 1946 ed., supp., sec. 3105). The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of this authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant (18 U. S. C., 1946 ed., supp., sec. 3109). An officer exceeding his authority in executing a search warrant, or a person who maliciously and without probable cause procures one to be issued and executed, is liable to fine and imprisonment (18 U. S. C., 1946 ed., supp., secs. 2234 and 2235).

Only the property specified in the warrant may be seized; such property must be personal property and movable. In proper cases, documents and records may be seized. All evidence, however, which is not related to the offense is immune from seizure.

**State search warrants**

State search warrants are usually directed to peace officers of the State and may be served only by such officers. Of course, where Park Rangers hold appointments as deputy sheriffs, or other peace officer status from the State, they may also serve
State search warrants, but not otherwise. This is not to be interpreted, however, as a limitation upon officers of this Service to accompany such officers in serving the warrant, when requested to do so by the officer, or of their right to act as a witness to substantiate the acts of the officer serving the warrant. Of course, Service officers may appear before State judicial officers for the purpose of securing the issuance of search warrants, also.

Search without a warrant following and as an incident to an arrest

When making a lawful arrest, whether with or without a warrant of arrest, the officer making the arrest may make a reasonable search for the “instruments, fruits, and evidences of the crime,” which may include a search of the premises where the arrest takes place, so far as controlled by the accused. If the evidences of the crime or instrumentalities used in the commission of it are found as a result of the search, it is not only the right but the duty of the arresting officer to seize such evidences and instrumentalities, whether found on the person of the accused or in the immediate surroundings where the arrest was made.

The right to search and seize without a warrant conferring this authority exists only as an incident to a prior lawful arrest (except in the case of moving vehicles, hereinafter discussed) and is even then restricted to a reasonable search. The mere fact that there is a valid arrest does not of itself legalize a search or seizure without a warrant or justify indiscriminate searches and seizures. The search or seizure must be reasonable under all the circumstances and facts of the particular case and definitely relate to the arrest. A search is not an incident of an arrest unless made at the time and place of
arrest. The practice of using the arresting power as a pretext or justification for continuing a search without a warrant must not be utilized. If the arrest is obviously a sham or pretext, the arresting officer may find himself subject to suit for false arrest. He may also be liable in a civil action for searching and seizing when no justification exists therefor. Also, the evidence seized in this manner cannot be presented in evidence at trials in the Federal courts. Likewise, a search incident to an arrest may not be used to obtain evidence to justify an otherwise illegal arrest.

A private dwelling cannot be searched without a search warrant, except as an incident to a lawful arrest therein or at the request or invitation or with the consent of the occupant of the premises. Violation of this safeguard may subject the officer making the illegal search to heavy penalties (18 U.S.C., 1946 ed., supp., sec. 2236). An officer making an arrest on the premises but not in the house, is not entitled thereafter to enter and search the home without a search warrant. Neither does an officer, by virtue of making an arrest, have a right to enter a building in the vicinity of, but not on the premises, where the arrest is made. By the same token, an officer arresting an individual at more than a reasonable distance from the automobile of the accused does not have a right to search the car subsequent to the time of the arrest.

While a campsite within an area is not under the exclusive control, of its occupant in the same sense that a private house would be, it is nevertheless rightfully occupied, and entitled to some degree of immunity from search. There is no precedent for determining the exact degree of immunity, but such determination appears unnecessary, because it is not so much the site as the baggage and equipment
therein which are immune. They are immune to the same extent as pack sacks. That is, they cannot be searched unless there is reasonable ground to believe that an offense is being committed and an arrest based on such grounds has been made. For instance, if a law enforcement officer had reasonable grounds to believe that a pistol was possessed unlawfully within a campsite, by reason of seeing a part of a pistol or seeing its clear outline through the material of a piece of baggage, an arrest of the occupant-owner would be proper. As stated above, after an arrest is properly made, it is legal to make a reasonable search of the person arrested and his immediate surroundings and effects, seizing evidence pertaining to the offense, or to the fruits of the crime, or property unlawfully possessed. It is understood, of course, that a campsite is not immune from visits by law enforcement officers, and if, upon such a visit, there is visible evidence of an offense, an arrest may be made and a search conducted. In the same way, officers may enter a hotel lobby, or other place of public use and, observing through a window or an open door, evidence of a crime being committed, enter and arrest the persons apparently involved, and then make search for instrumentalities of the crime. The important point is that there must be a prior lawful arrest to justify the search.

Search of moving vehicles without a warrant—prior to arrest

Of course, it is possible to obtain a warrant for the searching of automobiles, boats and other vehicles and for the seizing of unlawful articles found therein, and such procedure should be followed where the vehicle is unoccupied and flight thereof is unlikely. However, the question which most frequently confronts an officer in the field is when may such a vehicle be searched without a warrant, unlaw-
ful articles found therein be seized, and an arrest based on the evidence thus obtained be made.

As shown in *Carroll v. United States*, 267 U. S. 132 [1924], the courts recognize "a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." Drawing this distinction the court upheld the search of a moving automobile without a warrant, under the National Prohibition Act, an act which "left the way open for searching an automobile, or vehicle of transportation, without a warrant, if the search was not malicious or without probable cause." In a recent case, *Brinegar v. United States*, 338 U. S. 160 [1948], the Supreme Court relied upon the Carroll case to uphold a search of a moving automobile, without a warrant, under facts similar to those present in the Carroll case, but where there was involved an alleged violation of the Liquor Enforcement Act of 1946. Unlike the National Prohibition Act, this latter act contained no legislative authority for a search without a warrant. While this distinction was brought to the attention of the court in a dissenting opinion, the majority apparently gave no weight to the distinction.

On the authority of these cases, it appears that Service law enforcement officers may search moving vehicles without warrants, provided they have probable cause for believing that a violation of either the National Park Service laws or regulations, or both, is being committed therein. Just as there must be a showing of probable cause before a magistrate may issue a search warrant, the law
Search and Seizure

enforcement officer has no authority to search a moving vehicle without a warrant in the absence of probable cause. The distinction lies in the fact that in the case of moving vehicles the enforcement officer rather than the magistrate determined the existence of probable cause.

While such a search and seizure is legal, it is of the utmost importance that all officers clearly understand what is meant by "probable cause" in connection with searches and seizures of this kind. As pointed out in the Carroll case, probable cause exists where the facts and circumstances within the officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in believing an offense has been or is being committed. Bare suspicion is not enough. There must be a reasonable ground for belief of guilt. This does not mean, as the court said in the Brinegar case, "* * * that every traveler along the public highways may be stopped and searched at the officers' whim, caprice or mere suspicion." The Carroll case likewise made this clear in the following statement: "But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

The principles applicable to the search of moving vehicles do not apply to vehicles which are unoccupied or are stationary and unlikely to flee. Warrants should be obtained before searching vehicles which fall within these latter categories. Such vehicles present a problem because they may be moved while a warrant is being obtained. In the
event the owner or an occupant returns and proceeds to leave in the vehicle, a search may, of course, be made in accordance with the principles governing moving vehicles. Should the officer have sufficient grounds to arrest a person who has returned to the vehicle or who is occupying a stationary vehicle, an arrest may be made and a reasonable search then be made incident to the arrest.
CONSENT TO SEARCH

Any individual may waive the rights afforded him by the law. Thus, just as he may consent to arrest, he may consent to a search, and such consent protects the officer and makes the ensuing search as lawful as if a valid search warrant had been obtained for this purpose. The consent necessary in this case, however, must be freely and intelligently given, and it must be unequivocal and specific. If there is any doubt in the officer's mind as to whether the consent granted by an individual does not meet these legal safeguards, then by all means the officer should obtain a search warrant to effect his purpose.

It should be pointed out that submission alone is not consent to be searched. In any search by consent it is a very good idea for the officer to have the individual waiving his rights sign a statement to this effect.
SEIZURE OF PROPERTY

Authority exists for seizing material which may be used for proving an offense. It exists for seizing "instrumentalities and means by which a crime is committed, the fruits of the crime such as stolen property, weapons by which the escape of the person arrested might be effected, and property the possession of which is a crime." Moreover, where there is a valid search, a law enforcement officer has authority to seize Government property the possession of which is a crime, even though he is unaware of the presence of the Government property when the search is initiated.

Material which is merely evidentiary may not be seized either upon a warrant or during a search incident to an arrest. Even though the search may be lawful, there is no authority for the seizure of property discovered but not of the type described in the foregoing paragraph. That is to say, a search may be lawful, yet a seizure made in connection therewith may be unlawful. The authority to search without a warrant when the accused is arrested, is no greater than when the search is made pursuant to a search warrant.

Officers are cautioned against making seizures unless the evidence at hand is sufficient to prove beyond a reasonable doubt that the accused is in unlawful possession of the things seized or that such articles have been or are being illegally used. Reasonable doubt in this instance must be such as would constitute real doubt in the mind of an ordinarily prudent man in like circumstances and not a whimsical notion about the right or wrong of the seizure.

When a person commits a violation in view of an officer, or the officer has a warrant for the arrest of
a person, he may, after he has made the arrest, search his prisoner and take from his person, and hold for disposition by the court, not only evidence within the category of that stated above, but also anything which might enable the accused to commit an act of violence or effect his escape, such as weapons, money, etc. When property is taken from a prisoner, in any event, he should be given a receipt for it signed by either the arresting officer or the person who removes the property from the prisoner in the event that it is not the arresting officer. In all cases where property is taken from a prisoner that may be useful as evidence in court it should be marked and remain in the custody or possession of as few people as possible since it will be necessary to establish the chain of possession from the time it is removed from the prisoner until the time it reaches the court. This will be dealt with more extensively in the chapter on evidence.
### INDEX

#### Law Enforcement

#### CHAPTER 5—SEARCH AND SEIZURE

<table>
<thead>
<tr>
<th>Consent to search</th>
<th>2</th>
<th>82</th>
</tr>
</thead>
<tbody>
<tr>
<td>Search of moving vehicle without warrant</td>
<td>1</td>
<td>78</td>
</tr>
<tr>
<td>Search warrant coupled with arrest warrant</td>
<td>1</td>
<td>72</td>
</tr>
<tr>
<td>Search warrant, State</td>
<td>1</td>
<td>75</td>
</tr>
<tr>
<td>Search warrant without arrest warrant</td>
<td>1</td>
<td>72</td>
</tr>
<tr>
<td>Search without warrant following an arrest</td>
<td>1</td>
<td>76</td>
</tr>
<tr>
<td>Seizure of property</td>
<td>3</td>
<td>83</td>
</tr>
<tr>
<td>Service of warrant</td>
<td>1</td>
<td>75</td>
</tr>
</tbody>
</table>
The purpose of this chapter is to give to the law enforcement officers of the Service a few of the essentials in the broad field of evidence which we believe may be helpful in the investigation of cases which they may be called upon to handle. Detailed information concerning any feature of the subject of evidence may be obtained from the United States attorney who would handle the prosecution of the case if it is tried in the United States District Court. Moreover, since in that event the United States attorney would have the primary responsibility of presenting the case in court, Service officers should in proper cases work very closely with his office to insure that the evidence amassed by investigators will prove to be sufficient material out of which he may build an unimpeachable case.
Evidence and Investigations

CHAPTER 6
Section 2
Page 87

EVIDENCE

Definition

Evidence may be defined as the testimony, documents, and other material which may be submitted to a competent court from which an inference by the judge and jury may logically be drawn concerning the truth of any fact pertinent to an issue being tried before it. Accordingly, evidence is distinguishable from proof, since proof is the effect of evidence.

Admissibility of evidence

Evidence may be submitted to the court and jury for consideration in several forms. For instance, by the testimony of witnesses in open court; the court taking judicial notice of proper facts; the submission of real evidence, such as, a gun, a knife, etc. Each of these forms of evidence is entirely proper. The test of admissibility of evidence is, therefore, not the form which it may take, but rather whether the proposed evidence is material and relevant. Moreover, evidence which is both material and relevant must meet the further test of competency.

Definition of terms

1. Material.—Evidence, regardless of its form, is material to the issue being tried when the fact or facts which it tends to prove or disprove influences, or may tend to influence, the decision of the judge or jury.

2. Relevant.—Evidence, regardless of its form, is relevant when the fact which it is intended to prove thereby, while not directly in issue, is material to the issue before the court, and the proposed evidence would establish conclusively the existence or non-existence of the facts which determine whether a conviction or acquittal will follow.
Evidence and Investigations

Chapter 6
Section 2
Page 88

3. Competent.—This term is generally applied to witnesses. For instance, a child below the age of understanding, or an insane person, are said to be incompetent to testify as to the facts in issue. Therefore, the facts about which such person would testify may be both material and relevant, yet the testimony would be incompetent and could not be admitted legally in evidence. Accordingly, competent evidence, regardless of its form, is that which is both material and relevant, and which is required as fit and appropriate proof of the fact to be established.

Direct evidence

Direct evidence is that evidence properly submitted to the court which directly tends to prove or disprove a fact in issue in the case. For instance, witness A could testify that he saw the defendant B set fire to certain timbered Federal lands within a national park. The testimony of witness A is direct evidence since it directly tends to prove one of the facts in issue in the case, i.e., that defendant B set the fire for which unlawful act he is now being tried. Witness A could not testify, however, to the same fact by stating that C had told him that he (C) saw the defendant B set the fire, since such testimony by witness A is now hearsay and is inadmissible. The subject of hearsay will be treated further in a subsequent section.

Circumstantial evidence

Circumstantial evidence is not inferior to direct evidence and is not resorted to as a secondary manner of proving the case before the court. Moreover, circumstantial evidence may be admitted even when there is direct evidence concerning the facts in issue. Circumstantial evidence is that evidence properly
submitted to the court which does not directly prove or disprove a fact in issue, but which may, according to common experience, warrant the court in reasonably inferring the existence or nonexistence of another or other facts which are directly in issue. For instance, testimony by the investigator that there were tracks at the scene of a fire which were made with a left shoe, the sole of which was split in half, and that the defendant was wearing a shoe which fit this description when he was arrested, would be circumstantial evidence. Moreover, a print of the track and the shoe may likewise be introduced as circumstantial evidence, since a fact directly in issue in the case would be placing the defendant at the scene of the crime. The testimony of the investigator, the print of the track and the shoe, do not directly prove that the defendant set the alleged fire. Together, however, they do establish the fact that a person wearing a left shoe with a split sole was at the scene of the crime, and, moreover, that the defendant was wearing such a shoe when arrested. From these facts the court may reasonably infer that the track was made by the shoe of the defendant and that he was at the scene of the crime. It should be pointed out that these facts alone do not establish that the defendant set the fire—they only tend to establish that he was there—the investigator must procure other evidence of guilt in order to build a sufficient case for conviction.

Hearsay

Hearsay is not evidence and cannot properly be received by the court to prove or disprove any fact in issue. This principle is generally referred to as the “Hearsay Rule” and the long experience of the courts has proved that it is a valuable safeguard. Simply, the rule means that witness A cannot testify
Evidence and Investigations

in court as to what B told him concerning a fact in issue. B should be called as a witness to testify as to what he knows concerning the case. The underlying reasons for establishing such a rule are that the statement by B to A was not under oath, the defendant in the instant case has not had an opportunity to cross-examine B concerning the statement, and the court has not had an opportunity to observe the demeanor of B. This rule, however, does not eliminate testimony by others concerning the fact that B made such a statement to A if the fact that such a statement was made is a material fact in issue. Such testimony establishing the fact that the statement was made would not be submitted to prove the truth of the statement made by B, but merely to prove that he made such a statement. If it is desired to prove the truth of the statement other evidence would be necessary.

Exceptions to hearsay rule

There are several exceptions to the hearsay rule, however, chief among which are the following: (a) a statement or utterance constituting a part of the res gestae which was made under such circumstances of shock or surprise as to establish clearly that it was made spontaneously and not as a result of any reflection on the part of the person making it. Evidence of such a statement may be introduced as evidence to establish the truth of the statement. (b) Moreover, other statements constituting a part of the res gestae made substantially at the same time as the subject matter of the case at trial transpired may be introduced. Such statements are not introduced as evidence to establish the truth of the statements, however, but merely to show that they were made. (c) Dying declarations may be received as competent evidence and constitute another exception to the hearsay rule. Before such
declarations can be introduced, however, it is necessary to establish that the deceased made the statement in the belief that he was soon to die. (d) Confessions and admissions against interest may likewise be termed exceptions to the rule. These will be treated further in subsequent sections.

Res Gestae

"Res gestae" is a term used in law that means the circumstances, including declarations and statements of persons involved in the case being tried by the court, as well as of the spectators, which were made substantially contemporaneous with the acts alleged and so closely related to such acts as to shed light upon the character of the things alleged in the information or indictment. Res gestae may show motive or intent. For instance, a sound, apparently of a firearm, is heard by a ranger who rushes into a cabin from which the sound came and sees a dead man lying on the floor. Another man with a gun in his hand is standing over the body, saying: "I knew I'd get you." Such a statement may be testified to by the ranger in the trial of the issue as a part of the res gestae.

Bad character

A basic rule of evidence is that the prosecution cannot establish the doing of the unlawful act with which the defendant is charged by proving the bad character of the defendant. In other words, a defendant could not be convicted on an indictment alleging that he set fire to timbered Federal lands within a national park by proving that the defendant is a disreputable character who has set fire to his neighbor's timber. Two of the exceptions to this general rule, however, are as follows: (a) when the defendant takes the stand as a witness
in his own behalf, his general reputation for truth and veracity may be established by the prosecution; and (b) when the defendant introduces evidence of his good character to establish the probability of his innocence, then the prosecution may introduce general evidence in rebuttal.

Presumptions

There are certain presumptions in the law which are taken into consideration by the court. For instance, a defendant is presumed to be innocent until proved guilty. Moreover, in criminal proceedings guilt must be proven beyond a reasonable doubt. In civil cases, on the other hand, only a preponderance of the evidence is necessary to sustain a verdict. Another presumption in criminal cases is that a defendant is presumed to have been sane at the time of the commission of the unlawful act alleged in the information or indictment.

Opinions

Opinions are usually not admissible in evidence, except in the case of experts who have been qualified as such. Such qualification is established in open court by direct examination of the witness by the counsel who proposes to use the witness' opinion as that of an expert in the field in which he is qualified.

Judicial notice

Judicial notice constitutes notice taken by the court of a fact or facts about which the judge and jury know from their own common knowledge or experience and upon which they may act without the taking of further proof. Other facts upon which it is not necessary to produce further proof in court are those facts which are formally admitted in open court by both sides to the controversy.
Best evidence rule

The best evidence rule applies to writings of either a public or private nature. Thus the best evidence of the contents of a certain document which is material to the case being tried is the written document itself, and a witness would not be permitted to testify to the contents of the document until a foundation had been laid for such testimony showing that the writing itself is not available.

Confession

A confession is a free and voluntary statement by the defendant dealing with each element of the offense alleged. Confessions may properly be received in evidence and constitute good evidence against the defendant. All confessions are subject to attack by the defendant to show that the statement was not freely and voluntarily made, or that it was made in consideration of a promise by the person obtaining it to reward the defendant for such a statement. Any alleged confession obtained under these circumstances is inadmissible. This rule of inadmissibility of a confession which is obtained by use of force or promise of a reward is jealously guarded by the courts and strictly construed in favor of the defendant. Moreover, the offense alleged cannot be proven entirely by the use of a confession—other evidence outside of the confession is necessary. When a confession is offered in evidence it should be offered in its entirety. If the prosecution fails to offer the confession in its entirety, the defendant may offer the remaining portion.

Statements against interest

Statements against interest are statements made by the defendant which fall short of a confession, but which constitute important admissions as to his connection with the offense charged. Any such
statements may be introduced in evidence without a showing, as to their voluntary nature.

Rules of criminal procedure

Rule 26 of the rules of criminal procedure for the district courts of the United States provides as follows:

_Evidence._—In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an act of Congress or by these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.

While this rule contemplates the development of a uniform body of rules of evidence to be applicable in trials of criminal cases in the Federal courts, it expressly continues existing statutes governing the admissibility of evidence and the competency and privileges of witnesses. Since this technical phase of the field of evidence deals primarily with the presentation of the case in court it is not deemed necessary to go into more detail here on the subject. Advice which Service law enforcement officers may have need of concerning this phase of evidence may be obtained through consultation with the attorney prosecuting the particular case in court.
Evidence and Investigations

Chapter 6
Section 3
Page 95

INVESTIGATIONS

The extent of investigations by our law enforce-
ment personnel, or the matter of notifying either
Federal investigatory agencies or state agencies
of suspected crimes, involves the exercise of sound
judgment by our administrative force in affected
areas. Generally speaking, it is the responsibility
of Service personnel to investigate and assemble
the information needed to secure convictions for
violations of the rules and regulations applicable
to areas under the administration of the Service, or
laws relating thereto. Where violations of Federal
criminal statutes are suspected, such as the revenue
laws, counterfeiting, treason, immigration, murder
(in a park area under the exclusive jurisdiction of
the United States), our personnel should prepare
adequate notes and investigate on the scene while
the case is “fresh.” Prints, tire marks, loose ma-
terial, and other possible clues should be assured
adequate protection pending arrival of revenue
agents, secret service agents, Federal Bureau of
Investigation agents, or other Federal investigatory
personnel. Where state offenses are involved, the
proper local officials should be notified without
delay.

It is important that full cooperation be extended
to outside investigative agencies, and that they be
notified promptly in accordance with existing pro-
cedures when cases are discovered which obviously
fall within their field. In no event should our
personnel go to unwarranted lengths to solve a case
falling in the scope of another agency’s jurisdiction.
The reasons for this are that an investigation may
require quick action outside of the area adminis-
tered by the Service for solution; failure on our
part to give timely notice to the proper agency may subject this Service to a charge of bungling or impeding the investigation; technical aspects of the case may be better understood by the proper agency; and, finally but not least, Service activities should be kept reasonably within our legitimate sphere.

The skillful presentation of a case in court is no more important than, or may actually be impossible without, an adequate investigation by the law enforcement officer preceding the actual arrest and indictment of the defendant. Thoroughness in investigation of our cases is essential. No clue is too small to overlook in the investigation of a case. It frequently happens that the one small point which seemed to be insignificant at the start of the investigation will later prove to be the turning point of the case. The object of all investigation is to build a true, complete case, supported by evidence which will stand up in court and convince the jury. Conversely, therefore, the good investigator is equally interested in eliminating all innocent suspects. It is of paramount importance that the investigator approach each case with an open mind. No set rules to be followed in criminal investigation can be laid down for use by Service law enforcement officers. It is believed, however, that the suggestions contained in the subsequent sections may be of assistance to our investigators. Imagination, observation, common sense, and initiative are prerequisites of a good investigator. Moreover, the ultimate success of his efforts is in direct proportion to his ability to utilize these talents.

Truth

Your object as an investigator is to build a case which speaks the truth. This often means starting with a few facts and a tentative theory based upon the facts. Frequently your facts may be gathered
from quick on-the-scene investigation and interrogation of witnesses, if there are any. Time is of the essence in the beginning of any investigation of a fresh case, but it is of utmost importance that the facts and the correct action regarding them be taken, so undue haste at this point should be avoided. After you have gathered the basic facts of the case you will, of course, form a tentative theory upon which to build the remainder of the case. Don't be blinded by your theory, however. As you continue your investigation you will uncover other facts which may warrant your changing that theory. Don't hesitate to do so when the facts justify such action. One cardinal principle to remember is that the case you are investigating involves a person who by nature is not infallible. From the multitude of clues which you may discover, do not be misled into believing that the person you have in mind could not have been so blundering, when your evidence leads you to believe he was. Every criminal caught usually does blunder somewhere; otherwise, he would not be caught.

In the initial stages of your investigation several things may be of help to you. (a) Get on the scene of the crime with the least possible delay. Be calm and alert and progressively pursue your object. (b) Detain all witnesses at the scene of the crime until you have had an opportunity to question each of them concerning all of the facts of which they may have knowledge. Usually most persons will cooperate with you in this respect. When talking with these witnesses it may be well to make notes of your conversation. If possible, and the circumstances warrant, ask them to stop by the park office and give you a signed statement of what they know about the case. By all means, get their names and addresses for future reference. (c) Preserve
Evidence and Investigations

and carefully examine the scene of the crime. Of course, in cases of forest fires, the primary responsibility is to put out the fire. It may be feasible, however, to preserve valuable clues for later detailed investigation by routing the firefighters to the fire in such a manner as to leave the scene of the origin of the fire as little disturbed as possible. If it is at all possible, take several pictures of the scene.

Completeness

To be complete your case must answer the following questions which are equally applicable whether the offense be a misdemeanor or a felony: (a) What was the offense? (b) Where was it committed? (c) When was it committed? (d) How was it committed? (e) Who did it? and (f) Why was it done? Keep these words always in mind—they will be of invaluable assistance to you throughout the entire investigation.

Convincing

You may theorize during your investigation, but when you take your case to court you must prove it beyond a reasonable doubt. That takes facts—the court must have evidence concerning each material point in the offense alleged.

Sound theory

In building a sound theory about your case there are four steps that may be helpful to you: (a) Clearly define the problem. It may not be what it first appears, find what the difficulty is; (b) Cast about for possible solutions—not only the first one which occurs to you, but as many as you can think of, then compare all of the various angles and select the most probable one; (c) Reason out the developments of your idea to its logical conclusions; and (d) Constantly test the theory upon which you
are working—keep your eyes open for further evidence which may indicate some other more probable theory. Remember that the rule of the investigator is to get the facts and not to "pin" the case on an individual who may be innocent.

Clues

Anything which has any connection with the offense or the person at the time he committed it is a clue. No offense is committed without leaving some clue—the only question is the ability of the investigator to find it. When the investigator reports that there were no clues at the scene of the crime it usually indicates that he overlooked them. Some of the things that may constitute a clue are tracks, camp fire or lunch remains, and other apparently insignificant things which may have been carelessly or unintentionally left by the offender. A good rule to follow in connection with clues is that anything which cannot be accounted for without reference to the offense which has been committed should be regarded as a clue. This does not mean, however, that all of these things which are unaccounted for constitute evidence which you may introduce in court. These clues are not evidence until you actually tie them up to the defendant and the offense.

Handling clues

Keep your hands off of the clue. The very object you have discovered may later prove to be a valuable part of the necessary real evidence which you will want to introduce in court. Moreover, the object may contain a perfect specimen of the fingerprint of the perpetrator of the offense. When it is necessary to handle a clue, especially when there is a possibility that a fingerprint is involved, pick it up by the edges or the corners or use an instrument of some
kind so as to touch as little of the surface as possible. Since this clue may be valuable as evidence in court, keep it in your personal possession, and put a small identifying mark on it so that you can later identify it in court. If you are to keep the object until it arrives in court, then lock it away in a safe place, to which access by other persons is strictly controlled. If it is necessary for you to surrender it to someone else, then get a receipt for it. In court it will be necessary to establish the chain of possession of the object from the moment it was discovered until it is introduced in evidence. In the investigation of clues where technical assistance and expert advice is needed, the Federal Bureau of Investigation is of inestimable value. Especially is this true in the case of fingerprints.

Interviewing witnesses

Each witness you interview presents an individual problem. A witness may be willing, he may be hostile, he may be calm and cooperative, or he may take an indifferent or unexpected attitude. You will be confronted with witnesses who will tell the truth, and those who may not tell the truth. Nothing will help you here more than a knowledge of men. Sometimes a witness gives false information when he honestly intended to tell the truth—he may be confused about what he saw—calm, sympathetic treatment is usually the most effective.

Where possible, the investigator who has been working on the case knows all of the facts which have thus far been established, and should interview the witnesses. A point always to keep in mind is to separate the witnesses so far as possible—keep them from talking to one another until after they have talked to you. Otherwise, you may have a case of a witness telling you not what he actually saw, but only a portion of what he saw as supplemented by
what another witness told him and what now he wishes that he had seen. Moreover, from such conversations with other witnesses he may actually think that he did see all of the things about which he tells you.

When interviewing a friendly witness, it is a good idea to put him at ease; ask him informal questions and let him do the talking. Of course, you want always to guide the discussion along the lines of the investigation you are pursuing. If the witness has no hesitancy about talking as you write down the information he is giving, then it is always a good idea to write it down and where possible have him sign it. If your writing down the information he is giving causes him to stop talking, then put your book away and after he is gone make notes concerning the items of importance. Do not stop a witness from talking merely because you are afraid you will forget one or two items. Moreover, in this interview you are searching for facts. It is, therefore, necessary that the information which the witness gives should be entirely accurate. About points which you think he may be surmising, question him closely—ask him to repeat, try to verify his statement—truth is of the utmost importance since other features of your investigation may hinge on facts adduced by this interview.

All of the witnesses whom you interview will not be friendly and cooperative. Eventually you will get to the suspect and his close friends who have a direct interest in the result of the interview. Frequently they may not tell the truth. Moreover, where possible, they may try to throw you off the track. Sometimes they may even refuse to talk to you. This type of witness should be handled entirely different from the friendly witness—where possible do not interview the hostile witness on his
home ground—get him in the park office. To inter-
view this type of witness successfully it is impera-
tive that thorough preparation be made prior to the
interview. This witness isn’t going to volunteer in-
formation. Moreover, you must have all possible
facts at hand and as nearly as possible have the
crime reconstructed in your own mind in order to
appraise adequately such information as he gives.
Here it is of utmost importance that so far as pos-
sible you keep the witnesses separated.

The hostile witness should be courteously received,
but the investigation should not be treated lightly.
At all times the interview should be conducted
strictly on a courteous, formal, official basis. You
may have present as many other persons interested
in the case as you wish to add to your support in
this battle of wits with the hostile witness. You
ask the questions and try to get him to talk. When
he talks, keep him talking along the lines you want
to discuss, i.e. the facts of your investigation. Here
also, if it is possible to do so, notes should be made
of the interview either by you or by someone else
in the group. If the witness shows any inclination
to stop talking when you start writing, then put
your notebook away. If the witness attempts to
tell you other than the truth, it may be necessary
to entangle him in order to get the truth—do not,
however, threaten him or make promises of rewards
for giving a complete statement. Sometimes nu-
merous repetitions in different forms of the same
questions will entangle a hostile witness when he is
not telling the truth. If the witness you are inter-
viewing is the offender, he has doubtless already
constructed a plan of conversation and he probably
knows it by heart. Lead him over this carefully
each time and strike off on a different tangent. To
break his false story is a battle of wits and no
slight inference or statement is too small to prove to be the opening wedge. If he confesses to the crime, freely and voluntarily, then a written confession should be prepared for his signature while he is still in your presence. Statements which he has made while not amounting to a confession may be against his interests and if possible his signature to these statements should be secured. It not infrequently happens that by signing such a statement, even though it does not amount to a confession, you may later in subsequent interviews secure a confession from him. Law enforcement officers of this Service, however, will scrupulously avoid the use of any method in the examination of witnesses which could be termed “third degree.”

Reports

During the investigation, and especially after each interview, you will be required to make reports concerning the progress of the case. Each of these reports should take into consideration three basic factors: (a) completeness, (b) accuracy, and (c) conciseness.

To be complete, your report should require no oral explanation. It should not be necessary for the person reviewing it to go back to fill in omitted facts. This is where the notes you have made throughout the investigation will be of invaluable assistance. The length of the report is not material—only that it is complete. To be complete, the report should include, among other pertinent information, the nature and elements of the crime, complete description of the suspects; description of the property damaged or taken; description of any evidence found at the scene of the crime; statements of witnesses interviewed; time and place of occurrence of the crime, if known; time and place
it was reported; a statement of action recommended; and, the names of others assisting in the investigation.

Your report must be absolutely accurate as to all details. This is of as much importance as a complete report—accuracy of facts, of spelling of the names of persons, places and things, and accuracy of descriptions.

Moreover, your report should be concise—repetition should be avoided and all extraneous material omitted. Stick to simple, definite words throughout the report.
When you have tracked down the clues, assembled the real evidence to be introduced in court, interviewed the witnesses and made your reports, the case is now placed in the hands of the prosecuting attorney, who proceeds to have the defendant indicted. The case is then called for trial, but the job of the investigator is still not over. In addition to your duty to investigate the case and arrest the defendant in proper cases, you are also called upon to testify as to facts which you have discovered as a result of your investigation. It is here, as a witness for the Government, that Service law-enforcement officers have an opportunity to prove the integrity and thoroughness of their work, of themselves and of the organization which they represent. It is well to remember that you, as a witness, are not convicting the defendant—that is for the court or the jury. You are here only as a witness in this case to tell those facts which you know to be true as a result of your investigation and to relate those facts in such manner as to construct a word picture of the events of the crime alleged. In your role as a witness there are several points which may be of assistance to you.

Tell the truth

At all times during your testimony tell the truth—no case is important enough to the Government or to you as an individual to justify any deviation from the truth, however slight. In telling the truth you do not have to worry about cross-examination on your testimony. Moreover, telling the truth will give you poise and assurance as a witness. Do not bluff!
Be natural

Tell your story in your own words, in your own way, as you saw it. It is not necessary to employ dramatics. Speak clearly, distinctly, loudly enough to be heard, and slowly—yet do not drag along.

Be prepared

Before going to court, it is well to refresh your mind as to all of the facts in the case. Do not, however, attempt to memorize your notes.

Correct mistakes

If in your testimony you have made a mistake, do not hesitate to correct it. Since you are testifying from memory a mistake is entirely possible.

Listen carefully

Listen carefully to the questions which are asked you by counsel and court and make sure that you fully understand what has been asked. If opposing counsel objects to the question asked, you should withhold your answer until the court has had an opportunity to rule on the objection.

Do not volunteer

Answer the questions asked you fully and concisely—do not volunteer information. However, if the partial answer which you have given does not convey the complete meaning, and in the meantime another question has been propounded, complete your answer to the original question before going on to the new question. In your answers state only the facts which you know—do not draw conclusions.

Do not lose temper

Do not lose your temper in the witness chair. Such behavior is not only in bad taste, but it also upsets your poise and leaves you open for attack.
Counsel for defense is not your enemy—he is merely selecting the grounds upon which he wants to fight his case—the prosecuting attorney and the court will not allow him to abuse you.

Be courteous

In all your dealings with the court and counsel be courteous and respectful even if trying circumstances should develop. Answers to questions from counsel for defense should be yes, sir and no, sir just the same as those to the prosecuting attorney. There is no rule or law, however, which requires you to answer a question either yes or no and if a question cannot be reasonably answered in that manner pursuant to a request from counsel, he should be requested to reframe the question, or you should answer it to convey the full truthful meaning to his inquiry.

On the witness stand

While you are in the witness chair sit erect—do not slouch or sprawl in the chair. Be alert at all times to what is going on and give your undivided attention to the person who is then examining you.
INVESTIGATIONS INTO CAUSES OF DEATH

In those areas which are not under the exclusive jurisdiction of the United States, the State laws relating to the issuance of death certificates, the holding of inquests, and the investigation of possible homicides, are considered to be in force. All proceedings are had under the direction of the State authorities. In case of death from other than known causes, the local police authorities and coroner should be notified and given any assistance they may require in making an investigation.

In areas under the exclusive jurisdiction of the United States, death certificates should be prepared by the superintendent in cases where inquests are not necessary. Such certificates should be based upon the reports of attending physicians, or the reports of investigating rangers in cases of death by accident. Copies of the death certificates should be forwarded to the proper State or county officers for their official information and filing. In cases requiring investigation as to the circumstances of death, a coroner of the State within the geographical boundary of which such a death occurs should be notified and invited to hold an inquest. In some of the national parks, selected members of the ranger force have received appointments as deputy coroners, with authority to hold inquests. If no coroner is available for a particular case, the superintendent is authorized to appoint a board to conduct an inquest in a manner similar to a coroner's jury. Where the circumstances indicate possible homicide, the nearest office of the Federal Bureau of Investigation also should be notified.
INDEX

Law Enforcement

CHAPTER 6—EVIDENCE AND INVESTIGATIONS

A—B—C

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admissibility of evidence</td>
<td>2</td>
</tr>
<tr>
<td>Bad character</td>
<td>2</td>
</tr>
<tr>
<td>Best evidence rule</td>
<td>2</td>
</tr>
<tr>
<td>Circumstantial evidence</td>
<td>2</td>
</tr>
<tr>
<td>Clues</td>
<td>3</td>
</tr>
<tr>
<td>Clues, handling of</td>
<td>3</td>
</tr>
<tr>
<td>Completeness</td>
<td>3</td>
</tr>
<tr>
<td>Confession</td>
<td>2</td>
</tr>
<tr>
<td>Convincing</td>
<td>3</td>
</tr>
<tr>
<td>Court decorum</td>
<td>4</td>
</tr>
<tr>
<td>Criminal procedure, rules of</td>
<td>2</td>
</tr>
</tbody>
</table>

D—E—F

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct evidence</td>
<td>2</td>
</tr>
<tr>
<td>Evidence, admissibility of</td>
<td>2</td>
</tr>
<tr>
<td>Evidence, circumstantial</td>
<td>2</td>
</tr>
<tr>
<td>Evidence, definition</td>
<td>2</td>
</tr>
<tr>
<td>Evidence, definition of terms</td>
<td>2</td>
</tr>
</tbody>
</table>

G—H—I

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hearsay</td>
<td>2</td>
</tr>
<tr>
<td>Hearsay rule, exceptions to</td>
<td>2</td>
</tr>
<tr>
<td>Interviewing witnesses</td>
<td>3</td>
</tr>
<tr>
<td>Investigations</td>
<td>3</td>
</tr>
<tr>
<td>Investigations into causes of death</td>
<td>5</td>
</tr>
</tbody>
</table>

J—K—L

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial notice</td>
<td>2</td>
</tr>
</tbody>
</table>

229448°53—8
<table>
<thead>
<tr>
<th></th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>M—N—O</strong></td>
<td></td>
</tr>
<tr>
<td>Mistakes, correction of</td>
<td>4 106</td>
</tr>
<tr>
<td>Opinions</td>
<td>2 92</td>
</tr>
<tr>
<td><strong>P—Q—R</strong></td>
<td></td>
</tr>
<tr>
<td>Presumptions</td>
<td>2 92</td>
</tr>
<tr>
<td>Reports</td>
<td>3 103</td>
</tr>
<tr>
<td>Res gestae</td>
<td>2 91</td>
</tr>
<tr>
<td><strong>S—T—U</strong></td>
<td></td>
</tr>
<tr>
<td>Sound theory</td>
<td>3 98</td>
</tr>
<tr>
<td>Statements against interest</td>
<td>2 93</td>
</tr>
<tr>
<td>Truth</td>
<td>3 96</td>
</tr>
<tr>
<td><strong>V—W</strong></td>
<td></td>
</tr>
<tr>
<td>Volunteering information</td>
<td>4 106</td>
</tr>
</tbody>
</table>
After an offender has been arrested, the next step is to take him, within a reasonable time under the circumstances as hereinbefore discussed, before the proper judicial officer for arraignment and trial. Arraignment is a preliminary step in the trial in that the offender is simply called to the bar to answer the accusation. In most cases, after reading the charge to the accused, he will orally plead guilty or not guilty. If he pleads not guilty, trial of the case is in order. In petty-offense cases, the convenience of all is generally best served by proceeding immediately to trial after the arraignment. The accused may or may not be represented by counsel. Probably in most of our petty-offense cases, the accused will in effect act as his own counsel by requesting a chance to present his side of the case.

From a strict technical standpoint, the function of prosecution should be performed by representatives of the Department of Justice in cases before Federal courts, and by representatives of the state or county prosecutors’ staffs in cases before state courts. However, many of the arrests made by our personnel will be for such minor offenses that the expense involved in having such trained prosecuting representatives present will not be warranted. It has, therefore, developed that in prosecuting violations of petty offenses under National Park Service laws and regulations frequently such representatives are not present and a rather informal hearing takes place before the United States Commissioner. In such a situation, the theoretical role of Service personnel is that of witnesses; however, they may be compelled in such circumstances to assume to a certain extent the role of a prosecutor in that it
will be incumbent upon them to present effectively and fully the facts which clearly establish the guilt of the accused.

The practice of proceeding without a prosecutor in relatively minor cases, as mentioned above, is frequently expressly requested, or approved impliedly, by the United States Attorney or his assistants. This is notably true where the United States Attorney's Office is extremely busy with serious cases and is located some distance from the park area or the commissioner concerned. There are occasionally district attorneys or their assistants who desire to be informed of, or actually handle, prosecutions of park cases, even the minor ones. In most areas, the superintendents have ascertained the views of the United States attorneys and have a reasonable conception of when the assistance of a prosecutor should be obtained. No hard and fast rule can be set forth as to the line of demarcation to be observed in circumstances of this nature; a knowledge of the particular area should be obtained before proceeding to trial.

It goes without saying that it is desirable for our law enforcement officers to cooperate fully with the United States attorneys, or their assistants, by appearing promptly as witnesses when desired, or by securing such additional information as the representatives of the Department of Justice may request when prosecuting park cases either before United States district courts or before United States commissioners. Naturally, the same cooperation should be extended to State and county prosecutors.

Whenever a particularly serious case arises, and generally when the offender desires to be heard in the United States district court, the United States attorney or one of his assistants should be notified. Our personnel having a knowledge of the events
giving rise to the case should endeavor to go over the case beforehand with the prosecuting officer. This does not mean that the law enforcement officer, or witness, will be coached or told what to say. The purpose of such preliminary discussion of the case is desirable so that the prosecutor may know the facts and be prepared for the testimony which our personnel will give. It is embarrassing, and sometimes fatal, if the prosecutor is caught by surprise by his own witness. If the accused is represented by counsel, he too, will in all probability discuss his version of the case with his attorney before trial.
TRIAL

As a general proposition, violations of park rules and regulations are tried before United States commissioners. These may be special park commissioners appointed pursuant to specific acts of Congress or they may be general United States commissioners. Commissioners are, generally speaking, judicial officers. They are now invariably appointed by the district courts, although until quite recently a number of park statutes provided for their appointment by the judge of the United States district court with the approval of the Secretary of the Interior. Even where there is a special statute providing for the appointment of a park commissioner, for one reason or another an appointment might not be made. In such an instance, it will be necessary to take the offender to the nearest United States commissioner having general as distinguished from park jurisdiction. The primary reason for having special park commissioners is to assure to the offenders speedy action, either in the nature of a trial with disposition of the cases, or by having the violator bound over for the next term of Federal court. United States commissioners' salaries, including special park commissioners, are now paid from the annual appropriations made to the Administrative Office of the United States Courts. The acts providing for the appointment of special park commissioners generally require that they reside within or in the vicinity of the park for which they are appointed.

National parks which have statutes authorizing the appointment of United States commissioners are as follows:
1. Big Bend National Park, Tex.
2. Crater Lake National Park, Oreg.
Park commissioners are authorized to try persons charged with violating the laws or regulations relating to areas of the National Park System. They also have authority to issue warrants for the arrest of persons charged with the commission of criminal offenses and to bind the persons over to the jurisdiction of the United States district court for trial. As a practical matter, most offenders would prefer to have their cases disposed of by the commissioners immediately after arrest and appearance before the commissioner. The commissioners may also grant bail in all cases bailable under the laws of the United States or the State.

It should be noted that special park commissioners are empowered to hear and act upon all complaints made of any violation of law or of the park rules and regulations. The commissioner may upon sworn information, issue a warrant in the name of the United States for the arrest of any person charged with a violation of such rules and regulations. He may try the person so charged,
and, if the accused is adjudged guilty, the commis-
sioner may impose punishment and prescribe the
fine. In all cases of convictions before special park
commissioners, appeals may be made by the de-
fendant to the United States district court. If an
offender is brought before the park commissioner
for other than a violation of the park rules and
regulations, the commissioner may hear the evi-
dence, and, if he is of the opinion that probable
cause is shown for holding the person so charged
for trial, he may commit such person for further
appropriate action. A proper transcript of the
record of such proceedings is then forwarded to
the district court. The offender is usually placed
on bail in such an instance.

Sections 3401 and 3402, title 18, United States
Code, 1946 edition, supplement, covering the duties
and powers of general United States commissioners,
to whom violators of park rules and regulations will
be taken in the absence of a special park commis-
sioner provide as follows:

Sec. 3401. (a) Any United States commis-
sioner specially designated for that purpose by
the court by which he was appointed has juris-
diction to try and sentence persons committing
petty offenses in any place over which the Con-
gress has exclusive power to legislate or over
which the United States has concurrent jurisdic-
tion, and within the judicial district for which
such commissioner was appointed.

(b) Any person charged with a petty offense
may elect, however, to be tried in the district
court of the United States. The commissioner
shall apprise the defendant of his right to make
such election and shall not proceed to try the case
unless the defendant after being so apprised,
signs a written consent to be tried before the
commissioner.
(c) The probation laws shall be applicable to persons so tried and the commissioner shall have power to grant probation.

(d) For his services in such cases the commissioner shall receive the fees, and none other, provided by law for like or similar services.

(e) This section shall not apply to the District of Columbia nor shall it repeal or limit existing jurisdiction, power or authority of commissioners appointed for Alaska or in the several national parks.

Sec. 3402. In all cases of conviction by United States commissioners an appeal shall lie from the judgment of the commissioner to the district court of the United States for the district in which the offense was committed.

The Supreme Court shall prescribe rules of procedure and practice for the trial of cases before commissioners and for taking and hearing of appeals to the said district courts of the United States.

The principal objection to taking an offender before the nearest United States commissioner is generally found in the fact that inconvenience results both to the offender and to the arresting officer because the commissioner may be located some distance away. If this is true, and State or county courts and law enforcement officers have shown a disposition to cooperate with us, it may be appropriate in special cases to proceed in such courts when the offense is one which may be prosecuted under State law. Here again no hard and fast rule may be set forth. Practical experience and expediency determine the best course to follow. Generally, proceedings before Federal commissioners and courts should be preferred.

In passing, it should be stated that the provisions with respect to general United States commissioners
do not repeal or limit the specific acts providing for the appointment and authority of special park commissioners. The provisions of law with respect to general United States commissioners is supplementary to the authority contained in the special park acts.

From the foregoing, it will be observed that the United States commissioners, in general, have the power and authority of a committing magistrate for Federal offenses. When a commissioner acts as a committing magistrate, he binds the prisoner over to the next term of the district court, or sets the bail to insure appearance of the accused. Commissioners have the same power to hold persons to security of the peace and good behavior in cases arising under the Constitution and the laws of the United States that State justices of the peace and judges have under the State laws. They may administer oaths in their official capacity.

It should be noted that, in some circumstances, commissioners may act as trial magistrates as well as committing magistrates. Under the act of October 9, 1940, commissioners may be specially designated by the court to try and, if found guilty, to sentence persons charged with petty offenses committed “in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction, and within the judicial district for which such commissioner was appointed.” The person charged with such petty offense may elect, however, to be tried in the district court of the United States which has jurisdiction over the offense, and it is incumbent upon the commissioner, prior to beginning the trial, to appraise the defendant of his right to make such election. Written consent of the defendant to be tried before the commissioner must be secured before the trial
may proceed. When acting as a trial magistrate the commissioner may try the case and it may be disposed of finally before him. As with special park commissioners, such cases are appealable by the defendant, after conviction, to the United States district court.

The rules of procedure and practice promulgated by the United States Supreme Court, pursuant to section 3402, title 18, United States Code, 1946 ed., supplement, for taking and hearing of appeals to the district courts of the United States are appended hereto for the information of Service law enforcement officers.

There are also appended several of the most frequently encountered rules of criminal procedure of the district courts, which are followed by the United States commissioners, when acting as committing magistrates.

When a case is of such gravity as to be tried before the United States district court, or to be appealed to such court, Service personnel should take all action required to insure complete cooperation with the United States attorney, or his assistants, who will try the case or handle it.
"It is ordered, On the sixth day of January 1941, that the following rules be adopted as the Rules of Procedure and Practice for the Trial of Cases Before Commissioners and for Taking and Hearing of appeals to the District Courts of the United States.

"It is further ordered, That these rules shall be applicable to proceedings instituted on or after February 1, 1941, and to pending proceedings except to the extent that in the opinion of the Commissioner or the Court their application would not be feasible or would work injustice.

"Rule 1. Information and warrant.—A warrant of arrest shall be issued only on an information, under oath, which shall set forth the day and place it was taken, the name of the informer, the name and title of the Commissioner, the name of the offender, the time the alleged offense was committed and the place where it was committed and a description of the alleged offense.

"If arrest is made on view, an information setting forth the same matters shall be made and filed before trial.

"Rule 2. Trial.—The date of trial shall be fixed at such a time as will afford the defendant a reasonable opportunity for preparation and for representation by counsel if desired.

"The trial shall be conducted as are trials of criminal cases in the District Court by a District judge in a criminal case where a jury is waived.

"Rule 3. Docket.—The Commissioner's proceedings shall be entered in his docket, which shall show: (1) The defendant's written consent to be tried before the Commissioner; (2) the date of the
Appendix I

Rules of Procedure and Practice
U. S. Supreme Court Order of January 6, 1941
Page 121

information and upon whose oath it was made; (3) the date of the issue and service of the warrant; (4) the defendant's plea or pleas; (5) the names of the witnesses for the United States and for the defendant and a condensed summary of the testimony of each, and of any documentary evidence received; (6) the judgment and sentence of the Commissioner.

“Rule 4. Appeal.—1. Motions subsequent to judgment of conviction shall not be entertained by the Commissioner.

2. An appeal shall be taken within five days after entry of judgment of conviction. An appeal shall be taken by filing with the Commissioner a notice in duplicate stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and the appellant's attorney, if any; a general statement of the nature of the offense; the date of the judgment; the sentence imposed and, if the appellant is in custody, the prison where he is confined. The notice shall also contain a succinct statement of the grounds of appeal which shall serve as the appellant's assignments of error and shall follow substantially the form hereto annexed.

3. The Commissioner shall immediately forward to the Clerk of the District Court the duplicate notice of appeal together with a transcript of his docket entries and copies of the information, the warrant, the defendant's written consent to be tried before the Commissioner, and any order concerning bail, pending appeal, certified under his hand and seal. From the time of the filing of the Commis-
Rules of Procedure
and Practice
U. S. Supreme Court Order
of January 6, 1941
Page 122

Appendix I

sioner's certificate the District Court shall have su-
ervision and control of the proceedings on appeal
and may at any time, upon five days' notice, enter-
tain a motion to dismiss it or for directions to the
Commissioner or to vacate or modify any order of
the Commissioner in relation to the appeal, in-
cluding any order for the granting of bail.

"4. An appeal from a judgment of conviction stays
the execution of the judgment unless the defendant,
pending his appeal, shall elect to enter upon the
service of the sentence.

"5. The defendant shall not be admitted to bail
pending appeal from a judgment of conviction save
as follows: Bail may be granted by the Commiss-
ioner or by the District Court or any judge thereof;
but bail shall not be allowed pending appeal unless
it appears that the appeal involves a substantial
question which should be determined by the District
Court.

"6. The record on appeal shall consist of the
matters certified by the Commissioner pursuant to
paragraph 3. No bill of exceptions and no assign-
ments of error other than those set forth as ground
for appeal shall be required. The defendant shall
not be entitled to a trial de novo in the District
Court and the decision of the Commissioner upon
questions of fact shall not be reexamined by the
District Court. Only errors of law apparent from
the record as certified by the Commissioner shall be
considered by the court.

"Rule 5. New trial for after-discovered evi-
dence.—Within sixty days after conviction a de-
fendant may move for a new trial on the ground of
after-discovered evidence. The motion shall be in
writing, addressed to the Commissioner and shall
set forth under oath the nature of the evidence and
the reason it was unavailable at the trial. A copy of the motion shall forthwith be served upon the United States Attorney. The Commissioner shall transmit the motion together with a transcript of his docket entries to the District Court. That court shall hear the motion, and, if it deems a sufficient showing has been made, may vacate the judgment of conviction and direct the Commissioner to re-try the case.

“Rule 6. District court rules.—The District Courts may, by order or standing rule, not inconsistent with these rules, regulate the practice and procedure on appeals from convictions before a Commissioner.”
FORM OF NOTICE OF APPEAL UNDER RULE IV

In the District Court of the United States for the

________________ District of ___________________

UNITED STATES OF AMERICA

vs.

Appeal from the judgment and sentence of __________

________________________ United States Commissioner.

Name and address of appellant ____________________________

Name and address of appellant's attorney __________________

Offense ______________________________________________

Date of judgment __________________________

Brief description of judgment or sentence __________________

Name of prison where now confined, if not on bail

I, the above-named appellant, hereby appeal to the United States District Court for the

________________________ District of __________________

district of __________________ from the judgment above-mentioned on the grounds set forth below.

(Signed) ____________________________

Appellant

Dated __________________________

Grounds of Appeal:

RULES OF CRIMINAL PROCEDURE

Several of the rules of criminal procedure which may be helpful to commissioners and law enforcement officers alike when the commissioner is acting as a committing magistrate are given below as general information. It is not feasible, however, to print all of the rules here. Rule 54 relates to the applications and exceptions of these rules to criminal proceedings.

"Rule 54. (a) Courts and commissioners.

(2) Commissioners.—The rules applicable to criminal proceedings before commissioners apply to similar proceedings before judges of the United States or of the District of Columbia. They do not apply to criminal proceedings before other officers empowered to commit persons charged with offenses against the United States."

"(b) Proceedings.

(4) Trials before commissioners.—These rules do not apply to proceedings before United States commissioners and in the district courts under the Act of October 9, 1940, ch. 785, 54 Stat. 1058-1059, 18 U. S. C. secs. 576-576d, relating to petty offenses on Federal reservations."

The notes of the Advisory Committee on Rules indicate that pursuant to the provisions of 54 (a) (2) quoted above, Rules 3, 4, and 5, hereinafter quoted, relate to proceedings before United States commissioners. The notes of the Committee relating to 54 (b) (4) quoted below:

United States commissioners specially designated for that purpose by the court by which
they are appointed have trial jurisdiction over petty offenses committed on Federal reservations if the defendant waives his right to be tried in the district court and consents to be tried before the commissioner. Act of October 9, 1940, 54 Stat. 1058, 18 U. S. C. sec. 576. A petty offense is an offense the penalty for which does not exceed confinement in a common jail without hard labor for a period of six months or a fine of $500, or both, 18 U. S. C. sec. 541. Appeals from convictions by commissioners lie to the district court, 18 U. S. C. 576a. These rules do not apply to trials before United States commissioners in such cases, since the rules of procedure and practice in such matters were specially prescribed by the Supreme Court on January 6, 1941, 311 U. S. 733, et seq. The substantive law applicable in such cases with respect to offenses other than so-called Federal offenses is governed by 18 U. S. C. sec. 468 (Laws of States adopted for punishing wrongful acts; effect of repeal). In addition, National Park commissioners have limited trial jurisdiction with respect to offenses committed in National Parks. Trials before commissioners in such cases are not governed by these rules, although when a National Park commissioner conducts a proceeding as a committing magistrate, these rules are applicable.

A list of statutes relating to jurisdiction of and proceedings before National Park commissioners may be found at the end of the Committee's notes on Rule 54, pages 1988 and 1989 of the United States Code, 1946 edition.

The pertinent rules mentioned above are as follows:

"Rule 3. The complaint.—The complaint is a written statement of the essential facts constituting
the offense charged. It shall be made upon oath before a commissioner or other officer empowered to commit persons charged with offenses against the United States.

"Rule 4. Warrant or summons upon complaint.—

(a) Issuance.—If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the Government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form.—(1) Warrant.—The warrant shall be signed by the commissioner and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available commissioner.

(2) Summons.—The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a commissioner at a stated time and place.

(c) Execution or service; and return.—(1) By whom.—The warrant shall be executed by a marshal or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) Territorial limits.—The warrant may be executed or the summons may be served at any place within the jurisdiction of the United States.
"(3) Manner.—The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

"(4) Return.—The officer executing a warrant shall make return thereof to the commissioner or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the Government any unexecuted warrant shall be returned to the commissioner by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the commissioner before whom the summons is returnable. At the request of the attorney for the Government made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the commissioner to the marshal or other authorized person for execution of service.

"Rule 5. Proceedings before the commissioner.—
(a) Appearance before the commissioner.—An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person
without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

"(b) Statement by the commissioner.—The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel, and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

"(c) Preliminary examination.—The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If from the evidence it appears to the commissioner that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the commissioner shall forthwith hold him to answer in the district court; otherwise the commissioner shall discharge him. The commissioner shall admit the defendant to bail as provided in these rules. After concluding the proceeding the commissioner shall transmit forthwith to the clerk of the district court
all papers in the proceeding and any bail taken by him.

“Rule 9. Warrant or summons upon indictment or information.—(a) Issuance.—Upon the request of the attorney for the Government the court shall issue a warrant for each defendant named in the information, if it is supported by oath, or in the indictment. The clerk shall issue a summons instead of a warrant upon the request of the attorney for the Government or by direction of the court. Upon like request or direction he shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

“(b) Form.—(1) Warrant.—The form of the warrant shall be as provided in Rule 4 (b) (1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

“(2) Summons.—The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

“(c) Execution or service; and return.—(1) Execution or service.—The warrant shall be executed or the summons served as provided in Rule 4 (c) (1), (2), and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so re-
quires, by also mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court or, for the purpose of admission to bail, before a commissioner.

"(2) Return.—The officer executing a warrant shall make return thereof to the court. At the request of the attorney for the Government any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the Government made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the marshal or other authorized person for execution or service.

"Rule 40. Commitment to another district; Removal.—(a) Arrest in nearby district.—If a person is arrested on a warrant issued upon a complaint in a district other than the district of the arrest but in the same State, or on a warrant issued upon a complaint in another State but at a place less than 100 miles from the place of arrest, or without a warrant for an offense committed in another district in the same State or in another State but at a place less than 100 miles from the place of arrest, he shall be taken before the nearest available commissioner or other nearby officer described in Rule 5 (a); preliminary proceedings shall be conducted in accordance with Rule 5 (b) and (c); and if held to answer, he shall be held to answer to the district court for the district in which the prosecution is pending, or if the arrest was without a warrant,
for the district in which the offense was committed. If such an arrest is made on a warrant issued on an indictment or information, the person arrested shall be taken before the district court in which the prosecution is pending or, for the purpose of admission to bail, before a commissioner in the district of the arrest in accordance with provisions of Rule 9 (c) (1).

"(b) Arrest in distant district.—(1) Appearance before commissioner or judge.—If a person is arrested upon a warrant issued in another State at a place 100 miles or more from the place of arrest, or without a warrant for an offense committed in another State at a place 100 miles or more from the place of arrest, he shall be taken without unnecessary delay before the nearest available commissioner or a nearby judge of the United States in the district in which the arrest was made.

"(2) Statement by commissioner or judge.—The commissioner or judge shall inform the defendant of the charge against him, of his right to retain counsel and of his right to have a hearing or to waive a hearing by signing a waiver before the commissioner or judge. The commissioner or judge shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him, shall allow him reasonable opportunity to consult counsel and shall admit him to bail as provided in these rules.

"(3) Hearing; warrant of removal or discharge.—The defendant shall not be called upon to plead. If the defendant waives hearing, the judge shall issue a warrant of removal to the district where the prosecution is pending. If the defendant does not waive hearing, the commissioner or judge shall hear the evidence. If the commissioner hears the evidence he shall report his findings and recom-
mendations to the judge. At the hearing the defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If it appears from the commissioner's report or from the evidence adduced before the judge that sufficient ground has been shown for ordering the removal of the defendant, the judge shall issue a warrant of removal to the district where the prosecution is pending. Otherwise he shall discharge the defendant. If the prosecution is by indictment, a warrant of removal shall issue upon production of a certified copy of the indictment and upon proof that the defendant is the person named in the indictment. If the prosecution is by information or complaint, a warrant of removal shall issue upon the production of a certified copy of the information or complaint and upon proof that there is probable cause to believe that the defendant is guilty of the offense charged. If a warrant of removal is issued, the defendant shall be admitted to bail for appearance in the district in which the prosecution is pending in accordance with Rule 46. After a defendant is held for removal or is discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.

“(4) Hearing and removal on arrest without a warrant.—If a person is arrested without a warrant, the hearing may be continued for a reasonable time, upon a showing of probable cause to believe that he is guilty of the offense charged; but he may not be removed as herein provided unless a warrant issued in the district in which the offense was committed is presented.”