

The Protection Ranger

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The Newsletter of the National Park Rangers Lodge, Fraternal Order of Police



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President's Message George Durkee

Greetings and a happy 2017 to all! We've not put out a newsletter for awhile so this short update is being sent out with your enclosed decal and membership card.

I'll start by thanking everyone for their continued support and double thanks for those of you who send a little extra with your dues renewals. Everyone's dues have gone a long way towards helping some of your fellow rangers. From my perspective of 30 years of the Lodge helping members 2016 has shown an alarming increase in adverse personnel actions – some amazingly petty.

The national press seems to have caught on to this trend. In what should have been a celebratory Centennial year, a number of magazine articles trashing NPS management practices were published.

As the Christian Science Monitor put it in the sub-header to their article "National Park Service wrestles with harassment, low morale":

"Allegations of sexual harassment that surfaced at several national parks in 2016 are, to some insiders, a sign of a work culture long impaired by hierarchy and fiefdoms." (<https://goo.gl/zKfmie>).

Two other recent articles were:

- High Country News "How the National Park Service is failing women" (<https://goo.gl/mc3U2V>) and
- Men's Journal "Parks and Degradation: Mismanagement and scandal at the National Park Service" (<https://goo.gl/vLGxJ9>).

All these articles are spot on. As I recently told a magazine writer interviewing me, sexual harassment is at long last receiving deserved attention and, in a very few cases, actual justice. Importantly, it's mainly because women are a protected class and in almost every case the women were eventually able to take their case *outside* the NPS appeal system, either to the Office of the Inspector General or to the Federal Labor Relations Board and so were able to prevail.

But it's employees everywhere – not just women – who are often victimized by what are too frequently personal vendettas by managers. They have few options for appeal. Most of the cases we see shouldn't even reach a disciplinary action and could easily have been solved by decisive action and the sub-district or district level.

Make no mistake, we all occasionally mess something up. A good supervisor (and I've been incredibly lucky to have mostly excellent supervisors over my 45 years in NPS) understand this. One former superintendent I worked for said "If you don't get one or two complaint letters in a year, you're not doing your job." I'm amazed, though, at how quickly many cases are escalated to an adverse action without an attempt at a low-key solution or simple counseling.

And the deck is too often stacked against the employee. Depending on the penalty imposed by managers, an appeal can be confined entirely to the region the park is in. If, for instance, a suspension of under two weeks is imposed, the same personnel managers who signed off on the original discipline are the ones who might receive and decide on the appeal.

This system was purposely put in place for NPS specifically to keep cases from going to FLRB where an independent administrative judge might well reverse many of the penny-ante cases brought before it. An employee's only hope otherwise is that their park is under a union contract which would have its own appeal process.

What's even more depressing is that where, 15 or so years ago, this combination of magazine articles and Congressional hearings would have brought about reform, the apparent reaction of today's managers – starting with Jarvis – is to just carry on as before. A Superintendent or two is allowed to quietly retire but that seems to be the extent of any reform effort.

In the *Men's Journal* article, a ranger is quoted as saying:

"It's like a fishbowl where the superintendent is king," says retired Yosemite ranger Andrea Lankford, author of Ranger Confidential. "The superintendent controls your housing, your job, your retirement, maybe your spouse's housing and job. Your kids might be in a school in the park, so the superintendent has a lot of power over you."

There are definitely some outstanding superintendents out there but the system allows both bad superintendents and other managers (to say nothing of regional managers) to continue without consequences for blatantly incompetent and often unethical practices.

I wish I could offer some brilliant solution here. The Lodge Board has often discussed this. Taking the long view, we've been successful in the past but it's a depressingly long and slow slog to reform.

In the meantime, we're reprinting (below) attorney (and former ranger) Randy Neal's advice on how to prepare for an adverse personnel action.

I'll repeat what the Lodge has advised about a zillion times or so: *get legal defense insurance!* As we wrote on our summary on the Lodge web page (rangerfop.com/insurance) there's a difference between Legal Defense Insurance (LDI) and Liability Insurance (LI). LDI will pay for your lawyer when you have to go before an administrative tribunal, civil court and/or criminal court. Look for a policy that's not capped at a certain amount: That is, after the ceiling is reached, you're on your own.

The best policies allow you to speak with a lawyer before you are charged with anything but you strongly feel that you will be charged. A good policy will pay for a lawyer to advise you when your supervisor calls you in for a counseling session that can lead to discipline against you.

Liability insurance pays damages that are assessed against you. For instance, if you hit someone or something in your patrol car and then you are sued in civil court and have to pay for your actions. If the agency won't pay it, your LI will. Often the sums are quite high and you'll never financially recover. Fortunately, these cases are rare but LI is usually inexpensive.

You can be liable for damages for slander or libel too, and these policies cover that. A good LI policy will provide a lawyer to try and stop you from getting assessed damages in the first place. Also remember the NPS is required to pay half your annual premium (but not for legal defense insurance).

You need LDI and LI as much as you need your body armor and other defensive equipment. Look at it as another item in your daily tool kit that will allow you to come home safe and sound. The Lodge urges you to purchase these coverages.

The Lodge

Many of you were aware that George Michael recently died. My reaction was "who?" I mean no disrespect to Michael or his fans, just pointing out that as we age we get out of touch with things. (OK. A strange opening paragraph, but stay with me...).

2015 was my last year as a law enforcement ranger. That means that now none of our Lodge Board are active LE anymore. Although we keep up though friends and colleagues still active it's inevitable that, more and more, we'll be increasingly out of touch with the everyday needs and issues of concern to current rangers.

Which is all to say this is yet another plaintive call for greater involvement from current LE rangers. We appreciate hearing from people with ideas and suggestions but, although we've got darned impressive collective experience, it's just harder for us to effectively help members.

The Lodge Board is back to the same Usual Suspects running things – Randall Kendrick, Greg Jackson, Business Manager Paige Meier (who correctly points out she's the one actually doing everything...) and myself. Not coincidentally, we were all founding members of the Lodge in 1986. While we're still dedicated to furthering the professional standards of LE rangers and advocating for accountability from managers, folks, we're all in our 60s+! We'd also like to put out more newsletter or ePro's but no one is sending us articles.

As we become more distant from day to day ranger operations, we're also developing other interests (kitten videos in my case – very soothing!). It's just difficult to devote the time necessary not only for individual ranger's problems but, especially, the larger issues that require NPS contacts and constant follow up.

Which is all to say the Lodge is desperately in need of a new generation of rangers to take over and continue to advocate for matters that you and your LE colleagues are most interested in. Write me: rangerfop@sonic.net.

Good Reading!

But it's not all gloom and me ranting. I'll end on a happier note with a book recommendation that helps remind us of our primary job of preserving and protecting our parks and monuments. Jordan Fisher Smith just published *Engineering Eden: The True Story of a Violent Death, a Trial, and the Fight Over Controlling Nature*. It's a truly outstanding look at the evolution of how and why we manage the wild places under our care and how we've come to define nature and natural.

Jordan uses a fatal grizzly attack at Yellowstone as well as the history of prescribed fire to frame his story. Those of you who have been around awhile will recognize many of the names, situations and decision points along the way.

This is a terrific book which also brings out some of what I've been writing about: the need for all of us – and especially managers – to constantly examine and reevaluate what we do and how we do it. This requires honest introspection; seeking out and listening to new ideas; and encouraging innovation or new approaches to problems; and, finally, being tolerant of mistakes and learning from them. It's really not that hard.

Preparing for an Adverse Personnel Action

Randy Neal

Randy Neal was a law enforcement ranger with the National Park Service for seventeen years. He attended law school at the University of Nevada Las Vegas while a Boulder Beach ranger at Lake Mead NRA. Since graduation, he has worked for the U.S. Department of Justice, U.S. Department of Homeland Security and as a state and federal prosecuting attorney. Now a private attorney, his practice includes representing National Park rangers, law enforcement officers and other state and federal employees in various employment law issues.

The Lodge has been using Randy as a referral for members in need. He's written us an article outlining what you need to know and prepare for in the event of an adverse action. His web site is: randyneallaw.com.

If you know the nature of the incident, the first thing to do is consider your liability in each of three areas: criminal, civil and administrative. In other words, are you being accused of breaking a law, is someone threatening to sue you, or are you solely being accused of a violation of policy? Of course, in modern law enforcement these areas often overlap.

Legal advice

Although it may sound self-serving, the answer to whether you should contact a lawyer before a meeting or interview is almost always "yes" – especially if you face potential criminal or civil liability. I have had clients call me not only after they have been through the entire process, *but after the deadlines for any avenues of relief have expired.* By then damage control is no longer an option.

The best time to get advice is before you have done anything that can affect your case. Yes, it may cost money, but normally only around \$100 for a consultation. How much does a suspension cost? Some rangers have pre-paid legal services, but be aware that this is different from civil liability insurance.

Preparation

Administrative interviews in the law enforcement setting are notoriously different than other employment settings. While there is pressure on employees to cooperate to avoid making things worse, supervisors and Internal Affairs investigators often use their law enforcement experience to handle interviews like interrogations.

And law enforcement officers "on the hot seat" tend to overreact because they see dumb criminals waive their rights and make admissions which

were clearly against their interest, while they perceive many others avoid consequences by exploiting technicalities.

If you're wondering which approach is more effective, remember it's a red flag if they've chosen to conduct a closed-door interview. While sometimes it's simply a way to protect an employee's privacy, it's more likely someone is looking to cause someone, maybe you, serious trouble regardless of how petty the issue may seem. Otherwise, they probably would have handled the situation much more informally.

The greatest challenge to preparing for these interviews is that most NPS management and investigators refuse to disclose anything prior to the interview. This is a classic law enforcement interrogation technique; holding back information so a suspect can be confronted on inconsistencies, while pressuring him to volunteer information because he doesn't know what evidence the agency may already have against him.

Don't let interviewers back you into a corner. If you don't know for sure, or can't remember, the correct answer is "I don't know," or "I don't remember." Don't guess. Always ask to review their materials first before you answer. If this request is refused, this is another red flag that the "interview" will be antagonistic.

Representation

Even if you are not a member of a union, you may have the right to a representative of your choosing. Even if you don't have a legal right to representation, many supervisors still may allow you to bring along a representative. Whether or not they have any official role, their participation rights vary widely with almost every individual situation. But in theory they are there as advisors and observers.

The value of having a representative may only be as good as the representative you choose.

Unfortunately, I have seen incidents where representatives were actually playing both sides of the fence, or stirred up more trouble than they prevented. The decision concerning representation is individual to the circumstances, and involves socio-professional and personality issues just as much as legal considerations. Sometimes management denies representation because they claim that it will delay the process. When management invokes this excuse, such "urgency" should serve as another red flag that you're in for a rough ride.

Constitutional Warnings

It has become quite trendy to begin interviews with the "Reverse Garrity Warning." Some lawyer apparently sold management on the idea that they should warn each employee of his "Garrity rights." This adds more confusion than it clears up as far as I am concerned. You do not have Garrity "rights." Any right you have against self-incrimination is guaranteed by the Fifth Amendment, not Garrity.

The Garrity case actually chipped away from your rights. It arose from the conflict between an employee exercising his right against self-incrimination and the responsibility of certain employers to ensure that an employee who has committed a crime is not left in a position of trust. The key to remember is that Garrity only applies in the situation where there is that conflict. If you voluntarily agree to be interviewed, then you are not asserting your rights against self-incrimination.

Rather than simply sign the Reverse Garrity Warning as presented, I routinely suggest adding a statement to the effect that "I am not waiving any of my constitutional rights and I do not consent to an interview on any matter which may implicate criminal liability. But I understand that I can

face disciplinary action and even termination for failing to cooperate, and that I am now being compelled by my employer to answer questions if I wish to avoid such professional consequences.”

Under the Garrity holding, anything you say in an administrative interview can be used against you administratively but the Fifth Amendment prohibits certain statements you give during a compulsory administrative interview from being used as evidence in a subsequent criminal prosecution against you.

While some investigators are cautious not to rely on information obtained in a compulsory administrative interview for fear of evidence being suppressed with a “fruit of the poisonous tree” doctrine argument, the Government may not always resist using such information in building a criminal case against you. In some rare cases where you face serious criminal liability, it may be in your best interest to be terminated rather than help the government build a criminal case against you.

If, on the other hand, someone ever begins your interview with the “Miranda rights,” you should immediately **without exception** assert your right to remain silent and request a lawyer. Never try to simply “talk your way out” of a situation like that alone.

Conclusion

As stated above, you must determine whether the closed door meeting you’ve been invited to as “guest of honor” involves criminal, civil or administrative liability. Always consult an attorney if the issue involves either civil or criminal liability.

The way you approach potential disciplinary actions is determined by a number of factors beyond purely legal considerations. Consulting with an

attorney early on is never a bad idea, while delaying a consultation with an attorney may limit his or her effectiveness in minimizing disciplinary consequences.

Legal Defense Insurance

And this is the perfect time to again remind members that you need legal defense insurance. **2016 was an especially bad year for adverse personnel actions against members.** In many ways, the system is rigged against the employee. There is nothing more depressing for us than to be called by a member who’s in the midst of a serious adverse action who doesn’t have insurance. We can give advice and, sometimes, an hour’s consult with an attorney but, as Randy Neal writes, what you really need is an attorney to advise you and guide the whole case.

Getting into trouble with a supervisor, other managers or the public is, sadly, independent of how good a ranger you are. Sometimes, it just happens. Our experience is bad things happen to good rangers! If your park doesn’t have a union where you can get representation (and, really, even if it does) you absolutely need insurance.

There are a number of insurers out there and we don’t recommend anyone specific, though lately we’ve found the folks at PLEA to be easy to work with and Lodge members get a discount there. Research the various firms and choose the one that best meets your budget and needs. Check our summary of insurers at: rangerfop.com/insurance.

Politics

Some of you may have noticed we just had an election and the Grand Lodge endorsed Trump. We had more than a few angry letters and several members quit. I don’t want to start a food fight here, but the member lodges are not consulted on national endorsements

nor would we have supported their action. In fact, both Randall and I think the Grand Lodge should just get out of the endorsement business altogether.

And, this just in from the House of Representatives:

National Capital Region Members Oppose Reinstatement Of “Holman Rule”

Proposal included in House Rules package would remove protections for federal workers.

Washington, January 3, 2017

Members of Congress Don Beyer, Steny Hoyer, Gerry Connolly, Eleanor Holmes Norton, and John Delaney released the following joint statement in opposition to the ‘Holman Rule’ included in the proposed Rules package:

“Today, the House of Representatives will consider a rules package that aims to further undermine civil service employee protections by stripping away necessary safeguards. Reinstating the so-called “Holman Rule” would allow any Member of Congress to simply offer an amendment that could reduce the salary of any federal employee, or eliminate a federal employee’s position without hearings, testimony, or due process.

Federal employees work in every congressional district to provide vital services that help keep our nation healthy, safe, and strong, but with this rule House Republicans would instead treat these civil servants like political pawns and scapegoats. We urge the GOP leadership to withdraw this harmful provision, and show support for the federal workforce.”

The Holman Rule allows Congress to vote on individual federal employee’s compensation or job security, and the overall composition of the federal workforce and individual agencies, as part of an appropriations amendment.