The Protection Ranger

The Newsletter of the U.S. Park Rangers Lodge, Fraternal Order of Police Vol. XII • No. 2 • 2001

Lodge Testifies Before Senate Committee

On March 29, Lodge Vice President Greg Jackson testified before the Senate Natural Resources and Energy Committee's National Parks Subcommittee. Greg was accompanied by Lodge Vice President Pete Tortorell, Lodge webmaster Duane Buck and C. L. Granberg, Legislative Assistant from the National FOP's Washington office.

The hearing was chaired by Senator Craig Thomas of Wyoming. Also testifying was Pete Ward, President of the US Park Police FOP. The subject of the hearing was law enforcement management in the NPS and the NPS's answers to questions about the Thomas report. Requested last year by the Committee, the Thomas Report is the NPS response to concerns about our LE program.

Senator Thomas seemed to be pleased, and perhaps surprised, that the Park Police and Park Rangers (represented by your Ranger FOP Lodge) were united and in agreement on the steps that need to be taken to improve how law enforcement is managed. Special emphasis in Greg's testimony was given to adopting the findings of the recent IACP report.

Senator Thomas was pleased that the Park Police and Park Rangers were united on the steps that need to be taken to improve law enforcement

Mr. Granberg will follow up by contacting committee staff to both answer their questions and to work with them to see that changes are implemented. The DC office of the FOP is a five minute walk from the Senate.

Congratulations and thanks to our three officers who took the time and trouble to get to DC – Greg from California, Pete from New Jersey, and Duane from Pennsylvania – and to represent us before the United States Senate. We also thank Senator Thomas for responding positively to our request to testify.

Additionally, a special thanks to Lodge members, especially in Florida and Hawaii – home states of two important Senators on the Committee – who called their Senators to voice concerns about NPS management of the law enforcement program. A number of members did so. It was the attention drawn by these calls that ensured a Senate invitation to testify.

As a result of member's calls, several aides to Senators have requested copies of the IACP report. All have also received copies of both Greg's and Pete Ward's testimony.

Testimony of Lodge Vice President Greg Jackson Before the Senate Subcommittee on National Parks

March 29, 2001

Mr. Chairman, members of the Subcommittee, I'd like to thank you for the opportunity to testify in front of you today. I am Greg Jackson, currently a District Ranger at Santa Monica Mountains National Recreation Area, with prior service at Lake Mead, Yosemite, Olympic and Bryce Canyon National Parks.

I am coming to you today not as a representative of the National Park Service, but as a member of the National Park Rangers Lodge of the Fraternal Order of Police, to testify

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regarding Title VIII of the National Parks Omnibus Management Act of 1998.

Specifically, I wish to offer the support of our Lodge and endorse the Park Service's report to Congress in response to this section – a document that the Park Service refers to as the Law Enforcement Program Study, or the Thomas Report.

Over 650 National Park Service law enforcement rangers are members of our Lodge, making us the largest such organization in the country. We were founded 13 years ago in Yosemite National Park, when rangers were becoming increasingly concerned about issues affecting their safety.

At that time, eight rangers patrolled Yosemite Valley on a typical night shift, and we were concerned that the number had dropped from twenty, to twelve, to ten the year before.

Last night, there was one ranger working in Yosemite Valley. This same staffing crisis exists in all too many parks.

While Park Service budgets have increased, the commitment to frontline visitor and resource protection has not.

Much the same as the Capitol Police are responsible for protecting these hallowed halls of Congress, the law enforcement Rangers of the National Park Service are responsible for protecting millions of visitors from around the world, in nearly 400 parks across our nation.

For those millions of people visiting these parks, the National Park Service Rangers have made them among the safest places in the country.

But it's not so safe for the rangers.

As reported in *USA Today*, National Park Service Rangers are more likely to be assaulted than officers of any other federal law enforcement agency; often ten times more likely. This includes the DEA, ATF, Boarder Patrol, FBI, and the U.S. Marshals Service.

We are too often forced to respond to the urgent, while sacrificing the time-intensive activities such as anti-poaching patrols...

In the history of the park service, park rangers have been involved in more than a hundred separate incidents involving gunfire with suspects. Thirty rangers have died performing law enforcement duties. In addition to seven rangers who have been shot and killed by suspects, at least eight other rangers have been shot and survived.

The murders of law enforcement rangers in Hawaii, Florida and North Carolina in the last 10 years are tragic symbols of the problems facing law enforcement in the National Park Service.

In 1990, when Ranger Robert McGhee was murdered in Florida, he was the only ranger on patrol. He had no backup. His body was found by park visitors. Every law enforcement agency in the country knows that you never send people to work without backup. But there he was.

Nine years later, staffing levels had been cut even more, when Ranger Steve Makuakane-Jarrell contacted a man with a dog off leash who would turn out to be his murderer. He too, was the only ranger working. No backup, no communications. His body, too, was found hours later by park visitors.

As rangers, we tell park visitors that for safety, its best not to hike alone. Yet each summer day, dozens of NPS rangers hike alone, patrolling our nation's wilderness in remote areas with inadequate communications. The cost? In 1996, Ranger Randy Morgenson, patrolling alone in an area of poor radio communications, in a remote and rugged area of Kings Canyon National Park disappeared. He is still missing, and presumed dead.

In spite of these deaths, and of everything we know about safety, I can tell you that today, tonight, there will be rangers working alone, without backup, in our national parks.

The cutbacks in the number of rangers also affect our ability to do our best job of protecting park resources. We are too often forced respond to the urgent – the emergency law enforcement, search and rescue, and firefighting needs of the moment as a matter of priority – while sacrificing the time-intensive activities such as anti-poaching patrol, monitoring archaeological sites to prevent vandalism, and educating the public, that make up our core mission of resource protection.

For example, from 1991 to 1997 poachers removed over 15,000 cactuses from federal land including Mojave National Preserve. In the same time period, others stole hundreds of sponges from Biscayne National park, looted Native American graves in Channel Islands, desecrated graves in National Battlefields, and killed hundreds of black bear just for their gall bladders in parks across America.

Staking out and monitoring remote resources take time. And because rangers must deal with issues of public safety first, there is often little time for stakeouts and surveillance. This has led to a slow but steady depredation of our nation's treasures, and a growing number of rangers who are paying the ultimate price in the defense of these

treasures.

Our Lodge fully endorses the recommendations of the NPS in the Thomas Report. We are not the only organization to endorse these recommendations.

A recent study by the International Association of Chiefs of Police (IACP) endorsed these recommendations as the bare minimum to achieve a safe and effective level of staffing in our parks. We agree. The recommendations the park service has made to you are a minimum. They don't fully provide for an effective level for backup to assure the safety of the workforce, but they are better than what we have now.

Backup at night often comes in the form of rangers being awakened at home to respond to a call. But as the IACP noted, park housing is not properly assigned or made available to assure a timely response to assure the safety of rangers and the public. More rangers are a start, but other changes are needed to achieve the critical goal of safety.

Our Lodge is also concerned that even if these staffing levels are increased, the park service will repeat the costly mistakes of the past. If Congress provides for 615 new ranger positions, they should also assure that the park service doesn't take 615 other positions out of law enforcement through attrition.

The IACP identified a lack of support for law enforcement within the park service in its first report on the agency in 1970. Thirty years later, the IACP identified many of the same problems.

Today over 30 management positions are assigned to permanently oversee wildland fire in the park service. There are only two positions in Washington assigned to manage the law enforcement program in parks across the country. This is a formula for disaster, and for a program out of control.

The IACP has called on the park service to "hard wire" law enforcement into its upper management, so it is not abandoned. Our Lodge recommends several ways to do this.

On virtually every issue, the IACP agrees with field rangers as to how these problems should be fixed.

First, we recommend that the National Park Service law enforcement program be accredited through CALEA, the Commission on Accreditation for Law Enforcement Agencies. They are the national benchmark, which law enforcement agencies use to show the public that they meet accepted practices in law enforcement. Agencies from the U.S. Marshals Service to even the National Institute of Standards and Technology have used CALEA as a standard for maintaining a quality law enforcement program. We believe that frequent external review is essential to create and maintain a quality law enforcement program.

Second, we agree with the IACP's recommendation for the creation of an associate director to oversee law enforcement in the NPS. We agree with this approach, or with recommendations by our colleagues in the U.S. Park Police to create a permanent committee on law enforcement standards to assure that the law enforcement function is being performed safely and effectively. The IACP states that decentralization has severely damaged the law enforcement function in the park service.

We agree.

They further state that, "NPS law enforcement can justly be described as a profusion of conditions and practices in search of a system."

There needs to be more than two people in Washington managing a law enforcement program that reaches across the country. They need to have a voice at the very top of the service, to make sure that ranger safety, and the safety of the public and of park resources is heard. And they need authority to see that their policies are being carried out.

Third, we recommend the creation of an internal affairs department within the Ranger services to ensure integrity of the law enforcement program, and to prevent situations like that of Ranger Freddie Aledo, at San Juan National Historic site. Aledo called for backup while being sniped at by a suspect with an AK-47. Aledo's supervisor, and closest backup, failed to come to his aid because the supervisor was in a meeting. No action was taken against this supervisor. This is unacceptable for any agency, and combined with other such incidents, demonstrates a clear need for an internal affairs program that reports to the Director.

Fourth, we recommend that this subcommittee oversee implementation of the IACP's recommendations to improve the NPS law enforcement program. It would be a tragedy if the park service were given additional personnel and funding for law enforcement, that would be wasted by the same poor management practices that the IACP identified.

The IACP identifies major discrepancies between the observations of NPS management and the observations of field rangers concerning the quality of the law enforcement program. On virtually every issue, the IACP agrees with field rangers as to how these problems

should be fixed.

We urge you to continue to seek the opinions of field rangers as the Subcommittee moves forward to improve the law enforcement program in the National Park Service.

Our Lodge has prepared a joint statement with our brethren in the U.S. Park Police that offers solutions to many of our common problems. I urge the subcommittee to take this statement in hand with the IACP report and the Thomas report as a blueprint for improving the National Park Service Law Enforcement Program.

This concludes my prepared testimony. I would be more than happy to answer any questions that you or the members have. I sincerely thank you for this opportunity to testify before you.

Federal Labor Relations Authority Hearing at Lake Mead

by Joseph T. Hayes, Lake Mead NRA

On February 15 and 16, 2001 the Federal Labor Relations Authority (FLRA) held a hearing at Lake Mead National Recreation Area, Boulder City, Nevada, to determine the applicability of a collective bargaining unit for law enforcement rangers. The LE rangers had previously filed a petition to form a unit under the FOP First Federal Lodge, but National Park Service managers at Lake Mead indicated their opposition by filing an intervention, thus necessitating the hearing.

The park superintendent, chief ranger, personnel officer and a newly promoted supervisory ranger all testified that LE rangers were no different than any other Lake Mead employees, that all employees were "functionally integrated", that all employees worked frequently on common projects, that LE rangers routinely picked up trash, put up signs, and performed other maintenance and resource management duties.

LE Park Rangers Joseph T. Hayes and Dan Fangen-Gritis testified that LE rangers spent most of their time doing law enforcement, fire, medical, and other emergency responses, that they had separate LE pay and retirement programs, that they had stringent training and medical standards, were subject to background investigations, and were held to higher ethical standards. First Federal attorney Stephen G. DeNigris represented the LE rangers and argued that the LE rangers had a clear and unique community of interests that appropriately qualified them to form a bargaining unit. DeNigris was assisted by LE ranger/law student Randy Neal in the preparation and presentation of the case.

Chuck Luttrell, a former Lake Mead LE ranger and now President of the AFGE maintenance workers local, testified that he and his members felt that the LE rangers needed a collective bargaining unit of their own, since the LE rangers had unique issues and problems.

DeNigris will now file a brief and we will await a decision from the FLRA on whether the Lake Mead LE rangers can proceed with an election. Many thanks to Steve DeNigris and the Lake Mead team for all the hard work and for the very professional and polished presentations. Needless to say, a successful outcome at Lake Mead will make it much easier for LE rangers in other parks to form a collective bargaining unit if they choose to do so.

Finally, we'd like to give special thanks to the First Federal Lodge for their invaluable support and assistance.

Federal Appeals Court Ruling Favors LE Disability Retirement

Two law enforcement officers who were forced by disability to retire before age fifty applied to OPM for enhanced disability benefits, as allowed by 5 U.S.C. 8339(d)(1). Because both were covered by – and had been paying the higher rates for – enhanced retirement under 6(c), they argued they should receive the enhanced disability retirement. OPM denied their application twice – both initially and on the LEO's appeal. That decision was again affirmed by the Merit Systems Protection Board.

On appeal to the U.S. Court of Appeals, Judges Mayer, Plager and Rader, ruled: "...OPM's informal interpretation of the statute is unpersuasive, we decline to adopt it" and "interpretations of a statute by an agency charged with enforcing it are 'entitled to respect,' but only to the extent that those interpretations have the "power to persuade."

The Appeals Court Judges were clearly unpersuaded by OPM's arguments and reversed the earlier rulings. OPM was ordered to compute the retirement rates of the disabled LEO's based on their enhanced disability rate:

> *All federal employees, including LEOs, who retire under the disability retirement provisions of 5 U.S.C. 8337(a), therefore, are entitled to the higher of the "guaranteed minimum" annuity calculation under 5 U.S.C. 8339(g), or the annuity calculation under the appropriate*

section ofTitle 5 for which they would have been entitled had they reached normal retirement age. Thus, LEOs retiring on disability are entitled to an annuity calculation under 5 U.S.C. 8337 (d) (1) if such calculation results in a higher annuity than the calculation under section 8339(g). The board erred in concluding that the petitioners must be at least fifty years old at the time of their separation to receive enhanced disability benefits.

This obviously has great implications for rangers forced out by the ongoing medical screenings. The case is United States Court of Appeals, Federal Circuit, *Pitsker and Rogers v. Office of Personnel Management.* No. 99-3462, December 15, 2000.

Back Pay Due?

The Lodge is looking into the interest due on the back pay commissioned rangers are to receive under the Pay Comparability Act of 1990. This back pay is due when a ranger receives coverage for law enforcement work done between January 1992 and July 1994.

Question

Has anyone received interest on this money? We have heard from many members, and not one thinks he/she has received interest. As soon as we can determine that no one has received this interest, we can move to try and force the agency and department to pay our members. Please let us know: *randallfop@ls.net* or 800-407-8295 or go to the Lodge web site and fill out the questionnaire.

Thank You!

Letters

Editor:

I wish I had written this sooner. I'm still thinking about the letter from Superintendent Barbara Goodman from the September mailing of *The Protection Ranger*. Much of what she said was right on the money. Even if members didn't agree with her message, it could have been received with courtesy. Instead, she got a 2½ column rant. She took the time to offer what she hoped would be helpful comments, and she was treated with complete and utter rudeness.

The current attitude of the Ranger FOP Lodge is doing more harm than good. Everything is not a war.

I don't get it. What has happened to the FOP? And what possible good did it do to publish the "response from a Lodge Member of long standing"? I know I'm not a ranger anymore, but I can still think green and gray. That "response" did much more harm than good. I know if I were a member of NPS management, I would have lost any respect I had for the FOP after reading that.

I used to be proud of being a member of this particular FOP Lodge. More and more, I simply find it useful. I'll probably get flamed for writing this, but it needs to be said. The current attitude of the Ranger FOP Lodge is doing more harm than good. Everything is not a war. All management is not the enemy. Even if they were, they are still the people you have to work with to accomplish the improvements the FOP wants. But what manager would want to work toward improvements with somebody who thinks like the "member of long standing"? I know I sure wouldn't. Please try to get this organization back on track. Much is at stake here and it would be a real shame to blow it now.

Jan Graham
US Forest Service

Editor's Reply:

Jan brings up an important point and one I've mulled over for years. The Lodge does not like to rant and rave. Really. As she points out, it is often not only counterproductive but, worse, our membership is too often offended by what appears to be our confrontational approach on some issues.

The problem – and frustration – for the Lodge, is that by the time a concern reaches print, it's almost always gone through several layers of attempts to resolve the situation. Before the Lodge rants and raves about a problem, we've already written a polite letter or placed a phone call to whoever we think can help: WASO, personnel or the Director. We rarely get an answer. We even do a follow-up letter along the lines of "perhaps you missed our last letter?" Again, we usually receive no response. As you can imagine, this gets pretty frustrating. As a result, by the time a member or Lodge officer writes an article, we're pretty amped up by the lack any attempt to discuss a situation by Administrative level people.

The Ranger Lodge of the Fraternal Order of Police is made up of field rangers and a number of managers with field backgrounds. We possess a huge amount of expertise and have a genuine contribution to make to the professional standards of the National Park Service and rangering. Our goal from the beginning has been to

engage in a sincere dialogue to improve standards, training and equipment for rangers. We also realize, of course, that administrators often have dif-ferent opinions based on reasonable disagreements. This is OK as long as we're at least engaged in a discussion and that the concerns of field rangers are being considered. When we are effectively "blown off" on an issue though, we get testy.

A few, though, have forgotten their proud roots and gone over to the Dark Side.

We have unfortunately found that the only way to get the attention of administrators at that point is by Tom Wolfe's 'Mau-mauing the flak catchers' approach: create a ruckus until someone listens to you. This means that, absent a response or dialogue, we go to our members, Congress, attorneys, the press or whoever we need to in order to effect the change –or just the dialogue – we feel is necessary. I want to emphasize that it's much more than creating a mere ruckus: we supply hard data to support our positions.

Over the years, we have often had excellent relations with park managers and administrators at all levels of the Park Service. Many have come from field ranger positions and know well the needs and problems we have. More than a few have cheerfully used the Lodge to bring attention to an issue so they could then justify working to change a problem. We understand this and, where we share the same goals, are quite happy to be used.

A few, though, have forgotten their proud roots and gone over to the Dark Side. Part of our task is to remind such people that their brilliant ideas – or lack of them – can have devastating effects on rangers: that when radios don't work, rangers get killed; that when medical standards are poorly written and applied, rangers lose the careers they love and have invested years in.

As editor, I take responsibility for the tone of *The Protection Ranger*. I have often tweaked articles to make them a little more temperate. However, I have an equal responsibility to give voice to the authentic frustrations of members as they try to bring about change within a too often unresponsive system.

To Jan, Superintendent Goodman and others who disagree with our methods or tone, the best solution is to bring your own expertise into the discussion and keep it there. *All* of our successes over the years have been achieved by members interested enough in a problem to contribute their time and energy to effect a solution.

So please, keep those cards, letters, articles and phone calls coming. Get involved and help us try other approaches to problems. We really are a member-driven organization and need your participation.

Court Ruling Opens Door to LE Seasonals Working After Age 57

A recent court ruling (*Schwartz et al v. U.S. Department of the Interior* (00-01049)) found that the age 57 mandatory separation for permanent fire fighters does not apply to those who fight fire as a *collateral* (versus primary) duty. We hope this ruling will be made to apply to law enforcement as well. The case was brought by Joel Schwartz at Delaware Water Gap. He was joined by 3 other NPS employees from Harpers Ferry, C&O Canal and Shenandoah. All four plaintiffs were assigned firefighting as a collateral duty. The Park Service had told them that they would have to stop firefighting at age 55 as a result of Director's Order 57. They sued as a class, claiming that NPS 57 violated their rights because:

1) the Park Service violated the Age Discrimination in Employment Act (ADEA).

2) the park service does not have a bona fide occupational qualification (BFOQ) defense – that the EEOC, the only agency authorized to do so, did not establish one for firefighting positions in the NPS.

3) Congress has implicitly stated that age limitations for collateral duty firefighters are inappropriate – that in the enabling legislation they named only primary duties, not collateral.

A Federal District Judge found that there was reason to believe plaintiffs would prevail and issued a temporary injunction stopping the Park Service from taking away their firefighting duties as their case moved forward.

Apparently on the strength of Judge Emmet Sullivan's preliminary ruling, the NPS agreed to allow Schwartz and colleagues to continue working as firefighters without going to trial, agreeing that NPS action under RM-57 was illegal for firefighting work as a collateral duty.

Lodge members Carleen Gonder and Michael McHale are in the process of contacting Schwartz's attorney, Gary Simpson, to find out how this may apply to law enforcement seasonals and how the decision can be expanded to include seasonals whose primary duties are LE. As noted above, Simpson argued primarily that the action is in violation of the ADEA **and** that the enabling

legislation for firefighting ONLY applied to *primary* duties, not *collateral*. The Judge's opinion clearly supported the latter reasoning but did not deal with possible violation of the ADEA nor whether RM-57 violates the need for an approved BFOQ for fire.

The Lodge is hopeful that this is the first of many holes in RM-57 as it applies to seasonal separation from their LE and fire duties. The ruling creates a paradox of some rangers being able to continue as firefighters past age 57, because their duties are collateral, while permanent and seasonal rangers, whose duties are primary, will be forced out.

RM-57 also sets up specific medical and fitness standards for LE rangers. We believe these should be the standards for seasonals separating from the Service: if a seasonal ranger continues to meet NPS fitness and medical standards, it is absurd that their experience and skills should be lost to the Park Service. Seasonals are not covered by the provisions of the retirement system and receive no benefits. They have an even more critical need to continue working in their chosen profession as long as they meet physical fitness and medical standards. This is the case with over 90% of fire and police agencies in the country.

The Lodge and individual members have been writing several Congressman and Senators asking their help in dropping this provision of RM-57. Several Congressmen, especially Burns and Baucus of Montana, have expressed support and a willingness to follow up. As soon as a Director is appointed, the Lodge will work for this change there as well.
We hope all seasonals who are within a few years of age 57 will contact their Congressional representatives about this issue. Contact Carleen or Michael for sample letters and background information to present to your representatives.

Contact Seasonal Age 57 Coordinator Carleen Gonder at:

P.O. Box 2024
Richland, WA 99352
carleen_montana@yahoo.com

Your US Rangers Lodge Requests Donations

Thanks go to the Lodge members who generously gave in response to our appeal for donations in the last Special Issue of *The Protection Ranger*. We are still receiving donations. If you want to give, your gift will be gratefully received.

We have not raised dues in six years, yet we are faced with several critical issues that are stretching Lodge resources. Please help support Lodge efforts to get the IACP recommendations implemented and to fix RM57, the NPS system of medical standards.

We also are faced with what may be new standards for granting 6[c] retirement to our members in the USF&WS, USFS, and NPS. It looks like the standard could revert to the old discredited investigator standard rather then the police officer standard that was won in the Jim Ferrier case.

Please don't let the following headlines be the last good news the Lodge is able to generate because we lack the money to carry on:

- Lodge Testifies before Senate to Implement IACP Report.
- Lodge Gains Support of Representatives Nethercutt and Regula in Fight Against Inconsistent Medical Standards.
- Lodge Efforts Result in NPS Rangers Attaining 6[c] Enhanced Retirement.
- Ranger Lodge Assists Members in Getting out of Required Occupancy of Government Quarters.
- Lodge Efforts Result in First Ever NPS Purchased Soft Body Armor for Rangers.
- Lodge Donates Time to Make Sig Sauer Purchase Program Work for Members.

UNITED STATES PARK RANGERS
FOP LODGE VA 60

Lodge Website

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

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 other cause than retirement while in good standing, I do hereby agree to return to the lodge my membership card and other material bearing the FOP emblem.

Name:_____

Signature:_____

Address:_____

City:_____

State:_____ Zip:_____

DOB:_____

☐ Permanent Rangers: $52/Year
☐ Seasonals and Retired Active Members: $35/Year
☐ Associate (non-Commissioned) Membership (Newsletter only): $35/Year

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

Agency & Work Unit:_____

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

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