The Protection Ranger

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Time To Move On IACP Implementation

Lodge Executive Committee

The battle over NPS-9, now DO-9/RM-9, was a contest of will, ego, power and perception that, even to the last minute, was filled with bitterness and backdoor maneuvers.

This is a bad omen for the future recommendations of the IACP survey.

The Lodge is confident in the professionalism of the IACP, and that the majority of the recommendations that they will make will be based on sound principles of law enforcement management.

The IACP has standards that are often higher than those required for police department accreditation. For example, if you have a tactical team (defined as a group of officers who have special uniforms, training, and weapons), you are required to provide them with 16 hours a month of training. To meet IACP standards, the NPS will have to alter its SET team practices. The IACP standard is sound policy. These teams are assigned high-risk duties, and regular training is essential. But it will require a complete shift in the way we do SET.

This is but one aspect of what the IACP can recommend.

Inside This Issue:

Leadership must direct that the eventual IACP recommendations be implemented–they are the future of the NPS.

The question for Washington is this: What are you going to do to see that the IACP recommendations are implemented in minimal time, with minimal politics?

We can look to two examples of how the Park Service is able to implement change:

1. The "Field Area" idea.

You'll remember the memo that came out announcing that the NPS would no longer have regions. Regional offices were cut back and re-named. "Clusters" were formed. Even Regional Directors had their titles changed. This major restructuring of the NPS, involving reassignment of personnel and offices around the country, happened relatively quickly, despite the fact that many, if not most, employees from the top down didn't agree with, or understand, the policy. Same thing with GPRA.

2. NPS-9

If you've been around awhile, you'll probably remember the first time you read the first draft of "New NPS-9" submitted to the field. "Six months to implementation," was the story. That stayed the story year after year, draft after draft. In fact the whole document went away for over a year before quietly resurfacing last year.

Why did one major policy get implemented so quickly, and one minor policy drag on forever? To understand this is to understand what it will take to implement IACP recommendations.

Leadership

First, it must be clear from the top down that changes in the organization are being initiated from the top. NPS-9 was run more like an internal debate. Nobody in responsibility would make a commitment to support the document. This ties into the weak central authority within the ranger ranks, where chief rangers are free to make or disregard policy as they choose.

Inevitability

Leadership must direct that IACP recommendations be implemented because they are the future of the NPS, period: get used to it.

Necessity

Leadership must make clear that these recommendations are a necessity to protect the integrity of NPS law enforcement, and to secure the safety of park rangers.

The Coming Battle

If left without strong leadership, the battle over the IACP recommendations will tear the NPS law enforcement program to pieces. Already, the Lodge has learned that some noted "Old Guard" players have begun to lobby against the IACP.

If the process is left for the field to settle, the situation will drag on for years in an ugly battle of words and backroom politics.

What is needed now is a solid, expressed leadership commitment from the Director to prepare for implementing the IACP recommendations, and consistent follow-up to see it through.

IACP Scoping Sessions Lodge Concerns Presented

Lodge Executive Committee

On February 7th, a scoping session was held at FLETC with the International Association of Chiefs of Police to determine a plan to conduct a survey of the management and operations of the law enforcement function of the National Park Service. The study was ordered by the Director after serious concerns were expressed by law enforcement rangers over the ability of NPS to safely and effectively carry out our law enforcement function. This dramatic lack of confidence in the NPS by field rangers was brought to focus by the recent violent deaths of several rangers.

The FLETC session began with Jerry Needle of the IACP introducing himself and explaining what the IACP is, and how it has done reviews of many law enforcement agencies from around the country.

The term "scoping" has to do with determining the scope of the IACP study of the organization. There is a fixed budget, so we can't have them study every detail of our operation. The scoping session involves a roundtable discussion of what rangers feel are the major issues within the Agency: training; radio communications and dispatch; staffing levels; the quality and availability of supervision; ethics; chain of command; policy and procedures and others were mentioned in both the San Diego and Georgia sessions. In both sessions, members of the Ranger Lodge as well as a representative of the Executive Committee attended.

The IACP staff, and no others, will evaluate the confidential survey data and compare it to the IACP standards and make recommendations.

Once the scope of the survey is determined, the IACP will begin its research. It will contact every commissioned ranger, both permanent and seasonal, at home via a postal survey. It will visit parks selected for their economy of travel as well as their diversity of operations (big vs. small parks). [Go to the Lodge web page for a link to the park clusters to be visited by IACP representatives.] Field rangers will be interviewed in all parks visited by the IACP, in addition to having the opportunity to send in their mail surveys.

The IACP will compare the status of NPS operations with the standards they have determined for quality law enforcement operations and make recommendations as to where the NPS falls short.

While there are NPS people guiding the IACP review process, they are involved in logistics, scoping, and funneling of field input to the IACP. The Lodge is also relaying information directly to the IACP. At both sessions the concerns and accounts sent to us by members were compiled and presented to an IACP representative who we continue to communicate with.

The IACP staff, and no others, will evaluate the confidential survey data and compare it the IACP standards and make recommendations. Continued updates and discussion of the IACP review can be seen on the Lodge web page.

The Lodge online poll currently shows that 15 percent of those responding believe that things will finally change with the IACP review, while 23 percent said the changes will be minimal. Currently, 45 percent of those responding think the review will have no effect on the NPS.

Over the years, we've all been discouraged by the lack of respect that NPS administrators have given to our law enforcement responsibilities. The absurd and embarrassing cat fights over something as basic as NPS 9 do not, as we note in our lead article, bode well for how the recommended improvements we are confident will emerge from the IACP study will be received by NPS administrators. The Ranger Lodge, though, considers the IACP study and eventual recommendations critical to the continued professionalization of law enforcement within the Service.

We can, though, be encouraged at the professional advances we've made in the past decade. The Ranger Lodge has won signal victories over NPS opposition to body armor, 6(c) retirement, pay for on-call duty, better weapons and training, and position

descriptions that accurately reflect our skills and duties. To this latest crisis, the Lodge and its members will bring to bear the same energy and single mindedness that have won our previous victories. Through our own efforts, the assistance of the National Lodge, Congress, the press–whatever it takes–we will not allow the recommendations of the IACP to languish in some file drawer in Washington. The memory of fallen rangers, at the least, demands it of us.

Everything a NPS Protection Ranger Needs to Know about the 4th Amendment

Richard J. Larrabee, J.D.,
Protection Ranger

Richard is a Protection Ranger currently working at Cuyahoga Valley National Recreation Area who formerly practiced law in the State of Oregon.

This article will address the provisions of the United States Constitution's 4th Amendment as they apply to United States National Park Service Protection Rangers (NPS rangers). Indeed, it is the author's intent for this analysis to serve as a helpful guide for all NPS rangers when confronted with the 4th Amendment legalities of a search, seizure, or arrest.

In possessing both a legal background, (Juris Doctor '96), and NPS ranger experience (currently working in that capacity with CVNRA), I have attempted to fashion this article in a form that will not only be informative, but also applicable to the unique circumstances which all NPS rangers encounter daily.

Specifically, the areas to be covered will involve the definition of a search and seizure, what is required in order to obtain a warrant for such a search and finally, what is required if an exception to the warrant requirement is invoked. The exceptions to the arrest warrant requirement that will be discussed include Felony and Misdemeanor Suspect Analysis, and Exigent Circumstances. The exceptions to the search warrant requirement that will be covered include Consent, Plain View, Exigent Circumstances, Open Fields, Abandoned Property, Search Incident to Arrest, Automobile Searches and Inventory Searches (even though not technically considered a "search").

The case law governing these topics are generally the same for all federal law enforcement personnel throughout the country. However, as alluded to above, a NPS ranger operates in a unique environment which will require a more probing analysis of the pertinent case law to decide what is appropriate procedure in certain cases, and ultimately answer the question: Will the arrest or search and/or seizure be upheld in a court of law?

The 4th Amendment was adopted in 1791 as part of the original Bill of Rights and reads as follows: "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." Consequently, the amendment can be broken down into two distinct clauses; a Warrant Clause and a Reasonableness Clause.

The Warrant Clause has been deemed to require three conditions in order for its provisions to be satisfied; 1) presence of articulable probable cause, 2) the warrant must describe with particularity the area or person to be searched or seized, and 3) the warrant must be issued by a neutral and detached magistrate. If the three requirements are met, a warrant may be issued.

No reasonable expectation of privacy exists when something is *held out to the public.*

The Reasonableness Clause should be viewed as applying to the Amendment regardless of the presence of a warrant. Generally, the Warrant Clause requires the issuance of a warrant when a federal law enforcement officer attempts to make an arrest or search and seizure. When such a warrant is issued, a reasonableness test must be met. However, there are exceptions when a warrant is not required (discussed below), and in these instances the arrest, or search and seizure, will be exclusively adjudged under the Reasonableness Clause (assuming it falls squarely within the parameters of its respective exception).

Definition of Search and Seizure

In order for an individual to invoke the protection of the 4th Amendment, a "search and seizure" must have taken place. Moreover, the search and seizure must have been executed by a government entity. This beckons the question: What constitutes a search and seizure? The United States Supreme Court wrestled with this question in the landmark case of *Katz v. United States*, 389 U.S. 347 (1967). In deciding the case the Court set the standard for defining a search and seizure as taking place when one's *reasonable expectation of privacy* has been breached. This standard is to be determined subjectively, in other words, in each case the court must

decide whether the interest that is being impinged upon is one society would reasonably expect privacy in relation to. Conversely, this theory is coterminous with the notion that no reasonable expectation of privacy exists when something is *held out to the public*, i.e. one's voice, one's appearance in general, emanating odors from a tent, or a VIN of an automobile.

In the context of visitors to national parks, seashores or recreation areas, this standard may not be so easily defined. For example, a NPS ranger may consider a legally registered campsite deserving of this reasonable expectation of privacy whereas the immediate area around a temporary picnic site may not be so deserving. This line of reasoning quickly leads one into the murky area of where a NPS ranger should draw the line. The recommended rule of thumb would be to indeed recognize a reasonable expectation of privacy in relation to a legally registered campsite (i.e. you cannot search any closed area inside the campsite that is not in plain view from outside of the campsite without a search warrant or the consent of the occupant). Yet, if the campsite is not legally registered, than the expectation of privacy does not exist and, due to the illegality of its presence, the closed tent may be searched. Such would also be the case of a temporary picnic setting with one exception; a NPS ranger may enter the picnic site to make plain view observations, but may not enter any closed containers without consent of the occupants inasmuch as they possess a legal presence at the picnic site.

Probable Cause

Once the definition of a search and seizure has been met, the next step in a 4th Amendment analysis is to determine whether there was *probable cause* to execute the search and seizure. Probable cause is needed for a NPS ranger to conduct a search regardless of whether he possesses a warrant. Probable cause exists when there are enough particularized facts that would lead a common sense person of reasonable caution to believe there is a fair probability of criminal activity.

The ranger should assess the circumstances in order to decide of there is ample time to obtain a warrant–it is always preferred to do so before making an arrest.

As noted above, it is recommended policy that NPS rangers be in possession of a warrant before conducting a search. In order to obtain either an arrest or search warrant, the NPS ranger would need to approach a neutral and detached federal magistrate with an affidavit stating the reason for the need of the warrant. This affidavit must state *sufficient underlying facts* and circumstances which would allow the magistrate to decide if probable cause for the warrant exists. At that point, the magistrate would decide whether probable cause exists for issuance of the warrant by considering the *totality of the circumstances*.

The information relied upon by a NPS ranger to establish probable cause for a warrant may be based on personal knowledge or observation, or information obtained by a reliable source. For example, if a camper approaches a NPS ranger and informs him that he witnessed a man in the neighboring campsite using cocaine and the NPS ranger subsequently observes a mirror with white powder at the second camper's campsite, he would have probable cause to seek a search warrant based on the combination of his own observation and the informant's report.

Once it has been determined probable cause exists by a federal magistrate by looking at the totality of the circumstances, the warrant must then be drawn up to describe with specificity what is being searched for and what area is to be searched.

This line of discussion brings us to the next prevalent question: was a warrant needed at all?

The core reasoning behind requiring a warrant can be found in a three tiered model. These tiers include the right of protection from governmental invasion of one's personal security (arrests), privacy (searches), and property (seizures).

Arrests

Felony and Misdemeanor Suspect Analysis

With respect to arrests, it is a general rule of law that a NPS ranger may arrest any individual without a warrant if the suspect has committed a misdemeanor in his presence, or the ranger has probable cause to believe the suspect has committed a felony. One notable exception to this rule is found in *Payton v. New York*, 445 U.S. 573 (1980). This case held that the 4th Amendment prohibits law enforcement officers from making a warrantless and non-consensual entry into a suspect's home (or premises) in order to make a felony arrest. This decision however should be strictly construed as pertaining only to a fixed premises as opposed to more mobile living quarters, i.e. a mobile home or RV; which is a much more common sight within the borders of a national park, seashore or recreation area. Accordingly, the NPS ranger should not feel restricted by Payton when contemplating making an arrest of an individual who is residing in an RV within the boundary of the park. At the same time though, the ranger should assess the circumstances in order to decide if there is ample time

to obtain such a warrant inasmuch as *it is always preferred to do so before making an arrest.*

Exigent Circumstances
A more clearly articulated exception to Warrant Requirement, and *Payton,* resides in the doctrine of *exigent circumstances*. Exigent circumstances exist if there is a possibility of danger to the public or the ranger, destruction of evidence, the suspect escaping, or if there is hot pursuit. However, it must be kept in mind that being excused from having a warrant does not lessen the NPS ranger's duty to demonstrate probable cause and reasonableness. These attributes must still be clearly articulable by the acting ranger.

Search and Seizure
The exceptions to warrantless searches are more abundant and complex than the exceptions to warrantless arrests. As opposed to the generally established per se rule that a NPS ranger may arrest anyone without a warrant who he observed committing a misdemeanor or has probable cause to believe committed a felony (as long as they are not in their home or premises), a warrantless search often requires a case-by-case analysis to determine whether it falls within one of the many exceptions the Supreme Court has laid down in relation to such searches and seizures.

Exceptions to the warrant requirement:

Consent
The first and foremost exception to the 4th Amendment's warrant requirement regarding search and seizure is the presence of consent. As long as it is voluntary, consent satisfies the reasonableness clause, dispenses with the warrant clause and is literally a waiver of the individual's 4th Amendment rights.

Before looking towards any other exception, a prudent NPS ranger should always attempt to obtain consent from an individual before searching their person or property. Fortunately, when approached in a savvy manner, consent to search amongst his belongings is readily given by a visitor 99% of the time. The key to this approach being so successful lies in the ranger's mastery of personal relations. If using the "I'm just trying to make it easier for you since I know you are telling the truth" approach doesn't work, more direct measures can be taken. For example, whereas a NPS ranger cannot lie to the suspect by saying "I *can* get a warrant," he is allowed to intimate that he will try to get one if consent is not given. More often than not, a guilty individual will feign innocence by readily consenting in hopes that the ranger will conduct a less thorough search.

Concomitantly, a 3rd party's consent can also be used as an exception to the warrant requirement. It must be proven however that the 3rd party possessed authority of entry into the area being searched before relying on their consent.

Plain View Doctrine
As suggested in the name of this doctrine, whether an article is in "plain view" is the deciding factor in trying to invoke this exception to the search warrant clause. A crucial requirement of this doctrine is that the NPS ranger's plain view be made from a *legal vantage point*. Legal vantage is defined as anywhere where the ranger is legally bound to be. This may mean the area within the parameters of a search warrant or any public place; i.e. a picnic area, boat launch, hiking trail or campsite access roads. Additionally, in order to make a seizure, the NPS ranger must have probable cause to believe the article observed is contraband or evidence of any crime.

Exigent Circumstances
As with the arrest warrant requirement, *exigent circumstances* can be articulated as a valid exception to the search warrant requirement. Indeed, in consideration of the nature of our duties as NPS rangers, this exception has the opportunity of coming into play quite often. Specifically, anytime where an emergency condition exists such as a fire, or accidents involving outdoor activities like boating, hiking, climbing, hunting or off-roading, a ranger has the justification to conduct quick sweeping searches of the scenes in order to ensure the safety of the public and himself. Additionally, many weapons or explosives violations call for an immediate search under the auspices of exigent circumstances.

Open Fields
This exception will only come into play for those NPS rangers who patrol in parks where private residences exist. This is the case since the exception specifically deals with open areas that can be seen from a public roadway or airway. The key issue to remember when considering invoking this exception is that the curtilage of the private residence has a reasonable expectation of privacy and thus is protected from searching eyes. This curtilage does not however include a storage barn which is several hundreds of yards away from the premises and is situated adjacent to a public access point; such a barn would be vulnerable to a plain view search of its apertures by a ranger.

Abandoned Property
Abandoned property is defined as *property which no person has the intent to return and claim.* This definition may be a little difficult to apply inasmuch as a visitor is not always present to verify his/her intent to abandon when such prospective property is encountered. However, this exception can come in quite handy to a

NPS ranger when addressing one or more people in a suspicious setting. For example, if a ranger were to come upon a disruptive scene somewhere in his jurisdiction and observe several backpacks and containers that he may feel possess contraband or illegal weapons, he need only ask who is the owner of each suspicious container. If the person or persons deny ownership of any of the containers, that container is subject to a thorough search by the ranger under the abandoned property exception. The legal reasoning being that since no person has claimed possession, there is no one to claim a *reasonable expectation of privacy* regarding the container and its contents.

Search Incident to Arrest

The general rule of law regarding this doctrine is that a search may be made pursuant to an arrest of a person in the *immediate, jump and reach*, area the person is occupying. The legal reason behind allowing such a search is based upon the notion of the ranger's and public's safety, the destruction of evidence, and to prevent escape or suicide of the suspect. The case law which has attempted to delineate the parameters of this rule is worthy of quick review in order to better understand its applications. In *Chimel v. California*, 395 U.S. 752 (1969), where a suspect was arrested in his own house, the Supreme Court set the parameters of the area that can be searched incident to an arrest by limiting such a search to only the immediate area around the suspect by reasoning this to be the only area where the suspect could lunge out and reach for a weapon or evidence before he could be stopped. In the park setting, this rule would prohibit the search of a suspect's recreational vehicle (RV) or tent if he were arrested at a picnic table at his campsite. A warrant would need to be sought in order to search these private property areas since they were not in the suspect's immediate "jump and reach" area.

Another Supreme Court decision worth reviewing is *United States v. Robinson*, 414 U.S. 218 (1973). In this case the Court held that if an arrest was made with probable cause, the suspect's entire person may be searched subsequent to the arrest, whether or not the ranger has probable cause to search for a particular item. This would include the search of all the many layers of clothing a skier, backpacker or hunter may be wearing at the time of the arrest. The legal reasoning for this ruling is based once again upon the need for the NPS ranger to protect himself and others while preventing the destruction of evidence. A strong impetus for this ruling is also evident in the court's belief that the suspect's reasonable expectation of privacy has been significantly diminished at this point since his liberty has already been taken away, via the arrest.

Typically, a search incident to an arrest is limited to the time contemporaneous to the arrest. However, two important Supreme Court decisions have eroded away at this strict requirement. In *Illinois v. Lafayette*, 462 U.S. 640, (1983) the Court held a law enforcement officer may search the individual and his personal effects if he is under lawful arrest when being admitted to confinement. Additionally, the Court decided in *United States v. Edwards*, 415 U.S. 800 (1974) that the clothing of the arrestee may be seized as evidence pursuant to lawful arrest. Once again, the underpinnings of these decisions lie in the Court's belief that the arrestee no longer has a reasonable expectation of privacy regarding his personal effects since the time of his lawful arrest.

A final area to note concerning this exception is especially applicable to rangers inasmuch as the issuance of a citation in a park is far more common than an arrest. In the recent case of *Knowles v. Iowa,* 119 S.Ct. 484 (1998), the US Supreme Court held the search incident to arrest exception to the 4th Amendment does not apply to citations alone, an arrest must take place; this is a bright line rule that applies to all states and territories in the Union.

A summary of the incident to arrest rule can be accurately summarized by the use a hypothetical. If a NPS ranger were to observe and arrest a couple of campers smoking marijuana on a blanket with a rolled up sleeping bag and a locked tacklebox next to them while a cooler was located thirty yards away, they may legally search the persons themselves and the rolled sleeping bag. However, the ranger would be wise to not search the locked tacklebox without a search warrant since it may be considered sealed and thus not within the immediate reach of the arrestees.

As to third item mentioned, the cooler is clearly not within the immediate jump and reach area of the arrestees and therefore should not be searched without a warrant. This, however does not mean that the ranger should not *ask* for consent to search these items! Furthermore, the ranger may feel it necessary to impound these items in order to safeguard them from theft which may subject them to an inventory search. The necessary provisions for such *inventory searches* will be discussed shortly.

Search of Vehicle

The general rule of law regarding searches of vehicles incident to an arrest is that once an occupant of a vehicle is arrested, and *probable cause* exists, the interior of the vehicle, and any unsealed containers therein, may be searched. This auto exception to warrantless searches was first established in 1925 during the

Prohibition Era when the Supreme Court decided *Carroll v. United States*, 267 U.S. 132 (1925). The original view of the auto exception relied on the theory of exigent circumstances and probable cause, taking into consideration the auto was so mobile and thus evidence may be removed or destroyed more readily than if it were located within a more immobile structure such as a building.

Today however, the Supreme Court has made it clear that a separate finding of exigent circumstances need not take place in order to justify a vehicle search as long as probable cause exists, *Maryland v. Dyson*, 119 S.Ct. 2013 (1999). Indeed, in *Chambers v. Maroney*, 399 U.S. 42 (1970), the Supreme Court ruled a search of a vehicle after it had been towed to a police station, two hours after the arrest, to be legal. In sum, if a ranger has probable cause to believe a readily mobile vehicle may be carrying evidence or instrumentalities of a crime, he may conduct a warrantless search of an automobile.

The combination of the auto exception and the "jump and reach" standard set forth in Chimel presents a very interesting problem when a search incident to an arrest takes place in an RV. Since the RV has the unique attribute of being both a form of transport and a place for lodging, a straight application of either the auto exception, or Chimel's jump and reach doctrine, cannot possibly be rigidly followed.

One recent Supreme Court decision, *California v. Carney*, 471 U.S. 386 (1985) allows for some insight on how to handle such a situation. In Carney, the Court held that an arrestee's mobile home did not earn the fixed-home protection of Chimel, and thus the entire mobile home was capable of being legally searched incident to the occupant's arrest, as opposed to only the driving compartment area. The main underpinning of this decision lies in the Court's determination of the mobility of the place being searched.

The court also noted a mobile home owner's reasonable expectation of privacy was far below that of a standard fixed home owner. Additionally, the court further justified its decision to apply the auto exception to motor homes due to the pervasive legislative regulations which such a vehicle is subject. These regulations include inspection stickers, license plates and other safety conditions placed on any vehicle that is given the privilege to travel on government highways or roads. Accordingly, the search of a house boat under similar circumstances would also probably be held to be lawful for the same reasons.

It should be kept in mind however that in order for a NPS ranger to open and search any *sealed or locked containers* in an auto, RV, or motor home, strong probable cause needs to exist (this is beyond the scope of a mere driving compartment search of an arrestee). Case law upholding this exception can be found in *California v. Acevedo*, 500 U.S. 565 (1991). In this case the Court held that if a federal law enforcement officer has probable cause to believe containers located within a vehicle contain contraband or evidence, they may search the containers without a search warrant even if they have no probable cause to search the vehicle itself. Summarily stated, if a NPS ranger has probable cause to search a specific container in automobile, under the auto exception rule they may legally do so regardless of the location of the container (i.e. in trunk), and whether it was sealed or not (i.e. locked). For example, if a NPS ranger observes an individual digging for archeological resources protected under ARPA and subsequently place them in a locked suitcase which is then placed into a trunk of a car, the ranger has the right to search the suitcase regardless of the sealed nature of the suitcase under the auto exception rule.

A final case worth noting regarding the interplay between the auto exception and search incident to arrest doctrines is *New York v. Belton*, 453 U.S. 454 (1981). In this case the Court seemed to overlap the two rules. A suspect was arrested outside of his car at which point the police conducted a search of the passenger compartment of the car and any containers in the car. The Court held this to be a legal search of the car even though there was no probable cause to search the car. They reasoned that since the arrestee was right next to his car at the time of the arrest (although not actually inside of it), the search constituted a search of the *immediate area incident to the arrest*. This overlap needed to be made by the court since **all auto exception searches and warrant searches need probable cause, whereas searches incident to arrest do not require probable cause**. However, prudence dictates this anomalous ruling to be read very narrowly when considering searching containers located in a vehicle upon the arrest of an individual outside of that vehicle without probable cause.

Inventory Searches

The title of this final exception to be discussed is technically incorrect. An inventory of impounded property should not be labeled as a "search", but rather an "inventory" of the objects located within the impounded property.

In order to justify an inventory search, the initial impoundment of the property (i.e. vehicle, tent, etc.) must be justified and reasonable. This standard of justification however is not extremely high. It has been held that a federal law enforcement ranger need not take the

least intrusive means when dealing with potential impoundment property. A couple of justifications that have been specifically carved out include the potential of theft of an automobile or a valuable item left in the automobile if such automobile were not impounded (i.e. due to high crime rate area or remoteness of area). Both of these explanations have been held by the Court to justify impoundment of a vehicle. Furthermore, a ranger need not let a third person drive the vehicle of an arrested person home, as opposed to impounding it, if the ranger feels it imprudent or unsafe to do so.

It must be noted however that the extent of the inventory search itself is strictly limited to the *written standard inventory procedure* the agency involved has adopted regarding such inventories. In fact, it is paramount that the agency possess such a standard procedure or else the inventory may be considered by a court to be subjective, and thus illegal. Yet once a standard procedure is in place, its terms may be very intrusive. Indeed, federal case law has allowed such inventory procedure standards to dictate that all *closed, sealed containers* located in the vehicle (or tent) to be opened and inventoried.

In sum, as long as a ranger can articulate his reasons for impounding a piece of property, be it for reasons of possible theft, or the property was illegally situated (illegal campsite, illegal parking), an inventory search can result in a more thorough and intrusive search than even one hinged on a theory of probable cause. The adroit ranger must keep in mind however, that an impoundment and subsequent search will not be held to be legal if the Court believes it to be based on a purely pre-textual context.

In conclusion of this guide, I wish to include a quick and easy model which every NPS ranger would be wise to memorize and consider when encountered by a 4th Amendment search & seizure situation:

Step 1 Does the visitor have a Reasonable Expectation of Privacy?

Step 2 Do you, as a NPS ranger, possess a valid search warrant?

Step 3 Would it be feasible time-wise to attempt to obtain such a warrant?

Step 4 If it is not feasible, and you do not possess a warrant, the search must fall into one of the exceptions listed above.

Postscript: The Ninth Circuit has just ruled that a person who erects a tent on public lands, with or without permission to do so, has a reasonable expectation of privacy (REP) for the contents of the tent. For the full article, see "Lodge News" on our Web site.

Lodge Website Report
by Duane Buck
Lodge Webmaster
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As you may have noticed, the Lodge website has undergone some changes in the last few months. As I have attained more web based training, I have had the urge to tinker with how the site is viewed and utilized. I hope these changes are appealing to both members and non-members.

We now have two sections for the Lodge website. A "General Area" and a "Members Only" area. The general area gives non-members a taste of what we have to offer as an organization. A general discussion area is provided so visitors and non-members may get involved in posting their own viewpoints on various topics.

The "Members Only" area is for the exclusive use of our dues paying members. Inside this area we have a large variety of services, including another discussion area, Lodge news, links, current job information and seasonal information.

Regarding the discussion areas, we ask that both members and non-members be cautioned about leaving your name or email address as some comments in the discussion areas have made it to upper management. Please participate, but cautiously.

For those who are members that have not yet ventured into our members only area, we invite you to visit and participate in discussions, view jobs, catch up on Lodge and National Park Service news items. Entry into this area is through a username and password entry system:

Username: npsfop
Password: protector
Note that both are lower case.

We please ask that the username and password be kept private. We are finding that people are exchanging this information and we are getting non-members and visitors into the area. We are currently working on improving the site security, although with all the hacking going on lately, that may be impossible.

Please get involved with the Lodge and the website! This is your Lodge and we want to hear exchanges from our members on what they would like to see the website offer and to improve its communication with the membership. Articles are gladly accepted, with the approval of the Lodge board. As the Webmaster, I am always looking for tips, suggestions and advice on design, content and graphics. Don't hesitate to contact me at: *bikeranger@earthlink.net*

De Paul University Police Officers' Safety Survey: A Study of Violence Against Police Officers

Professor Rosemary S. Bannan, Director

This survey would not have been possible without the cooperation of 1,987 police officers, President William Nolan, Harold Kunz, and the Board of Directors of Chicago Lodge 7, Fraternal Order of Police.

The Chicago Police Officer Safety Questionnaire Survey notes that in the last five years, 46% of 1,987 respondents sustained well over 4,350 batteries (including multiple battery estimates). Domestic disturbances are the most frequent source of attacks against police officers on patrol.

The level of seriousness of officer injury increases as years of service increase, reaffirming the need for retraining police officers with increasing years of service. Only 45% of police officers with three or less years of service report being battered. But after four to five years of service, the percentage battered rises to 73%, and the rise continues from 73% to 91% for those officers with over 21 years of service. These figures show police officers' batteries increase to seldom, that is, occasionally, from never with years of service but stabilize at seldom (1-9 times) rather than increasing further to v/often (over 10 times). Seriousness of injury also declines when police officers work with partners.

Eighty-four percent of 361 police officers who were interviewed reported that their most serious batteries occurred within the last ten years. Twenty-two percent of these happened during domestic disturbances. Sixteen percent of the interviewed police officers report never having been battered. They attribute not having been battered to communication skills, maintaining a professional attitude and common sense. These strategies do not differ to any extent from the strategies which battered police officers described during the interviews, supporting the hypothesis that violence against police officers is a random occurrence.

Never-battered officers experienced gun violence less often than battered officers. They disagree with battered officers with regard to the following: they maintain that they have been properly trained in street survival; that the weapons they carry are sufficient for their protection; and that battery is preventable by police officers' skill. Current training appears to be effective for these officers.

The comparison of respondent Chicago Police Officers and the Grampian Police of Aberdeen, Scotland, present certain interesting, if predictable, contrasts. The Grampian Service is smaller (1,200 police officers spread across 3,400 square miles), unarmed and responsible for an ethnically homogeneous and geographically diverse region. The Chicago Police Department, on the other hand, is much larger (13,240 police officers), armed and serves an area of great ethnic diversity. Differences also extend into official terminology: In Grampian attacks against police officers are called assaults; Chicago more often uses the term battery.

Important similarities between the two groups emerge in the responses of both Departments to the Police Officer's Safety Questionnaire and in follow-up interviews. There is a striking coincidence in the fact that the majority of respondents from each service could be considered veterans since they have had over 16 or more years of experience.

In addition, official records of 1993-1994 also show that the greatest number of serious injuries occurred among the officers of both departments with the greatest number of years of service.

Police officers working alone are more often seriously injured.

Neither Department has addressed the issue of systematic retraining of patrol officers. Eighty-one percent of Grampian police officers say that they have not had training in street survival since leaving Scotland's Police College. Eighty percent consider it important enough that they would come on their own time for such training if there was no other alternative. Seventy-six percent of Chicago police officers have not had such training since leaving the Chicago Police Academy. Forty-two percent would come on their own time if there was no other alternative. This emphasis on retraining is not an academic recommendation. It comes from the police officers in both Departments.

A majority of Grampian and Chicago police officers believe that the public is not aware of how frequently police officers are assaulted. They believe that change would come about if the public was better informed.

In all three time periods, the majority of police officer injuries were minor, i.e., not requiring hospital treatment. The weapons most frequently used by offenders are hands, fists, feet, knees, teeth, all features of the human body described by the Federal Bureau of Investigation as "personal weapons." These attacks are generally delivered by one offender, usually a substance abuser and directed at uniformed officers.

The fact that the greatest number of police officer injuries are minor, that is, not requiring medical treatment, should not obscure the fact that in the United States, the circumstances during which police officers are most frequently battered are the same as those in which police officers are killed: disturbances and making arrests (FBI Law Enforcement Officers Killed and Assaulted 1994). The only difference is that police officer deaths are the result of firearms while batteries are most often the result of personal weapons (hands, teeth, feet, etc.) by a single offender, usually a substance abuser, and the target selected is the uniformed officer. Any attack against a police officer can be a Close Call. By comparing the circumstances of batteries and the circumstances of deaths of police officers in the United States and noting the similarities, one can appreciate that the element of chance may determine whether a given circumstance remains a battery or turns lethal.

Chicago Police Department Officer's Battery Reports do not distinguish domestic from other disturbances, but the results of the Chicago Police Officers' Safety Questionnaire show that Chicago police officers are most frequently battered during domestic disturbances. Grampian police reports distinguish these assaults and show that Grampian police officers are most frequently assaulted during public disturbances usually during weekends.

Most responding police officers from both Departments do not file reports of attacks against themselves while answering domestic disturbance calls. The major reasons why Grampian police officers do not file reports of such attacks are that the injuries were not serious enough and/or that it goes with the job. They also report lack of support from the courts. Grampian police officers have only infrequently had their reports rejected by supervisors. Chicago police, however, are almost equally divided between personal reasons for not filing reports but they add, more frequently, the lack of Departmental support as well as lack of court Support as major reasons for not filing.

Those [officers] who are most frequently battered have encountered more problems with [radio] communications than their never-battered colleagues.

Both Grampian and Chicago police officers are more frequently assaulted while working with partners than while working alone. However, in both groups, police officers working alone are more often seriously injured.

Grampian police officers who are assaulted do not differ in a statistically significant way from their counterparts who have never been assaulted on the basis of gender, height, weight, education, as well as in their perception of police officer safety. For Chicago police officers age, gender, years of service, rank, height, weight, and ethnic/racial group, are the variables which correlate with frequency of battery. Police officers who report never being battered are typically between 21-31 years of age, have three years or less service, are African American, are female, are shorter in height and weigh less than their battered colleagues.

While the Chicago data show statistically significant patterns of demographic characteristics and frequency of battery in the Police Officer Safety Survey, it is not the case with official records between Feb. 9, 1993 - May 31, 1994. Nor are the Grampian data resulting from the Police Officer Safety Survey statistically significant. The reasons for these different results are not inconsistent with the hypothesis that battery against police officers is a random occurrence.

Chicago police officers encountered communication problems more frequently than Grampian police officers, although the majority of Grampian police officers also express concern about inexperienced communication staff and problems with radio equipment. With Chicago police officers, those who are most frequently battered have encountered more problems with communications than their never-battered colleagues. Ninety-two percent of Chicago police officers have had problems with the new 911 system.

A majority of Grampian police officers believe some officers cause assaults to happen. A majority of Chicago police officers have observed police officers causing batteries to happen.

In a domestic dispute, the majority of Grampian and Chicago police officers ranked police officer attitude and communication skills as the Most Important factors as opposed to equipment or offender's attitude.

Grampian offenders who assault police officers are predominantly male, between 16-25 years of age, and have prior convictions. Seventy-eight percent of these offenders acted alone in these attacks on police officers (1993-1994). Chicago offenders are 64% African-American, 18% white, 17% Hispanic; predominantly male; between 18-25 years of age; and generally without prior convictions. Seventy-three percent acted alone in attacks on police officers (1993-1994).

Of 288 randomly selected Police Officer's Battery reports, the State's Attorney charged 83% of such batteries as misdemeanors and 17% as felonies. The Grampian Procurator Fiscal of Aberdeen, Scotland, charged 78% of 174 offenders with assault on a constable plus one or more violations and 9% offenders solely with assaults on constables.

In the Cook County Courts, 16% offenders were imprisoned, 2% were fined. Of the remaining 82%, it can be said that their only punishment was having to appear in court: 25% received suspended sentences, probation, conditional discharge, and 34% were Stricken On Leave. That is to say, one out of five were formally punished.

In Grampian courts, 20% of offenders were imprisoned; 46% were fined. That is, two out of three were formally punished. Fines collected from offenders may be awarded to victim police officers.

The really stark difference, between Grampian and Chicago police officers, however, is the matter of gun violence which 1,987 Chicago police officer respondents report in July, 1966:
65% (1,254) have been shot at–this although:

- 59% (1,142) have never fired their guns.
- 85% (1,622) have never fired at and wounded an offender.
- 70% (1,354) have never used any lethal force.
- 73% (1,402) have never used pepper mace.

Thank you once again for your cooperation. We will continue to try to bring these issues to the attention of the public.

Sincerely,
Rosemary S. Bannan
Professor of Sociology
DePaul University, Department of Sociology and Anthropology

Editor's Postscript: *I spoke with Professor Bannan several weeks ago. As noted above, the Scottish officers actually had a higher rate of assaults on them than the Chicago officers. However, the Grampian officers have revised their training program in the last few years and now require defensive tactics (which hadn't been required before). As a result of even that little training, assaults declined from 430 a year to 180 in 1998. In short, don't get complacent because you're "experienced"–that's the most dangerous time. Practice defensive tactics!*

Sign Up for the *eProRanger* The Lodge's New e-mail Publication

The Ranger Lodge is publishing, via email, the *eProRanger*. This is supplementing the *Protection Ranger* newsletter and will provide timely notice of news of interest to Lodge members. Most of what is sent via the *eProRanger* will see the light of day in the *Protection Ranger* - it's just that those members with email will receive it first. We plan to issue the *eProRanger* only on an "as needed" basis and we will not adhere to any fixed schedule as we do with the *Protection Ranger*. If you do not have email at your home, you will not miss anything.

Please contact the Lodge at: *randallfop@ls.net* to sign up for the *eProRanger*. We would prefer not to send it to a government office.

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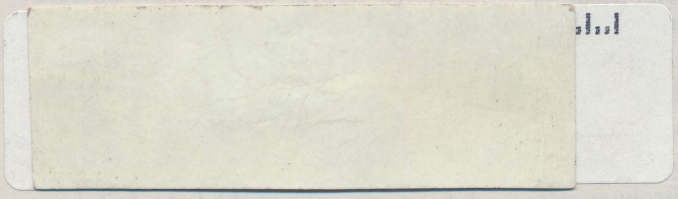

Lodge Website:

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

www.rangerfop.com

Lodge Phone: 800-407-8295
10 am to 10 pm Eastern time

or, use our e-mail address:
randallfop@ls.net

Application for Membership

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

Name: _____

Signature: _____

Address: _____

City: _____

State: _____ Zip: _____

DOB: _____

☐ Permanent Rangers: $52/year

☐ Seasonals and Retired Active Members: $35/year.

☐ Associate (non-Commissioned) Membership (newsletter only): $35/year.

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

NPS Area: _____

Mail To: FOP Lodge, POB 151, Fancy Gap, VA 24328