



PLEA

MESSAGE FROM THE PRESIDENT.....

Well, since we last visited, we have had some changes with the Board, so let's get to it. Our long time Treasurer, Bill Runnoe, has submitted his resignation. His resignation from our Board coincides with his retirement from Oklahoma State Parks. He and his wife packed up and moved to a cabin in Idaho, where he says he'll get down to some important business, like hunting and fishing. Not bad, huh?

Bill needs to be recognized for his dedication and efforts toward the betterment of our association. The Treasurer's position is one of the most important positions on the Board. It is one of great trust, and Bill did an excellent job. He went further than merely performing the duties of Treasurer. He was very vocal on issues that came before the Board, and based his decisions and opinions on the welfare of our association and its members.

Besides his good business sense and capable leadership qualities, many of us will remember Bill for his sense of humor and easy-going demeanor. He'll be missed by all of the Board members, but we congratulate him on his retirement, and hope that he finds his new lifestyle very fulfilling.

Bill Runnoe's was not the only resignation letter I received during this quarter. Bob Herring, a long time Board member, who works for Maricopa County Parks in Phoenix, Arizona, has had some health problems, and felt it was in the best interest of both parties to relieve himself of his Board responsibilities. We hope Bob's health continues to improve, and thank him for his outstanding efforts. I hope both Bob and Bill will continue to participate in the association, and if able, to attend future workshops. Thanks, guys, and good luck to both of you.

October is quickly approaching, and I hope you are making plans to attend the NRPA conference, which will be held in San Antonio, Texas, October 3-7, 1995. We will be sponsoring several educational sessions during the conference.

The 1996 workshop will be held in February 21-24, 1996 in Austin, Texas, at the Howard Johnson Plaza Hotel. Write the dates down and make plans now, because our hosts and friends from the Texas Parks & Wildlife Department are working very hard to plan a very informative and fun workshop.

Until next time, take care, and don't forget - try to get one person in your organization to become a member of our association.



NATIONAL RECREATION
AND PARK ASSOCIATION



THE PLEA BOARD OF DIRECTORS AT WORK : 1995 PLEA Annual Conference, Cincinnati, OH. Left to right.: Norm Lapera, Tim Curtin, Bill Runnoe, and Richard Greer.

JOURNAL OF THE PARK LAW ENFORCEMENT ASSOCIATION

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CALL FOR PUBLICATIONS

The Park Law Enforcement Association (P.L.E.A.), an affiliate of the National Recreation and Park Association (N.R.P.A.), invites you to submit articles for consideration to *PLEA: the Journal of the Park Law Enforcement Association*. P.L.E.A. was established in 1984 to improve park law enforcement, natural and visitor resource protection services in park, recreation and natural resource areas through professional development, thus ensuring "quality of life" leisure opportunities in local, state, and national park, recreation and natural resource settings. P.L.E.A. serves individuals and organizations interested in the advancement and support of park and natural resource law enforcement services. Membership includes park rangers, forest rangers, park police, park patrols, park security, game wardens, conservation officers, park and recreation board members, administrators, educators and other interested park, recreation and natural resource professionals.

PLEA is published quarterly and attempts to provide timely information to the membership concerning the association and articles specifically aimed at the park and natural resource law enforcement audience, with the goal of providing educational information for our membership, facilitating an exchange of ideas, and to generally promote professionalism within the field. Articles should be from three to ten double-spaced, wide-margined pages and should include a short biographical sketch, listing the author's agency affiliation. Photographs, charts and tables are highly desired. Upon publication, the author will receive a copy of the issue his article is printed in for his/her records. Please submit articles to the Editor for review and consideration. Thank you for your interest in *PLEA*. We look forward to receiving your articles.

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PARK PATROL VEHICLE ROUNDUP

By Timothy E. Regan

It's Two O'clock in the afternoon on rainy, cloudy Sunday. The park is very quiet and from all of the areas you've already patrolled, it's just some sightseer's and dogwalkers passing the day away. Quiet days are nice, you think to yourself when out of the radio comes the dispatch: Unit 5, respond overlook drive for a motor vehicle accident with unknown injuries. At first you think "Oh no that's four miles from here, wet, windy roads, fog". However, then you realize your not driving that old 1979 junker, with a siren that only worked when you hit bumps, no mobile radio, lights that couldn't alert anyone you were coming, and enough rust to start your own bodyshop. It's your first day on patrol with that new full size sport utility: Ahhhh. It has an airbag, antilock brakes and enough warning devices to alert groundhogs that you are on the way and a mobile radio you call Aussie outback rangers with.

Hopefully more park agencies are realizing that their aging fleet should be updated, and buying vehicles with so called "Police Options", is a wise choice. Law Enforcement park officers have a unique terrain to travel, and also special equipment that sets him apart from the common police officer.

One of the big questions for park agencies, is what makes the best patrol vehicle? Of course that question depends on your locale, responsibilities, and unfortunately the local budget. But, here are some of the latest in Park Patrol vehicles and the equipment that go's with them.

SEDANS & WAGONS: For years the mainstay of many departments has been either the Chevy Caprice or the Ford LTD Crown Victoria. Constant upgrades by manufacturers have made these cars some of the safest and quickest vehicles around. Airbags coupled with antilock breaks give

every officer an edge on beating injuries. Unfortunately, these cars, are just that, cars! The smallest muddy rut or snow can disable you for hours. Trails will have to be handled on foot or ATV. Unless you have a

4WD SPORT UTILITY: Four wheel drive has come a long way since the days of the Jeep CJ or IHC Scout. Today's SUV's are designed to be comfortable as well as rugged. Some of the more common vehicles being used are the venerable Ford Bronco, which with its large V8 engine, ample seating for five and plenty of storage, make this an awesome vehicle to take trailering. The arch rival of the Bronco has been the for years the Chevrolet Blazer/GMC Yukon. It also has a powerful V8 motor, seating for five rangers, if you need it, and ample storage space. Of course with big comes cumbersome, narrow trails and small paths can either redesign your quarter panels or drop you into a very embarrassing scenario. So the next best thing is a downsized 4WD vehicle Chevy S-10 Blazer, Ford Explorer, or maybe even a Nissan Pathfinder, can fit the bill. Let's see; small enough for the narrowest trail, roomy for my long legs, safe. Wait what about my 200 pounds of forms, park brochures, first aid supplies, water rescue gear, etc. Some other vehicles to watch are the Ford Taurus Sedan and wagon, and of course the Jeep Cherokee, which has to be one of the most common park patrol vehicles across the country a powerful 4.0 liter engine, four doors (optional) and 4WD make this a contender for any park district's fleet.

Some safety options you may want installed are dual cowl spotlights, a winch/brushguard combination, and a underhood siren speaker. Thanks to advanced engineering it has been found that siren noise (some well over 120 decibels) is both more comfortable and more effective when placed under the hood. Listing today's lighting options could go on forever. Some of the best features to include are multiple rotating halogen lights, combined with strobes for the best day-night visibility. Take down lights, alley lights and finally some type of oscillating intersection light. Finally reflective striping is a must.

So when all is said and done (and in service) the vehicle you choose should will be a major investment. It should look professional and be distinguished easily from other public service agencies. As each agency differs because of region or state laws, park vehicles will change colors and designs. But, in the end, officer and visitor safety is always paramount.

Shop around and check out what other park agencies are using. Finding the right vehicle may take time but in the end a well thought out design puts you and the agency on the right track.



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SILENT WITNESS

Learning Guide Testifies to Loss of Native American Treasures

Hiking in a remote wilderness area, you discover a large Anasazi pot wedged between two rocks.

Your father is using a backhoe to dig a water line for your new family home. He discovers the remains of several American Indian bodies, but wants to finish using the backhoe, which is rented out for only a day.

On a scouting trip to a historic ghost town, you notice your scout leader picking up bits of pottery. When you tell him that taking artifacts is illegal, he retorts that little things like broken sherds really don't count.

These are just a few of the dilemmas students face in Silent Witness: Protecting American Indian Archaeological Heritage, a learning guide and video for teachers created by the National Park Service with the National Parks Foundation. The package, based on the time-honored idea of cultivating minds while they are young, has been sent to every middle and high school in Arizona, New Mexico, the southern half of Utah, southwestern Colorado, and El Paso.

Aside from putting students on the spot, the lessons encourage them to consider what they value about their own histories. Sites and artifacts are given a personal dimension as "messengers" of past peoples, who shared many of the same hopes, needs, and concerns that students have today. One of the guide's most important goals is helping young people become culturally literate, as evidenced by an exercise that asks them to interpret what Abraham Lincoln meant when he said, "A country with no regard for its past will have little worth remembering in the future."

The video drives home the point with a series of jarring juxtapositions. Native American dancers in silhouette fade to a slow pan of rock art, with viewers gradually aware that "K.C. Rules," "The Brethren," and "Bronco 88" have been spray-painted atop the ancient symbols. A rusted refrigerator stands at the base of petroglyphs outside Albuquerque, New Mexico. In an Arizona cave, gouges scar a wall where native peoples once expressed themselves in millenia long past.

As the video makes clear, these places-called "outdoor churches" by a ranger at Bandelier National Monument - are still revered by the descendants of native peoples. Narrator Robert Redford poses the question, "Why, then, do we treat them the way we do?"

A reformed looter offers one telling clue. The man, caught removing three Navajo pictographs, says "I thought it was like J-walking. It's illegal, but nobody cares." The director of the Hopi cultural preservation office tells of a

German buyer offering \$15,000 for a Sityaki polychrome vessel during an FBI sting.

The video - also useful for educating the general public - testifies to the need for laws like the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. Handcuffed looters -cardboard boxes crammed with sherds nearby - dramatically illustrate the lure of the marketplace. Fragments of stolen pottery commonly resurface as jewelry or as photographic props in advertisements.

A young Navajo says that the issue comes down to a conflict over what we value as a society. Thanks to projects like Silent Witness, perhaps Americans will come to realize the priceless heritage that is being lost, never to be replaced. For more information, contact Glen Kaye, National Park Service Southwest Region, Division of Interpretation, P.O. Box 728, Santa Fe, NM, 87504-0728, (505) 988-6838. Copies of Silent Witness are limited, and there are no plans to reproduce it.

Federal Law Enforcement Officers,

1993

Condensed to those Federal park and natural resource agencies considered within the context of this survey

by Brian A. Reaves, Ph.D.

The National Park Service employs more than 2,000 full-time personnel with arrest and firearms authority. The total included 660 full-time officers of the U.S. Park Police. Although most Park Police officers were employed in the Washington, D.C. Area, they are authorized to provide police services throughout the National Park System. The Park Service also reported that 1,500 park rangers (a third of all rangers) throughout the system were commissioned as law enforcement officers. Another 800 rangers who served on a seasonal basis were also commissioned officers. No information were available on the States where the National Park Service's commissioned rangers were employed; however, the Park Police reported that about two-thirds (64%) of its officers were employer in the District of Columbia (423). Most of the remainder were working in New York (64), Maryland (63), California (55), or Virginia (32).

The Tennessee Valley Authority (TVA) employed 740 officers with about half performing duties related to security and protection at nuclear and fossil fuel plants, and about half providing police response and patrol services. The TVA, as its name implies, employees most (62%) of its 740 officers in Tennessee (456); it employed about a third of them in Alabama (250).

The U.S. Forest Service had 732 officers providing either police response and patrol services (72%) or investigative services (28%) for National Forests. About a fourth of the Forest Service officers were employed in California (191) and a tenth were employed in Oregon (70).

The U.S. Fish and Wildlife Service had 620 full-time employees with arrest and firearms authority. About two-thirds of these employees were refuge officers, 90% with collateral law enforcement responsibilities. The remaining third were special agents responsible for criminal investigation. The U.S. Fish and Wildlife Service employed officers in all states, excluding the District of Columbia. Alaska (45), Texas (44), and North Dakota (35) had the largest numbers of these officers.

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In-House Training A Management Tool for Park Law Enforcement

by: Sgt. Chet Mackiewicz,

Most Park Law Enforcement agencies send their new people to the appropriate "basic" training academy in their state. Some of us error in thinking that we get back a fully trained Park Law Enforcement Officer when all we did was send them to "basic" training.

Let's look at the possibilities for Management in Park Law Enforcement if we do some of our own in-house "advanced" training after the academy has taken care of "basic" for us. If we expect our officers to perform at a high level, and at the same time to avoid mistakes, law suits and complaints from our citizens, we must be accountable for their development.

I will break this down into four general areas since, in addition to providing training to our officers, we are also doing some conscious management of the development of our people. The areas I will address are; classroom topics, role play situational training, firearms training, and physical training (defensive tactics & baton).

I realize that this looks like a lot of extra work, but there are tremendous advantages to the administration of a Park Law Enforcement program if we maximize the use of in-house training, not just for training's sake, but also as a management tool. Let's look at the advantages to the Administration of Park Law Enforcement first, and then we can look at ways we can make our training more "advanced" than what our offices received in "basic".

With the use of some in-house training, we provide an audience for the Chief or other Command Officers to address the class on the subject matter as an opening for the training. This insures that the current administration's philosophy is communicated and understood directly by our officers. It also allows supervisors to oversee situations in advance by the use of role play situational training, so the supervisors can have input into many types of situations before their officers ever have to handle them. We can also use the instructor role as a means of providing professional growth opportunities for officers at all levels who need an opportunity to expand their abilities where we might not have a promotional opportunity available for that good employee at this time. You will also KNOW what your officers have been taught, instead of hoping they were taught what you wanted in "basic".

The first step in developing an in-house training program is to get input from all of your people about what areas they feel need the most attention first. Next, identify people at all levels of your organization that are interested in becoming trainers, and specifically those who have already shown an extraordinary interest in a particular area that you want to teach. Avoid using anyone as an instructor when they don't want the job. An instructor who doesn't want to train simply will not be able to accomplish what you are trying to get done.

After a new instructor has been identified, allow that person to gain as much knowledge as possible in the area that he or she will be teaching and then provide them with some good instructor development training and you're ready to begin. Now your officers are being trained at an "advanced" level by one of their own peers instead of an "expert for the outside" of your agency. There is significant value in creating the feeling that you have the experts within your own organization instead of having to bring in an expert. Be sure to make your trainers aware of how important their role is in your organization since it is vital that they enthusiastically support your agency's goals and approach training with a very positive attitude.

This article is not overlooking the importance of a good Field Training Officer (F.T.O.) program, which is very valuable one-on-one training, but it is focusing on these forms of group training in addition to, not instead of, one-on-one field training. Now we will look at the four general areas with focus on making them more advanced and field applicable by blending the training together instead of segmenting areas of our training.

Classroom topics: Although much of the material that we have to present in this format is academic, this method allows us to teach it along with the agency policy and administrative philosophy. It also presents the perfect "golden opportunity" for the Chief or other Command Officers to make a statement to a group of officers to facilitate a better understanding of this topic and what is expected of your officers.

Role Play Training: This area of training allows supervisors to set up situations that officers, under their direction, will likely handle. This type of training is best done by using supervisors or higher ranking officers to

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conduct the lecture portion on verbal skills, non-verbal communication, and methods of reducing conflict. It must not be done in a way that implies that it is in conflict with officers' physical training. These skills must be taught from the view that they are 'good for the officer' from every standpoint and that officers will not be giving up their safety by using these skills, but that they will instead allow for a proper transition for the officer if a situation did escalate to a physical encounter. To further make this type of training work, we need to recognize that our senior patrol officers are not going to be real excited about this training but also remember that this communication process with supervisors will be good for everybody. So, to best deal with this factor in a positive way, we might consider using the senior officers as the role players as we train the newer officers.

This gives us the additional input of those officers to help give us situations to role play and gives us the value of their opinions and experience when the training is reviewed. This way the senior people feel that they have contributed, which they have, and they have not been deprived of the communication and understanding between all of the officers and the supervisory level. This entire process allows for constructive supervision which enhances teamwork rather than correcting real situations when they have developed a problem or generated a complaint from a citizen. This is a simple example of proactive management & supervision by communicating how we want our people to perform, instead of negative supervision in response to a situation that is already over.

A further advantage of role play training to the agency is the opportunity to spot an employee performance problem at the training stage so that the situation can be corrected or the appropriate action taken. This allows us to give these officers more coaching or supervision to reduce potential future problems. This is just another proactive process in which to engage, instead of having to react to negative performances.

Physical training: While we are responsible for making sure our officers have the skills in areas of low and intermediate force to protect themselves and our citizens, we must also concern ourselves with the problems that would develop if one of our officers were to act wrongly and use excessive force. That is all the more reasons to train well at low and intermediate force levels so our officers don't escalate to the last resort of the firearm just because they don't know how to handle themselves well at a lower level.

Let's look at how much of this training is done and see what we can do to improve upon it within your agency. Much of defensive tactics is taught to be simply the use of empty hand techniques of blocking, striking, holds, takedowns and usually some handcuffing. Batons and O.C. are usually taught as a separate unit involving the techniques of each product. If we allow outside sources alone to teach these areas to our officers we give up control over two

important areas. One is that if these areas are taught as separate segments, we have no assurance that our officers understand the proper use of low and intermediate level force applications, as they all blend together, such as the use of a baton followed up by handcuffing. Baton programs don't require that, although a good instructor (your instructor) will add such drills as a supplement to the program. How can we expect our officers to know how to transition from a baton application to the use of handcuffs if we don't teach them? It sounds simple but think about the excitement of that situation and you can see the need to practice such simple things.

What about verbal skills in this area? Think about all of the mobile news teams and citizens with video cameras! If we don't teach proper verbal skills and proper commands with physical training, they will likely be taught by the popular TV shows and movies. Can we afford to have our officers on camera with unprofessional language just prior to the application of physical techniques? Could what the officer says prior to the application of force be used to establish the intent of that officer? Let's look at a simple scenario. Your officer is forced to use a baton technique on a person in a situation that might or might not be OK depending on a few small considerations. One officer prior to using the baton says something like, "Back Up. Now!" In the same situation an officer says something like, "I'll beat your _____!" These situations are identical except for the verbal skills. The person is injured and the news is playing this tape. Which officer do you want?

The answer is obvious. Now we have to be willing to be accountable. We cannot expect officers to perform something that we assume someone else outside of our agency taught them. If your agency teaches this proper blending of skills, they can be expected and required to perform accordingly. If you don't teach them, you have no control over how they use these skills until the situation is over. Again, we are back to pro-active management instead of reactive.

The bottom line is that as we teach physical skills, the instructor must be integrating communication skills. The instructor must also be able to blend programs together such as batons to handcuffing. What about O.C. spray training? This training comes from the manufacturer who is promoting their product. There is instruction on how to use the spray and what it might do to a suspect. Most programs don't deal with what will happen to an officer if he or she is sprayed and what the officer should do. Isn't this an obvious issue that we should address with this program? We are starting to get an idea of why we have to develop good instructors of our own that can take these "basic" programs and enhance them into "advanced" training in-house.

On dealing with the physical areas of Park Law Enforcement training, the biggest mistake we can make is

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to not conduct either the physical training or the verbal training or both. You get the training but give up control and believability by bringing in outside "experts". Your best answer from an administrative point of view, is to teach it within your own agency so you have the bottom line on quality control.

Firearms training: We absolutely do not want to see our officers hurt or killed. At the same time, we realize that we will be responsible for our officers actions in the field and we want those actions to be correct.

Now, let's look at what has been going on in firearms training and what we can do to enhance our training and minimize our risk. Only a couple of decades ago Law Enforcement firearms training was more or less limited to target practice. As training in Law Enforcement progressed, we have observed that officers are being hurt doing things that seemed to be a bad idea as we evaluated them from our safe environment looking back at the situation. We began to realize that our officers have to train and practice simple, logical tactics in addition to being good shooters to control the encounter. This led to a nice variety of tactics on reloading, using cover, and an assortment of good shooting drills. This was all good process.

The latest craze in the firearms area is the debate and rather constant changes in makes and models of guns and ammo. This trend, in the eyes of this trainer, is probably not making as much impact on our use of firearms as the last wave where good tactics came into being. I further suspect that much of this is inspired by the manufacturers who have a need to keep selling us 'better' products while keeping their profit level up. A genuine concern over this development of 'better' and 'more expensive' guns is many officers starting to feel that their new and better gun is the difference instead of being focused on their skill level and tactics. At any rate, this wave is under way and it probably doesn't have much impact on training either way.

So what can we do to take firearms training into the future? Frankly, the tactics of the shooting itself have been worked on by instructors around the country and will probably see minimal changes since good trainers have been focusing on this area for a long time. What we might consider trying to do is to continue to make this training more field applicable. Things like the F.A.T.S. program are good, but many of us cannot afford or get access to this moving video firearms training.

Let's look at how our officers really use their firearms. I would guess that my own experience is closer to reality than what we see on TV with weekly shootings by the same officers. With 18 years in park Law Enforcement I have been shot at only once under circumstances where I could not shoot back. I have never had to shoot anyone but I have made more gunpoint arrests than I can easily remember. Further, in two cases, the suspects had to be released.

This tells us that we do a fair amount of control at gunpoint to handcuffs without having to fire and obviously these are dangerous situations or it wouldn't be gunpoint in the first place. In looking at the mechanics of these cases which we 'won' and nobody got hurt, let's break down the elements and then look at our training.

To make gunpoint arrests without shooting we again are clearly combining verbal and non-verbal communication with the exposure of our duty gun. Although there has probably been some lecture and demonstration and maybe even practice giving verbal commands at gunpoint, we have to look at the stress that the officer is under during these situations. The study of real cases shows over and over again that under stress we will do what we practice. If we don't practice something until it comes naturally, we run the risk of making mistakes and getting too nervous to perform well. Further, as we look at the end of the gunpoint arrest, we now have an officer that has been in a stressful situation for several seconds or maybe several minutes and the officer now must make a transition from gunpoint control to handcuffing. The officer in this situation now has three clear objectives; not to give up control and risk being hurt, not to risk being disarmed since we have to be close to conduct handcuffing, and to secure the suspect quickly without any further physical problems in handcuffing.

Now, let's go back to review our original concerns. We want to provide good training for our officers, minimize the risk of making mistakes, and avoid law suits and complaints from citizens.

We know that the tactical training in the firearms area is generally good. We know that the marksmanship factor must also remain, so we need to work on making the drills that we develop more like reality in the gunpoint areas that do not involve actual shooting. The shooting part is covered with good shooting drills. So, we need to add the proper verbal control drills to the shooting drills with the use of proper language. Remember, a controlled voice shows control on the part of the officer. This officer is less likely to be challenged. Also, use solid training guns (not real, totally safe) to do drills at each firearms training session to allow your officers to go through the gunpoint commands to handcuffing and teach them how to transition from gunpoint to handcuffing with minimum risk of being disarmed. Further, these drills are fun for the officers and they build confidence since they know that they will be performing this function in the field. Simply said, we need to train to reality. We don't want to give up the good things we are doing now but we want to advance them and make them more practical. If this is done with your own trainer your agencies feeling of being a top quality, high performing team will be greatly enhanced.

This article was not meant to contain all of the specifics of training in these areas but to at least give food for thought so that as we implement training we give

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consideration to what we want to get done, why we want to do it and how we will do it within our training program. I am suggesting that simply to bring in an outside expert to give a seminar does not allow us this management thought process. I will end with giving you this trainers' philosophy for instructors and Park Law Enforcement Training programs:

K.I.S.S. Keep It Simple System. Complicated techniques do not work under extreme stress.

In physical areas, teach things that work for most people, on most people, most of the time. Don't just teach toward your super athletes.

Blend training programs together so your officers can better understand how these things will really work. Examples: verbal skills and all physical and firearms areas, batons to handcuffs, guns to handcuffs, etc.

Instructors must teach the agency goals with enthusiasm and support.

Set up "winning" scenarios. Never train officers that they can do anything else but go home safely.

Be sure that training is used as a positive vehicle of communication between Park Law Enforcement Chief's and Command Officers and the officers in the field. Good teamwork will be your reward.

Be open minded! Never, never quit learning and sharing what you learn.

Sgt. Chet Mackiewicz, Instructor Trainer, 18 years Rockford Park Rangers, Rockford, Illinois

P.L.E.A COMING EVENTS

1995

October: 5-10 National Recreation and Park Association Congress. San Antonio, TX. Contact N.R.P.A. for further details concerning registration at (703) 820-4940. - P.L.E.A. Informational Booth in Trade Show: - P.L.E.A. sponsored presentations in Education Session. - P.L.E.A. Mid-year Board of Directors Meeting.

1996

February 21-24. P.L.E.A. 17th Annual Park Law Enforcement Assn. National Conference. Austin, TX. Sponsored by the Texas State Parks. Contact P.L.E.A. Board of Directors for details - P.L.E.A. Board of Directors Meeting.

October 26 - 30: National Recreation and Park Association Congress, Kansas City, MO. Contact N.R.P.A. for further details concerning registration at (703) 820-4940. - P.L.E.A. Informational Booth in Trade Show: - P.L.E.A. sponsored presentations in Education Session. - P.L.E.A. Board of Directors Meeting.

1997

March P.L.E.A. 16th Annual Park Law Enforcement Assn. National Conference. Durham, NC. Sponsored by Durham Park Rangers. Contact P.L.E.A. Board of Directors for details. - P.L.E.A. Board of Directors Meeting

October 29 - November 2: National Recreation and Park Association Congress, Salt Lake City, UT. Contact N.R.P.A. for further details concerning registration at (703) 820-4940. - P.L.E.A. Informational Booth in Trade Show: - P.L.E.A. sponsored presentations in Education Session. - P.L.E.A. Board of Directors Meeting.



DO WE HAVE YOUR AGENCY'S PATCH IN THE P.L.E.A. PATCH DISPLAY?
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PROSECUTION OF THE ARCHEOLOGICAL RESOURCES PROTECTION ACT

This Technical Brief details the procedure for pursuing a civil violation of ARPA through the administrative law process. Its purpose is to provide a succinct blueprint for use by land managing agencies when civil prosecution under the law is the desired option. Note that in the event of any discrepancy between this Technical Brief and applicable ARPA regulations, the regulations control. Citations in this brief will depart from the standard American Antiquity style in favor of the legal citation format used by lawyers and Administrative Law Judges.

Introduction

The Archaeological Resources Protection Act of 1979 (ARPA)¹, as amended, provides a means to assertively protect the ancient and historic remains of the cultures that have inhabited Federal and Indian lands. The Act provides for criminal and civil penalties against those who excavate, remove, damage, or otherwise alter or deface archeological resources, or attempt to do so, without a permit.² ARPA with its amendments and accompanying Uniform Regulations offer agencies flexible alternatives to employ in the preservation of resources under their protection.³

Criminal enforcement of ARPA has become an active part of the repertoire of agencies across the United States.⁴ It is not unusual for vehicles and the tools of the violation to be subjected to seizure in connection with the criminal prosecution.⁵ In contrast, civil prosecution ARPA has been rarely and only recently pursued.⁶ The purpose of this technical brief is to provide a familiarity with the civil provisions of ARPA that may expand its future use.

Background of the Civil Process

Development of the Civil Law

ARPA provides for civil penalties and outlines a description of damage calculation to determine a penalty assessment.⁷ Criminal violations are specifically set forth in statutes, whereas the civil process depends upon descriptive regulations. Although ARPA became law on October 31, 1979, the Uniform Regulations were not adopted until January 6, 1984. The Department of the Interior Supplemental Regulations, which are an integral part of the process, were promulgated in 1987.⁸ By the time the civil process was a completed package, agencies were actively training law enforcement personnel and archeologist to enforce the criminal aspects of the law. Priority was given to those cases that merited criminal prosecution and much time was spent preparing those cases to overcome reluctant prosecutors who were unfamiliar with the law. In 1988 ARPA was amended to establish a \$500 threshold for felony prosecution, in place of the previous \$5000 threshold, and ARPA criminal prosecutions grew in number rapidly.⁹ Since 1988, successful ARPA criminal prosecutions have been reported with some frequency throughout the country.¹⁰ Experienced ARPA prosecutors, while in great demand, are no longer rare.

It is now time to explore the use of the other ARPA prosecution, the civil prosecution. The use of the civil option will not replace criminal prosecution. Rather, those incidents that for one reason or another do not merit criminal prosecution will become the subject of the civil process. These are the incidents that

have been overlooked although they are no less important in the effort to preserve and protect archeological resources .

Cooperative Agreements

In order for an agency to proceed in a civil matter it must have access to an Administrative Law Judge (ALJ). The Department of the Interior Office of Hearings and Appeals is ideally suited to the task, but not every agency is similarly staffed. The lack of an agency ALJ impeded active civil enforcement for agencies outside of the Department of the Interior. That problem has now been rectified with the issuance of Memoranda of Agreement with Interior executed by the Forest Service and the Tennessee Valley Authority.¹¹ One of the first civil ARPA cases to utilize the Interior ALJ was brought by the Forest Service.¹²

The Civil Advantage

There are a number of reasons to favor civil prosecution over criminal. Some of these are inherent in civil procedure regardless of the particular substantive law.

Burden of Proof: In a criminal trial the prosecutor must prove the defendant guilty beyond a reasonable doubt. This is a substantial burden, which calls upon jurors to feel as comfortable about their decision as they would in making a decision in the more important affairs of their daily life. Punishment is not to be discussed in a criminal trial, but the jurors know that their verdict could impact the liberty of the defendant. The standard of proof in a civil case is one of a preponderance of the evidence. That is a tipping of the scales in favor of the claim being made.

Non-Jury Trials: A criminal defendant who faces a significant loss of liberty (six months or more) is guaranteed a jury trial. This fundamental right is not an issue in civil matters, which are tried before an ALJ outside of the jury trial process, since the only loss is monetary. Civil penalties may include a prohibition from entering a Federal or Indian enclave or may require some constructive activity but will never include incarceration. Administrative proceedings are therefore less time-consuming, less expensive, and less formal.¹³ To convict a criminal defendant the twelve member jury must reach a unanimous verdict. To find that the civil defendant is responsible the agency must convince the ALJ that the facts are complete. ARPA criminal trials also may be interesting instructive sessions that educate the jury and instill in them an understanding for the law and reasons to care about archeological sites. Every jury trial, however, carries the ever-present possibility of error and a mistrial requiring a repeat of the process. In contrast the civil hearing is simple and direct.

Optional Use of Lawyers: Depending on its policy, the individual agency is not necessarily represented by an attorney at an ALJ hearing. A case may be presented by the law enforcement agent and the archeologist. Therefore, if criminal prosecution of ARPA is declined by the U.S. Attorney's office in the appropriate district, the agency is not foreclosed from taking action against an alleged violator. In a civil case the defendant is not entitled to representation by a lawyer as a matter of constitutional right. The defendant may obtain counsel or proceed in proper persona, on behalf of one's self ,but the agency does not bear the cost of the defendant's legal representation.

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Civil Penalties Versus Fines: In a criminal prosecution, in addition to or in lieu of a period of confinement, the defendant may be ordered to pay a fine. The fine also may replace a prison term. Fines have two limitations: first, they may not exceed \$100,000 for a misdemeanor conviction and \$250,000 for a felony conviction, and second, they are paid not to the agency but to the general fund of the U.S. Treasury.¹⁴ Restitution may be paid to the agency in an amount deemed appropriate by the judge after considering everything else levied against a defendant and the ability of those held responsible to pay. Penalties in a civil proceeding are assessed based on the actual damages proven at the hearing.¹⁵ These assessments become judgments that may be collected directly by the agency or the Indian tribal authority affected by the violation.

Agency Discretion: A criminal case presented to the office of the local U.S. Attorney transfers decision making authority to that office. Depending on the policy of each district office the recommendations of the Assistant U.S. Attorney to whom the case is assigned will usually determine whether to prosecute, whom to prosecute, when, and for what offenses. That office will determine whether to forfeit items and what items to forfeit. Although the Assistant U.S. Attorney will consult with the agency through the law enforcement agent, the office of the U.S. Attorney makes decisions in plea bargaining and prosecution resolution. In a civil proceeding the agency never loses total control over the presentation of the case. Negotiations prior to judicial resolution are handled by the agency area manager, who has been delegated the authority by each respective Secretary or agency official.

Agency Policy Determination: The agency area manager, or equivalent officer determines whether to maintain a case for civil prosecution or to refer the matter to the U.S. Attorney's office for criminal prosecution. The number of ARPA violation investigations has grown to a point that now may allow the agency area manager to establish policies for the referral of a case. This information will assist the agent in the field to properly direct their reports and to involve the appropriate lawyer, U.S. Attorney, Solicitor, Office of General Counsel or Judge Advocate General. It will also assist the first contact officer in the field in determining which option should be employed. There are other options beyond criminal or civil prosecution under ARPA alone. It is possible to seize the tools and vehicles used in a violation without the prosecution of an individual.¹⁶ Each agency has published regulations in the Code of Federal Regulations (CFR) that prohibit various activities that apply to the protection of sites managed by that agency.¹⁷ All of the pre-ARPA options available to land managers still exist. ARPA merely adds to those options. However, if an individual is cited prematurely under a CFR section that protects archeological resources, and if the individual quickly enters a plea of guilty to that violation before the nearest magistrate, the agency will be prevented from proceeding further under ARPA, criminally or civilly. To do so would constitute double punishment. The agency may still bring an action to forfeit a vehicle or tools used in the commission of the offense.

Avoiding Double Punishment: Once the agency submits a case for criminal prosecution, the agency loses control of the case until and unless the U.S. Attorney issues a declination letter indicating a decision not to proceed. If the criminal case does proceed but the sentence does not include forfeiture, the agency may still seek forfeiture in a separate civil proceeding. Forfeiture is available under ARPA if the defendant is cited for a CFR violation rather than an ARPA violation.

It is important to realize that if a criminal case is negotiated by an Assistant U.S. Attorney and if the negotiations include financial considerations, either as a fine based on the damage amount or as restitution, the agency may not later assess a civil penalty against the defendant. This would amount to double punishment. When a defendant in a criminal case is sentenced to pay a fine in lieu of incarceration and the amount of the fine is based upon an amount calculated to deter future violations, civil prosecution remains an option.¹⁸

Issues in the Proof of a Civil Case

Jurisdiction

Civil and criminal prosecutions have the same jurisdictional basis. That is, for the law to apply, Federal or Indian lands must assertively have been impacted by the alleged violator.¹⁹ Indian lands include lands of Alaska Native Village corporations and Native Hawaiian as well as trust lands subject to a restriction on alienation. Federal lands include those in Puerto Rico, Guam, and the Virgin Islands or any lands held in fee title by the United States.²⁰ The only exception to tying the violation to Federal or Indian lands is when an otherwise protected item is obtained in violation of a State or local law and then transported in interstate commerce.²¹

Any person who commits a prohibited act on the lands under the jurisdiction of ARPA is liable under the law. Person is defined as "an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof."²² The description of person is important to note in the context of a potential civil action because the type of "person" will more often be broadly construed than in the typical criminal case. For example, a corporation that is not charged in a criminal ARPA indictment nonetheless may find itself facing civil ARPA charges. The reason for the difference may be found in the intent exhibited by the violator. Intent is discussed below.

Identification

In all cases, the "person" to be held accountable must be identified. This may be a direct identification, as in a criminal case, where the violator is observed at the scene. In a civil case the alleged violator may be identified as the "person" responsible for the care and control of a site such as the private contractor who allows a protected area to be bulldozed. The alleged violator also may be a business that allowed equipment to be rented if the firm knew or had reason to know the use planned for the equipment (see intent). More than one person may be held responsible, although each may have had a different level of involvement. Directors of corporations and even government employees are not immune from civil liability.

Protection of Archeological Resources

Under ARPA the protected items are the same in both civil and criminal prosecutions.²³ Archeological resources are those material remains of past human life where there is sufficient material remaining to extract scientific data.²⁴ The ability to gain information about past human life from the material remains is referenced in the law as "archeological interest." The items also must be over 100 years old.

Expressly excepted from the protection of ARPA is the collection of arrowheads found on the surface of the ground.²⁵ Although technically protected, as a practical matter "arrowhead" includes any object that would appear to the common person to be

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an arrowhead even if it is actually a spear point or a scraper. To be protected the stone point must be totally subsurface. Generally, unworked minerals, rocks, and paleontological (fossil) specimens are not protected by ARPA unless they have evidence of human interaction.²⁶ However, where these items are found within an archeological site they're protected if they can render clues to the past human existence. The proof of this issue will rely on the expert testimony of an archeologist. Similarly, coins and bullets are not protected unless they are found in a direct physical relationship with an archeological site, such as in a battlefield.²⁷

Authority of a Permit

Where the person holds a valid ARPA or comparable permit and acts within the permit, there can be no violation.²⁸ Any lawful excavation will be overseen by an individual holding the permit. Government contracts and government employment status may take the place of an ARPA permit because they act as authority to undertake the activity obligated by the contract or within the scope of employment. Government contracts do not excuse the obligation to act responsibly, and all government contracts will or should contain ARPA language.²⁹ Government employees and volunteers working with the government do not need a permit. However, if their actions exceed the scope of the job they may face civil sanctions.

ARPA violations may still be perpetrated by the holder of a permit or government contract where the action taken exceeds the authority of the document.³⁰ This may occur if unnecessary excavation takes place or if the contractor or permittee strays from the designated area.

Calculating the Amount of Damage

Civil and criminal archeological site damage calculations are conducted in the same manner, but the application of the information varies. Damage calculations in civil actions become the penalty amount, whereas in criminal actions the amount of damage determines the severity of the crime, and the damage may be a factor in sentencing. A criminal defendant may be ordered to pay the damage amount as restitution to an agency.

Quantifying Damages: The amount of the penalty is determined by calculating the archeological damage to the area or the commercial value of the materials and adding either, but not both, to the cost of restoration and repair of the materials or the area that was damaged.³¹ This is another aspect of case preparation that is dependent wholly upon the archeologist acting as an expert witness. Commercial value of an object may be determined by the price placed on the object by the alleged violator, the going price of similar objects offered for sale, or by research in collector catalogs. Archeological value is described in the Uniform Regulations as the cost of scientific data recovery that would have been attainable prior to the violation in an area that is adjacent to the violation site, and that is of comparable size.³² It assumes that the disturbance has created a situation of forced excavation even though no further data recovery may occur in the near future. It enables the agency to arrive at a dollar amount of damage even though the actual loss of a nonrenewable resource is priceless.

Added to the archeological damage or commercial value is the cost of restoration and repair. This includes the actual costs of reconstruction or stabilization of the archeological resource, surface stabilization, research to carry out stabilization, physical barriers or protective devices to guard against further disturbance, analysis of the remaining archeological materials, reinterment of human remains, curation, and the preparation of reports necessary to do any of the above activities.³³

Damages as Civil Penalties: In a civil ARPA case the damage amount becomes the actual amount that may be assessed to the person or persons found to be responsible. There is no minimum or maximum amount. When there are subsequent violations by a person, the amount of the damages assessed is doubled.³⁴ In no situation may the person be assessed more than double the actual damage amount. The land manager does have the discretion in the negotiation of a civil penalty amount prior to an administrative hearing to reduce the assessed penalty. When the violation is so egregious that the damage assessment as a sanction is insufficient, then criminal prosecution may be the more appropriate course of action. The criminal law provides for incarceration and penalties over and above the actual damage amount. However, the maximum fine in a criminal action against an individual is \$250,000 and against a corporation is \$500,000.³⁵ It is possible for civil penalties to exceed these limitations.

Forfeiture

As part of the civil proceeding, the ALJ may order that archeological resources in the possession of the person and all vehicles and equipment which were used in the violation be forfeited.³⁶ All items which were forfeited by order of the ALJ and that involved violations that originated on Indian lands are to be turned over to the Indian or Indian tribe affected. Where Indian interests are not affected, the items are forfeited to the United States. Agencies receiving forfeited vehicles and tools place them into agency use. Native American human remains are subject to repatriation wherever they are found, and non-repatriated items are subject to curation under the Federal curation regulations.³⁷

Intent, a Non-Issue in Actions

Based on Negligence

In every criminal action the intent of the defendant must be proven. The criminal statute will either call for the government to prove the specific intent of the alleged wrongdoer or show general intent. That is, the government must show that the defendants actually knew they were doing wrong and persisted in their actions, or that they knew what they were doing though they may have had no knowledge of the law. The ARPA criminal statute is a general intent law.³⁸ In a civil case intent is not an issue. A person may be liable civilly even if the person had no knowledge of the prohibited activity if the actions of the wrongdoers occurred while in the employ of that person or under that person's supervision. Negligence, which gives rise to civil liability, is:

The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.³⁹

Inadvertence, carelessness, thoughtlessness, and inattention are all negligence. Where there is a duty to act or a contractual obligation to take action, the failure to act is negligence. Therefore a person may be negligent due to an action or failure to act. Negligence may exist even where there is no ill will or no desire that injury occur.

Civil penalties also may be assessed for any violation of a permit.⁴⁰ Intent is not an issue, and the alleged violation may be technical or inadvertent. In the case of technical violations of a permit, agencies must proceed cautiously in seeking sanctions. During the passage of ARPA, Congress expressed concern that penalties not be used to harass citizens in their normal use of public land.⁴¹

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Procedural Component of a Civil Case

The decision whether or not to proceed in a civil ARPA case rests wholly within each individual agency and the designated divisions therein. ARPA gives the land manager, that is the designee of each Secretary or the head of a Federal land managing agency, the authority to initiate proceedings. Therefore, each Area or Park Superintendent, Forest Supervisor, or Base Commander may set policy to govern the option to proceed in house. Over time each division will develop policy that guides agents in the field so that they can determine whether the violation that confronts them should be handled civilly or criminally. Once a matter is submitted to the office of a U.S. Attorney the agency control is held in abeyance until the U.S. Attorney decides how the matter is to be handled and concludes its action. Those who investigate ARPA matters should not be overly concerned with what the land manager decides since the ARPA investigative work is the same regardless of how the case eventually will be handled.

The ARPA case begins with the determination by the land manager as to how to proceed. The following procedure applies when the decision is to proceed civilly and when forfeiture is a desired option. Also, after the conclusion of a criminal matter where actual monetary damages related to the disturbance of the site were not sought or negotiated in a plea agreement, or where forfeiture was not pursued, the land manager may proceed with the following civil process.

Report to the land Manager

The agency law enforcement personnel, or investigative personnel in the case of the Corps of Engineers, will compile the ARPA case report. It will contain the information necessary to determine whether evidence exists for each of the issues of proof discussed above. The report also will contain a site damage analysis and the basis for archeological interest that places the site within the protection of ARPA. Photographs, maps, returns on search warrants, and descriptions of seized property will be included when they apply.

The use of legal support for the agencies varies. In most instances the land manager will decide how to proceed based on the report. In the Forest Service, policy now requires that the report be submitted to the Office of General Counsel when civil action is contemplated so that an attorney may advise the land manager at each stage of the proceedings. The law does not require, and civil actions are not dependent upon, representation of the agency by counsel (see ALJ hearing below).

Notice of the Violation

Service: A civil action begins with the Notice of Violation which is served on each alleged violator. A corporation is served through a statutory agent who is listed with the Secretary of State. Personal service may be by a process server although the regulations allow service by registered mail, return receipt requested.⁴² All actions that follow will be predicated on the ability of the land manager to prove that actual service on the suspected violator has occurred.

Contents: The notice will be in letter form, signed by the land manager designee (Appendix A). It will contain a short statement of the facts that indicate what occurred, where, and how the alleged violator was involved.⁴³ This brief statement is not a recitation of everything in the report. The notice letter will indicate whether the asserted violation occurred without a permit or outside the scope of a contract or employment agreement.⁴⁴ The

notice normally will state the amount of the proposed penalty, although the regulations allow the notice to be sent with an indication that the actual amount is to be ascertained and will follow in a separate notice.⁴⁵ Since the notice is not complete without a specific penalty amount stated, two separate letters may impact on the ability of the land manager to show proper service. There will be instances, however, when prompt notice will prevent further damage even though the site damage analysis is not complete.

The notice must advise the violator of the options (1) to discuss the matter informally with the land manager, (2) to file a Petition for Relief which will trigger the administrative law process, or (3) to take no action and receive notice of final assessment.⁴⁶ The notice will advise the alleged violator of the option to remit payment which will close all further proceedings. Finally, the notice must advise the alleged violator of their right to seek judicial review of all administrative determinations .

Timing: The Notice of Assessment should be served in a reasonable time after the incident is investigated. While there are no specified time limits, general principles of timeliness do apply. If the matter languishes until the evidence of the violation becomes obscured, it may be no longer appropriate to pursue the action. It is reasonable for several months to elapse while investigative work is being completed, and it may take time to find the alleged violators and to tie them to the scene. After four years an action may be prohibited.⁴⁷ The 45 day period within which the alleged violator must respond does not begin until the receipt of the notice letter which contains the assessed penalty amount. Therefore the suspected violator may be notified of the asserted violation, but the obligation to respond would not begin until receipt of the second notice letter with a specific penalty.

Respondent's Options

Once the suspect, who is termed the respondent in a civil action, receives the notice one of four courses of action must be taken within 45 days. The first and most desirable option for both sides is the scheduling of a meeting with the land manager to informally discuss the asserted violation and the amount of damages.⁴⁸ Such an informal discussion complies with the Presidential "Civil Justice Reform" order issued in October 1991.⁴⁹ The intent of the Executive Order is that no formal litigation commence without an attempt to informally resolve the matter.

The respondent may bypass the land manager by filing with the land manager a Petition for Relief.⁵⁰ This will place the matter before an ALJ to hear and decide. If the respondent accepts the damage amount and responsibility for the damages, the land manager may be paid in full or the respondent may notify the land manager in writing that the amount is acceptable.⁵¹ This acceptance of the civil penalty by the respondent, in writing, relieves the land manager of any obligation to send a second letter as a formal notice of assessment. If the respondent later reneges on the payment of the penalty, the land manager may obtain a court judgment and proceed to collect on the judgment (see judgment below). The respondent may take no action and await the notice of the final assessment from the land manager.⁵²

Informal Meeting

When a request is made for an informal meeting within the 45 day period, the land manager is obligated to comply. This discussion may be attended by the respondent with or without counsel. The land manager may have present any personnel deemed necessary, which may include the investigator and the

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archeologist. Whether counsel is present for the government will depend upon the policy of each agency.⁵³ The Office of Hearings and Appeals prefers the use of counsel at all times, since this furthers orderliness and due process. During the informal discussion the respondent may try to impress the land manager that there is no responsibility or that the damages are too high. If a negotiated compromise is recalled, it should be put in writing and signed by both the land manager and the respondent. This agreement will become the amount indicated in the notice of assessment. If no compromise is reached, the land manager still will prepare a Notice of Assessment.

If the land manager determines that no violation has occurred or that the respondent is not the responsible party, a written notice of that fact will be sent to the respondent indicating that no penalty shall be assessed.⁵⁴ The land manager may determine that additional information is necessary, which will continue the investigation." When the additional information is received the land manager will then issue the Notice of Assessment. The regulations do not contemplate a second informal meeting after further investigation, but there is nothing in the regulations to preclude such action. If at the initial informal meeting the land manager determines that further investigation is warranted and if this further investigation reveals a good deal of new information that impacts the original Notice of Violation, the land manager could serve a second or amended Notice of Violation, and the process would begin anew.⁵⁵

Petition for Relief and Formal Hearing

The uniform regulations to ARPA provide for the respondent to request a formal hearing with the land manager.⁵⁶ The Petition for Relief is a letter, which responds specifically to the Notice of Violation (Appendix B). This petition must be in writing and must be signed by the individual respondent or an authorized officer of a corporate respondent. It must be filed with the land manager no later than 45 days from receipt of the notice of violation. Although the uniform regulations do not resolve the possible problem of the running of the 45 days while informal negotiations are pending, it would seem reasonable that the 45 days to file a petition for relief be extended in writing when the respondent has requested and scheduled an informal meeting within the 45 day period. The petition for relief must indicate specifically the factual or legal reasons for any relief requested by the respondent. This document gives the land manager another opportunity to consider all issues before the determination of an assessment. The filing of a petition for relief does not entitle the respondent to a hearing with the land manager.

Assessment of Penalty

The land manager will issue a written Notice of Assessment which is to be served on the respondent(s) in the same manner as the Notice of Violation (Appendix C). The assessment will be sent after the 45 day period has lapsed or at the conclusion of any informal meetings and the receipt of a Petition for Relief.

Determination of the Penalty Amount: If the alleged violator does not respond, the assessment may repeat most of the initial Notice of Violation. If a hearing or meeting has taken place, the Notice of Assessment must discuss the information presented at the hearing or meeting or furnished in the petition for relief.⁵⁷ The penalty shall be assessed in accordance with the law and regulations discussed above.⁵⁸ Nonetheless, the land manager may assess an amount that is less than the maximum calculations for reasons enumerated in the regulations. The assessment may be reduced if:

1. the respondent agrees to return archeological resources taken from public or Indian lands, which agreement may extend beyond the items originally noticed;
2. the person agrees to assist in preservation, protection, and study of archeological resources on public and Indian lands;
3. the person will give information to assist in the detection, prevention, or prosecution of other violations of ARPA;
4. first time offenders show a demonstrated hard-ship and inability to pay;
5. there is no willful commission of the violation;
6. the proposed penalty is excessive;
7. the proposed penalty is unfair.⁵⁹

Content of the Notice of Assessment: The Notice of Assessment will contain the facts and conclusions that resulted in the determination that a violation occurred and that the respondent committed the violation.⁶⁰ It will indicate the basis for the assessment, including the site damage ~mount (doubled after the first offense), less any amounts due to mitigation for any reasons stated.⁶¹ The assessment shall advise the respondent of the right to an administrative hearing and provide the addresses of the appropriate administrative forum and the office of counsel for the agency. The notice shall state that the decision of the ALJ may be appealed administratively, and thereafter, judicial review of the final administrative decision may be sought in the appropriate United States District Court.⁶² Finally, the notice should advise the person that failure to request a hearing, in writing within 45 days, will result in a waiver of the right to a hearing.

Administrative Hearings

Request for a Hearing: Within 45 days of the receipt of the Notice of Assessment the respondent must request a hearing or the right is deemed to be waived.⁶³ The request must be in writing and accompanied by a copy of the Notice of Assessment.⁶⁴ The regulations do not indicate specifically that a Petition for Relief be included with the request, but it would be appropriate for the respondent to indicate the specific aspects of the assessment with which exception is taken.⁶⁵ The request may be delivered in person or sent by registered or certified mail, return receipt requested. It is important for the respondent to show proof that a hearing request was timely. The regulations allow the person to deliver the request personally and thus save the cost of a process server. The addresses for delivery of the notice are given in the Notice of Assessment.

Administrative Law Judges: The ALJs function within and are part of the Executive Branch. They are not part of the Federal court system. Not every agency employs ALJs, and until recently a civil ARPA case may not have been an option. By Memorandum of Agreement the Forest Service and the Tennessee Valley Authority (TVA) have removed this impediment.⁶⁶ The following description will track the process before the Hearings Division, Office of Hearings and Appeals, Department of the Interior.

ACJ Process: The Department of the Interior ARPA Supplemental Regulations specify the documents to be mailed to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203-1954, with the request for a hearing.⁶⁷ The request must be in writing and dated. It must include a copy of both the Notice of Assessment and the Notice of Violation. Further, "the request shall state the relief sought, the basis for challenging the facts used

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as the basis for charging the violation and fixing the assessment...⁶⁸ Therefore, the request establishes the issues for the hearing. In addition the respondent may indicate preferences as to the place and date for the hearing.

A copy of all documents sent to the ALJ must be sent to the legal counsel for the agency that initiated the procedure. For example, if the agency is within the Department of the Interior, the Solicitor of the Department must receive a copy personally or by registered or certified mail, return receipt requested. Forest Service matters will be handled by its Office of General Counsel, and TVA matters will be handled by its General Counsel.⁶⁹ The respondent must serve notice to the office listed in the Notice of Assessment.

Once a specific ALJ is assigned to the case, all communications are sent directly to that judge. Copies of all documents sent to the ALJ must be sent to the other party.

Representation by Counsel and Appearance at a Hearing: Each Department's policy states when counsel will appear on its behalf at ALJ hearings. Currently the Offices of General Counsel for the Forest Service and the TVA prefer to be involved in ARPA civil proceedings at each stage of the process. This is strongly recommended by the ALJs. The Department of the Interior Supplemental Regulations provide that the departmental counsel designated by the Solicitor officially will enter the case once an assignment is made to a specific ALJ for hearing. Thus the land manager will receive the request for hearing from the respondent and the notice of the ALJ assignment and then forward the entire case file to the appropriate Solicitor's or General Counsel's office. Thereafter the attorney assigned the matter will be responsible for determining that all documents have been filed with the ALJ. The rules for the ALJ hearings do not require that either party be represented by an attorney.⁷² The Interior Supplemental Regulations allow for the appearance at a hearing of the party in person, by a representative, or by counsel.⁷³ If the respondent fails to appear at the hearing and there is no good cause for the absence, the ALJ then will make a decision without a hearing based on the documents provided.

Conduct of a Hearing: The rules for a hearing before an ALJ are more relaxed and abbreviated than the rules of procedure in a Federal district court.⁷⁴ Testimony under oath will be heard by the ALJ from the witnesses for each side. Each side will have an opportunity to question each witness. A transcript of the proceeding will be made. Exhibits such as maps, titles to vehicles, and archeological materials may be submitted to the ALJ. The ALJ will consider the evidence and the briefs filed and render a decision. There is no jury. The decision will be in writing and will specify findings of fact and conclusions of law upon which the decision is based. The ALJ is not limited to the determinations made by the land manager in the Notice of Assessment. Based on the evidence produced at the hearing, the ALJ may increase or decrease the assessment.⁷⁵

Final Order and Administrative Appeal: The decision of the ALJ becomes final 30 calendar days after the written ruling is sent to the parties, unless in the case of Department of the Interior land managers either the respondent or the land manager files a Notice of Appeal within 30 days.⁷⁶ A "Notice of Appeal" is a brief statement of intent to appeal, and it is mailed to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203-1954.⁷⁷ Copies must be mailed to the other party and to the judge who rendered the decision. The Notice of Appeal must have

attached to it an affidavit that the copies were sent.⁷⁸ An Ad Hoc Board of Appeals will be appointed by the Director, Office of Hearings and Appeals, pursuant to 43 CFR Parts 4.1(b)(4) and 4.700, to decide the appeal. The appellate review is not a repeat of the first hearing.⁷⁹ The appeal panel will consider the matter on the record compiled by the ALJ and supplemented by briefs in support of the appeal and oral argument if necessary. The appeal panel will issue a written decision, which constitutes the final administrative determination of the matter.⁸⁰ It may be subject to judicial review in the appropriate Federal district court. If the administrative order is not appealed it will be final and collectible.

The administrative appeal panel will determine if there are facts to support the ALJ's decision, if all of the procedural aspects of the process were in compliance, and if the ALJ's decision complies with the law. A Federal district court judge presented with a Petition for Review of the administrative appeal panel will consider only the specific issues designated by the party who pursues the appeal. This judge will not substitute a new opinion for one supported by evidence. The predominant issue on appeal may be a claim by the respondent that he or she was not properly served or was denied due process.

Payment of the Penalty

Payment of an assessment is due:

1. when the respondent receives a Notice of Violation and opts to pay in full without further discussion;⁸¹
2. 45 days from the receipt of the Notice of Assessment from the land manager and the respondent does not request a hearing;⁸²
3. 30 days after the decision of the ALJ and the respondent does not file a Notice of Appeal with the Office of Hearings and Appeals;⁸³
4. 45 days after the appeals board issues a decision and a final assessment and the respondent does not appeal to a Federal district court⁸⁴; or
5. the Federal district court issues an order affirming the final administrative decision.

If at any point the respondent does not pursue the available process, the penalty is deemed to be accepted, and payment becomes due. Given the usual time delays, a respondent may postpone payment for a period of time. Although the civil process does not provide an instant remedy and fast payment, it is still less cumbersome than obtaining financial redress through the criminal process. During this time if it appears that the respondent may be dissipating assets or frustrating the possibility of collecting on a judgement, steps may be taken by the appropriate office of the U.S. Attorney who will handle collection.⁸⁵ Under normal circumstances the agency will refer the matter to the U.S. Attorney for collection when the penalty is not paid. In some cases, such as the TVA, agency counsel will pursue collection.

A final penalty becomes a judgment, which is a court-ordered demand for payment of a set amount. The judgment will accrue interest at the highest legal rate.⁸⁶ To obtain payment on the judgment from a respondent who does not voluntarily pay requires a second tier of legal actions. The office of each U.S. Attorney contains a collection division to pursue payment of judgments owed to agencies of the Federal Government. The collection attorney will file a copy of the judgment in the district in which the respondent lives, transacts business, or can be found and served.⁸⁷ Liens may be placed on properties owned by the respondent, and any income may be garnished. If there is no collection attorney

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available, civil collection actions may be initiated directly.⁸⁸ Some of the costs of collection will be added to the amount owed by the respondent.⁸⁹ In a collection action the debtor may not attack the amount of the judgment, the basis for the judgment, the calculation of the penalty, or ask that the judge go behind the judgment to examine the reasons for the judgment. If, however, the judgment is defective due to a procedural omission, the judgment may not be enforced.

Penalties collected from incidents occurring on Indian lands are paid to the appropriate tribal entity. All other funds collected above the costs of collection are paid to the agency bringing the action. How these funds are allocated within the agency is a matter of internal agency policy.

Forfeiture of Vehicles and Tools

Items Subject to Forfeiture: Materials excavated or taken from Indian and Federal lands will be seized, as they are the property of the Indian or Federal landowner.⁹⁰ The person from whom the materials are seized may be given a receipt for these items as a matter of record keeping. Property, including vehicles and tools, that belongs to the alleged violator and is used in the commission of the asserted violation is subject to forfeiture.⁹¹ These items may be seized and held at the time of the asserted violation. They are to be released either to the owner or to the seizing agency depending on the outcome of the forfeiture action.

Each agency and the land manager determine whether to pursue forfeiture. Even though forfeiture may be a legal option, the condition of the item or the lien on the item may make forfeiture undesirable. Forfeiture may be negotiated by the land manager in the informal meeting or hearing process.

Forfeiture Procedure: Items may be forfeited civilly by inclusion in the Notice of Violation as part of the demand or as an action against the item itself. If the Notice of Violation served on a respondent contains the appropriate language, the forfeiture becomes an integral part of the civil penalty process (Appendices A & C). If at any time the forfeiture is not appealed or preserved in the civil process outlined above, the item becomes the property of the agency or the Indian tribal entity if the violation occurred on Indian lands.⁹³ If the items to be forfeited are not associated with a person, the government may file an in rem judicial action, which is an action against the thing. Notice is published in a newspaper that the described items are subject to forfeiture, and any interested persons must come forth or lose their ability to claim the items. The in rem action is filed in the Federal district court where the items were found. The determination by the court that the items were used in an WA violation is sufficient to award the property to the government or tribal entity. If someone appears to contest forfeiture, the individual has the burden of proving lawful ownership, and connection with or knowledge of the violation must be dispelled. Even if the lawful owner had no actual part in the ARPA violation, the item still will be forfeited if the owner knew or should have known how the item was to be used.

Prognosis for Use

If there is a correlation to be drawn to the growth of ARPA criminal actions, once the civil prosecution process is known, its use could expand significantly. Civil actions will not replace all criminal prosecutions for ARPA violations that have become commonplace nationwide. Similarly, citations issued under the various agency CFRs still will be appropriate. However, where financial recoupment of damages is the desired result, the civil process is waiting to be used.

This brief is intended to assist in the use of the civil law. To keep updated on civil ARPA matters, copies of decisions in civil penalty proceedings may be obtained by a written request to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22303-1954. There may be a fee for this service.⁹⁴

ENDNOTES

1. P.L. 96-95, as amended by P.L. 100-555 and 100-588, 16 USC 470aa-mm (1988).
2. 16 USC 470ee.
3. 43 CFR Part 7, Department of the Interior; 36 CFR Part 296, Department of Agriculture; 18 CFR Part 1312, Tennessee Valley Authority; 32 CFR Part 229, Department of Defense.
4. LOOT Clearinghouse, reports of cases under ARPA and related laws, compiled by the NPS Departmental Consulting Archeologist, Archeological Assistance Division, Washington, D.C.
5. 16 USC 470gg.
6. In 1990, 20 individuals were charged with a total of 52 counts of civil and criminal violations of ARPA and other Federal and state laws, including National Oceanic and Atmospheric Administration regulations, at the Channel Islands National Marine Sanctuary. Extensive property was seized and \$132,000 in fines was imposed. The first civil matter to utilize the ARPA civil process, as outlined in this document, was Eel River Sawmills, et al. v. U.S., Docket nos. ARPA 90-1 and 90-2, before the United States Department of the Interior Office of Hearings and Appeals, Hearings Division, Salt Lake City, Utah. The ALJ decision imposed a civil penalty of \$43,500, against two of the three alleged violators. After initially filing an appeal of the ALJ's decision, the violators subsequently reached a settlement of the judgement with the Forest Service.
7. 16 USC 470ff.
8. 43 CFR Part 7(7) [52 FR 9165; 1987].
9. P.L. 100-555 and 100-588 (1988).
10. LOOT, supra, note 4. See also Technical Brief no. 11, June 1991.
11. TVA: Feb. 22, 1990; Dept. of Agriculture: Feb. 10, 1988.
12. Supra, note 6.
13. Administrative Procedures Act, P.L. 89-554 (1966), 80 Stat. 378, 5 USC 500-559; Administrative Hearings, 18 USC 556.
14. Criminal Fines Improvements Act of 1987, P.L. 100-185, 18 USC 3623, 101 Stat. 1279.
15. 16 USC 470ff; fines may be double the damage assessment amount for a subsequent offense (criminal or civil), see sec. 470ff(1)(B).
16. 16 USC 470gg(b)(3). (470gg(b)(1) & (2) require conviction by a court for an ARPA violation for a forfeiture while 470gg(b)(3) does not).
17. 36 CFR Part 296 (Forest Service); 50 CFR Part 27 (Fish and Wildlife Service); 43 CFR Part 7 (Interior); 32 CFR Part 229 (Defense); 18 CFR Part 1312 (TVA); 36 CFR Part 2 (NPS).
18. Criminal fines, unlike civil penalties, are deterrence or retribution, and a criminal defendant assessed a fine also may be subject to a civil penalty judgment. U.S. v. Ward, 448 U.S. 242, 250, 100 S. Ct. 2636, 65 L. Ed. 2d 742 (1980). If a fine is assessed strictly as an alternative to incarceration, in the true sense of "punishment," and is not linked by the

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- judge's order or the negotiations of counsel to the amount of the damage assessment, civil remedies are still available. If forfeiture is not considered in the criminal indictment or in a plea agreement, civil forfeiture remains an option.
19. 16 USC 470bb(3).
 20. 16 USC 470bb(3) & (7).
 21. 16 USC 470ee(c). See also U.S. V. Gerber, 999 F2d 1112 (7th Cir. 1993) affirming the conviction. Gerber and others were criminally charged under ARPA for removing archeological resources from private land and transporting the items across State lines. The defendants questioned the validity of 16 USC 470ee(c).
 22. 16 USC 470bb(6).
 23. 16 USC 470ff(a)(2)(civil) and 470ee(d)(criminal).
 24. 16 USC 470bb(1)
 25. 16 USC 470ff(3) and 470ee(g).
 26. 16 USC 470kk(b) and 470bb(1).
 27. Id.
 28. 16 USC 470ee(a).
 29. The contract will contain a paragraph within the document or as an addendum stating that Federal law prohibits the excavation, removal, damage, alteration or defacement of any archeological resource on Federal or Indian lands, that the contractor shall control the action of its employees and subcontractors at the job site to ensure that any protected sites will not be disturbed or damaged, and that it is the obligation of the contractor to ensure that employees and subcontractors cease work in the event of a newly discovered site until further authorization is obtained.
 30. In Eel River Saw mills (supra, note 6), a contractor to the Forest Service was alleged to have damaged an archeological site when a road was built through a protected area to develop a water source. Eel River Sawmills claimed that its actions were inadvertent and that its agents did not see the flags marking the area. It also disputed jurisdiction and the method of calculating damages. The Forest Service contended that the contractor acted outside the scope of its contract because it is customary to develop water sources only with prior consultation with the contracting agency. Inadvertence is not a defense to a civil matter. No machinery was seized, and the land manager offered to resolve the matter ~that the initial hearing for an amount of damages that was less than the full damage assessment. A decision was issued on August 10, 1992. The parties agreed to a settlement of the judgement on January 19, 1993.
 31. 16 USC 470ff(a)(2).
 32. Title 18 CFR Part 1312.14(a).
 33. Id, at 14(c).
 34. 16 USC 470tf(a), and 18 CFR Part 1312.16.
 35. 18 USC sec. 3623
 - 36 16 USC 470gg(b)
 37. 36 CFR Part 79, (effective Oct. 12, 1990).
 38. H.R. Rep. No. 96-311, 96th Cong., 1st Sess. (1979), reprinted in 1979 US. Code Cong. Ad. News, 1709, 1714; United States v. Kohl, no. 85-10044 (D. Idaho Feb. 13, 1986), memorandum opinion.
 39. Black, Henry Campbell, 1968. Black's Law Dictionary, 4th revised edition, West Publishing Co., St. Paul MN, p. 1184.
 40. 16 USC 470ff(a)(1).
 41. H.R. Rep. No. 96-311, 96th Cong., 1st Sess., reprinted in 1979 US. Code Cong. Admin. News, 1709, 1714.
 42. 43 CFR Part 7.15(b).
 43. 43 CFR Part 7.15(b)(1).
 44. 43 CFR Part 7.15(b)(2).
 45. 43 CFR Part 7.15(b)(3).
 46. 43 CFR Part 7.15(b)(4).
 47. Title 28 USC sec. 1658, sets four years as the time to bring an action arising under an Act of Congress. The statute is effective on incidents occurring after the date of the Act, Dec. 1, 1990. The application of the statute of limitations is a matter to be discussed with counsel.
 48. 43 CFR Part 7.15(c)(1).
 49. 56 FR 55195 (Oct. 25, 1991).
 50. 43 CFR Part 7.15(c)(2).
 51. 43 CFR Part 7.15(c)(4).
 52. 43 CFR Part 7.15(c)(3).
 53. The Forest Service and the TVA request that counsel be involved at all stages.
 54. 43 CFR Part 7.15(e)(3).
 55. 43 CFR Part 7.15(e)(2).
 56. 43 CFR Part 7.15(d).
 57. 43 CFR Part 7.15(e)(2).
 58. Supra, note 32, calculating damages.
 59. 43 CFR part 7.16(b)(1)(i-vii).
 60. 43 CFR Part 7.15(f)(1).
 61. 43 CFR Part 7.15(f)(2).
 62. 43 CFR P:3rt 7.15(f)(3).
 63. 43 CFR Part 7.15(g).
 64. 43 CFR Part 7.15(g)(2).
 65. Department of the Interior Supplemental Regulations, 43 CFR Part 7.37(a) requires that a written statement of the basis for the relief accompany the request for hearing. All agencies with Memoranda of Agreement to use the Interior ALJs must follow the Supplemental Regulation procedures.
 66. TVA, Memorandum of Agreement approved Feb. 1990. Service of notice on the TVA is to be made to: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tenn. 37902-1499. Forest Service notice shall be given to the Office of General Counsel, Department of Agriculture.
 67. 43 CFR Part 7.37(a).
 68. Id.
 69. Supra, note 64.
 70. 43 CFR Part 7.37(c).
 71. 43 CFR Part 7.37(d)(2).
 72. Supra, note 66.
 73. 43 CFR Part 7.37(d).
 74. 5 USC 554-557, Rules of Procedure for Administrative Hearings.
 75. 43 CFR Part 7.15(g)(3).
 76. 43 CFR Part 7.37(e)(3).
 77. 43 CFR Part 7.3,(f).
 78. Id.
 79. 43 CFR Part 4 A, B & G.
 80. 43 CFR Part 7.37(h).
 81. 43 CFR Part 7.15(c)(4).
 82. 43 CFR Part 7.15(c)(3).
 83. 43 CFR Part 7.37(e)(3).
 84. 43 CFR Part 7.37(f).

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85. Prejudgment actions to preserve assets pending future judgments are part of an aggressive collection process. Individual State laws will control the available remedies.
86. The amount of interest on the judgment will be determined by the law of the State in which the judgment is ordered.
87. 43 CFR Part 7.15(i)(2).
88. Id.
89. The sum varies, depending on State law.
90. 16 USC 470gg(b).
91. Id.
92. 16 USC 470gg(b)(2 & 3).
93. 16 USC 470gg(c).
94. 43 CFR Part 7.37(g).

APPENDIX A Notice of Violation

Date:

Addressed to:

An investigation has revealed that you are responsible for damage to an archeological site on (location and popular name of site, if any). The damage occurred (between dates) (on or about) during an activity that was conducted outside of the permit or contract authority or without a permit or a contract, that is (describe). The specific location of the damaged site is (describe). You have damaged an archeological resource located on (Federal or Indian) lands in violation of the Archaeological Resources Protection Act of 1979 (ARPA, 16 USC 470aa-mm) and (agency regs. that apply). The total damages have been ascertained pursuant to the law and are in the amount of (\$). The proposed penalty amount is (\$).

Archeological resources removed from the site are the property of the United States Government and are to be returned (or if seized, are to be maintained in government custody for appropriate disposition). Certain tools and vehicles were used in the commission of the violation of ARPA, and those are (fully describe). These tools and vehicles are subject to forfeiture, and, if seized, will remain in the custody of the (agency) until the final disposition of this matter.

You have 45 days from the service of this notice to take one of the following actions: seek informal discussions with the (identify the agency attorney, address and telephone); file a petition for relief, stating the basis for your request, to be sent to (person and the address); pay the amount indicated above; or take no action and await the issuance of the Notice of Assessment. Any Petition for Relief must comply with the requirements of (agency regulations).

Upon completion of the review of any petition, at the conclusion of the informal discussions, or upon passage of 45 days if you take no action, I will, if appropriate, issue a notice of Assessment. If one is issued, you will have the right to a hearing before an Administrative Law Judge of the (hearing body), if you wish to appeal. I will advise you of the proper procedures for appealing the Notice of Assessment in any Notice of Assessment that I issue.

You have the right to seek judicial review of any final administrative decision assessing a civil penalty.

Signature and Title Date
(address if not apparent and telephone)

APPENDIX B Petition for Relief

To: (person issuing notice of violation)

Date: (served within 45 days of notice)

(I) (we) (accept) (take issue with the Notice of Assessment dated for the following reasons: (I am not the violator, explain) (I did not create the damage as indicated, explain) (I did not use the vehicle or tools now in your possession, explain) (the damage is overstated, explain). The factual and legal reasons that I feel that I should not be assessed a penalty are:

Signed by the recipient of the notice Date
or an officer of a corporate respondent

APPENDIX C Notice of Assessment

To: (respondent) (s)

Date:

After an investigation (and after considering the facts you brought forth in the informal hearing and/or the petition for relief) it has been determined that you are responsible for damage to an archeological site (describe) on the (site location). The damage occurred when you took action without a permit or contract, or in excess of your permit or contract authority, that is: (describe).

During the course of the investigation (brief statement of the facts that indicate there was a violation of ARPA, that be respondent was the violator, and that vehicles or tools were used in the commission of the offense).

During the meeting you requested on (date) you indicated (pertinent discussed facts and land manager's response thereto). Therefore you acted without authority and damaged the archeological site.

I have determined the amount of the penalty to be (\$), which includes the (archeological value of the resource or the commercial value of the items, plus the cost of restoration and repair in either case). (In the case of a contractor with a receivable pending) If the awarded contract is more than the penalty amount, the remaining monies will be refunded. If the penalty amount exceeds the amount of the contract, the (agency) will (absorb the remainder and/or request collection of the balance). The administrative costs will be (billed or absorbed by the agency).

In accordance with a Memorandum of Agreement between the (petitioning agency) and the Department of the Interior for implementing administrative procedures under the Archaeological Resources Protection Act, you may file a written, dated request for a hearing with the Hearing Division, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203-1954, within 45 days of service of this Notice of Assessment. You should enclose a copy of the Notice of Violation previously sent to you and a copy of this Notice of Assessment. Your request will state the relief requested and your basis for challenging the facts alleged by (agency). You also should include your preferences as to the place and date for a hearing.

A copy of the request for a hearing should be served upon (agency counsel) personally or by registered or certified mail, return receipt requested, at (address of counsel).

You have a right to seek judicial review of any final administrative decision assessing a civil penalty.
Signature and Title

(may attach a copy of the site damage assessment)

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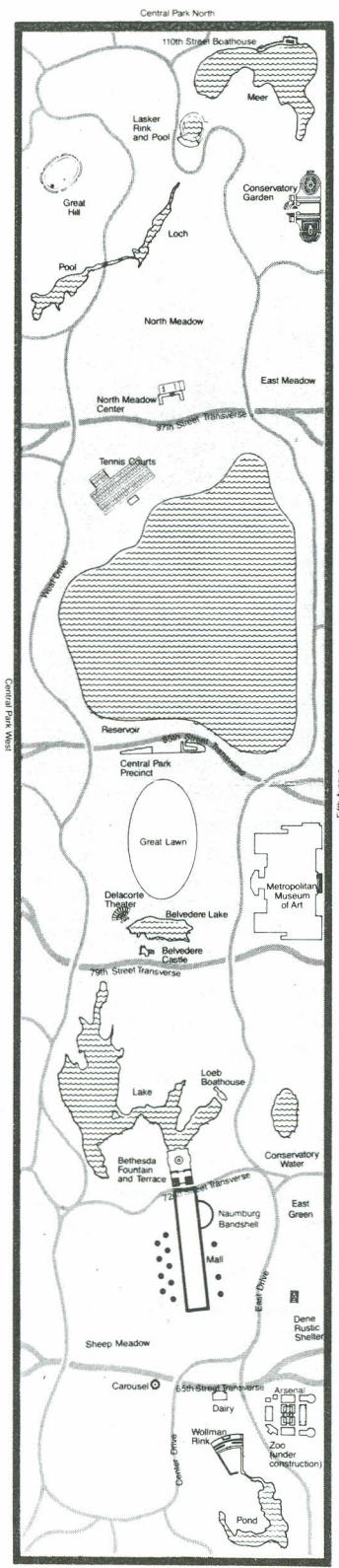
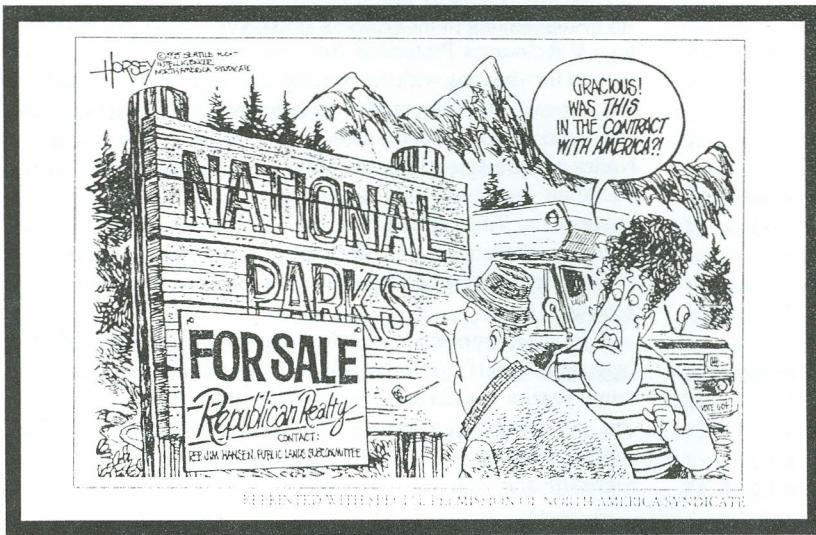


PROFILE: NEW YORK CITY PARKS ENFORCEMENT PATROL

By: Timothy E. Regan

Many people may be surprised at the fact the old "Concrete Jungle", also has one of the largest urban open space programs in the United States. Today the City of New York Parks and Recreation Department is responsible for 1548 parks encompassing nearly 27,000 acres. Of course with this ultra urban parkland comes the unique responsibility of patrolling and providing safety services to the millions of people who use these facilities. The men and women of the NYC Parks Enforcement Patrol have been given one of the toughest assignments in park rangering today. All officer's are under the classification of Urban park Ranger, assigned to the Parks Enforcement Patrol. Today the PEP's as they are known number nearly 250 strong. Each ranger is a commissioned special patrolmen and although they do not carry firearms, all have full peace officer powers. All rangers are assigned to individual parks and then provide satellite patrols to smaller areas.

Some of the toughest patrol areas include Central Park in Manhattan. 843 acres of man-made lakes, ponds, ravines and woodlands was built between 1858 and 1868. Today rangers must watch over the nearly (summer average) 40,000+ visitors who are participating in everything from rollerblading and canoeing to more devious illegal activity. Rangers handle such a large number of calls it may seem overwhelming to those of us who are more rural. Illegal vending, domestic disturbances, assaults and even more serious crimes are all processed by the PEP's. Additional law enforcement help comes from the NYC Police Central Park precinct. Other challenging Manhattan parks include Tompkins Square on the lower East side and Riverside Park on the West Side. Other large parks include Flushing Meadows-Corona Park in Queens, in which rangers provided security for the 1994 US Open Tennis tournament. Brooklyn is home to Prospect Park and Pelham Bay/Van Cortland Park in the Bronx.



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LETTERS TO THE EDITOR



All Rangers attend a thorough training class on Randalls' Island. Course content includes all aspects of patrol procedures, defensive tactics, use of side handle baton and oleoresin capsicum. After graduation rangers are assigned to a park and maintain a minimum shift until 00:00 hours, larger parks maintain all night security, but are very limited due to several budget restrictions. Some of the major events that the rangers are assigned to include: The New York City Marathon in November, various festivals such as the Lollapalooza Concert held in the summer of 1994, and many large parades.

Rangers respond to and patrol in a variety of vehicles. The fleet mostly consists of 1993-5 Ford Broncos, although some parks use older Bronco II's and Chevy Blazers. All new vehicles are painted white with the words NYC-PARKS incorporated into a green reflective stripe. Whelen strobe bars in red/white are used for maximum traffic clearing power.

Uniforms consist of forest green trousers, shirts (black ties in season) and "Sheriff" style stetsons. Plain leather finished belt accessories round out the uniform. Unfortunately like so many other city departments budget cuts have reduced manpower and eliminated many much needed things from the rangers arsenal of tools.

So the next time you are in the "Big Apple" take time to think that amongst all the concrete and steel, lie some of the most diverse and beautiful parks in the nation. The Parks Enforcement Patrol is only entering into its second decade, and with lessons of the past they are working harder everyday to protect the visitors and the natural resources of New York City.

Dear Sir or Ms.

3/29/95

As a family activity, my nine year old son and I recently began collecting law enforcement insignias from throughout the Nation. I would truly appreciate your help in obtaining a complete reference listing of all State and National parks.

Thank you very much for taking the time to read my request. I wish you and enjoyable day.

Respectfully Yours,

Carlos Garcia
Dept. 19433-K 2205L
P.O. Box 02-8538
Miami, Fla 33102-8538

Dear Mr. Garcia,

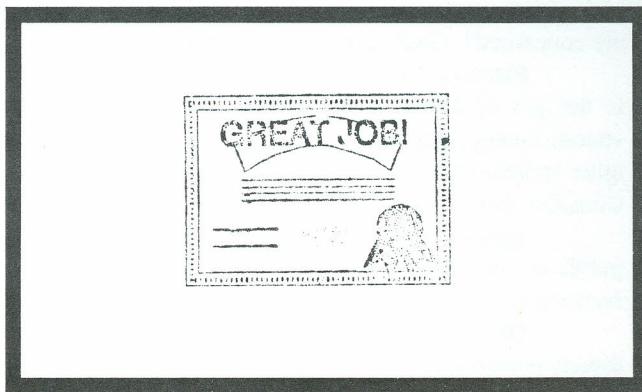
April 26, 1995

I received your letter dated March 29, 1995, regarding your patch collection, and your request for a list of all state and national parks. As a rule, the Park Law Enforcement Association does not provide its membership list to individuals who request it, so I am unable to help you in that regard. What I can do for you, is give a copy of your letter to our association's newsletter editor, and perhaps he can include it in a future publication. That may generate some responses to your request.

I have included one of my department's patches. Good luck with your collection, and thank you for your interest.

Sincerely,

Colonel Richard A. Greer
President
Park Law Enforcement Association



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Molding Visitor Expectations: Beyond regulations They Shoot deer, don't they?

It tore at my gut - that headline on the front page of the Arizona Republic newspaper: "Junk Food Diet Dooms Canyon Deer to Execution." The sub-headline read, "Ailing Animals Being Shot."

The shooting was not a resource management decision to control overpopulated deer. Rather, it was a resource management decision to send a wake-up call to the visiting public about appropriate human-wildlife behavior in national parks. Dave Haskell, chief of resources management at Grand Canyon, cited the steady diet of Cheetos, Fritos and candy as the culprits that have rendered the deer incapable of digesting natural vegetation, and as a result, the animals are starving to death.

Interestingly, an animal-rights group claimed the National Park Service could have prevented the problem by enforcing regulations against feeding wildlife. The park management responded by planning to increase education to stop visitors from feeding animals.

And therein lies the crux of the matter: virtually every park in the System has dealt with issues of "enforcing the regulations" - be they regulations that prohibit the feeding of wildlife, the handling of historic fabric, the taking of artifacts, or other inappropriate and consumptive uses of park resources.

Enforcement and education are only two parts of a complex solution. In tandem, they can be effective - on site. They lose effectiveness for the millions of visitors - or potential visitors - who are not in direct contact with park rangers during a visit.

A third facet, which we as an agency need to explore more fully, is that of molding visitor expectations. How can the public be educated and influenced in positive ways about what to expect before their visit a national park or not, which encourages a more sophisticated understanding of why such behavior is inappropriate? And could that knowledge be transferred to other situations, thereby having a citizenry capable of independent decisions where preservation and conservation of natural and cultural resources are concerned? Gosh, can we save the globe?

Planning for and facilitating "visitor experience" is the job of all NPS employees, as well as partners, concessioners, tourism councils, community groups and other stakeholders.

Consider this:

How much accurate "information" is given to the public in gift shops, both in and out of the park, in local restaurants, or at gas stations and motels 100 miles away?

Does the information contain any messages remotely related to appropriate behavior, what to expect of the

park experience, why the resources are significant and how we all can be stewards? Are there accurate enforcement and education messages?

Is it possible to influence the information provided to the public by people not employed, contracted or permitted by the NPS? And if possible, what would you want most for those information providers to know? And how would you go about educating the huge numbers of "interpreters" outside the park boundaries?

Planning for and facilitating the range of visitor experiences in a park is a challenge for all of us directly or indirectly involved in visitor services. Visitor experience planning considers three important aspects:

Physical Experiences - These include virtually everything that happens to a visitor, beginning with pre-visit planning, information, orientation, access, availability of services, what choices the visitor has at points along the way, choices of things to see and do, sense and feel while in the park, and what opportunities are available. It also includes how informed the visitor is regarding these choices.

Intellectual Experiences - Some visitors cannot appreciate the significance of the park without grasping it first intellectually. Provide information, technical details, explain consequences of actions, management policies, the what, where, why and how. Help visitors understand why the area is a part of the National Park System and what they can do to assure its future protection.

Emotional Experiences - When touched by experience on an emotional level, the significance of an area and its resources take on a depth with the power to transform visitors into stewards. When visitors are provided opportunities to discover things, changes in attitudes and behavior are the likely outcome. Preservation of heritage, culture and ecosystems are no longer just our messages, but become their messages. The power of emotional experience may have the most profound and lasting effect.

Keeping Fritos from the digestive system of deer at Grand Canyon National Park is but one reason to mold the expectations of the public. If visitors discover for themselves what appropriate behavior is around bison at the Badlands, then perhaps father won't perch Junior on the back of a bison when they get to Yellowstone.

When the public understands that taking a potsherd in Mesa Verde is the same as breaking into a private home in Philadelphia and stealing the family photo album, then a change in attitude, behavior and understanding has occurred. And when the gas station attendant in Williams, Ariz., takes an active part in molding visitor behavior at Grand Canyon, the world just might be saved.

PARK LAW ENFORCEMENT ASSOCIATION
MERCHANDISE
ORDER FORM

ITEM #	DESCRIPTION	QUANTITY	COLOR	SIZE	PRICE EACH	TOTAL
RETURN ADDRESS						
NAME _____		ADD \$1.00 FOR XXL _____				
ADDRESS _____		ADD \$200 FOR XXXL _____				
CITY/STATE/ZIP _____		POSTAGE AND HANDLING <u>\$2.50</u> _____				
PHONE _____		GRAND TOTAL _____				



MAIL TO:

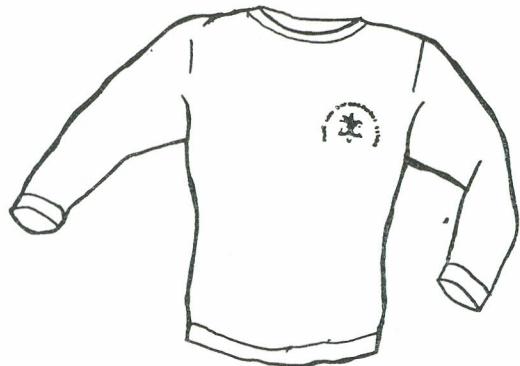
Stephen Pokrywka
 Chief Ranger
 Wyandotte County Parks
 3488 West Drive
 Kansas City, KS 66109
 913/299-0550
 913/299-9051

Guarantee:

If not completely satisfied with your purchase
 please return within 30 days for a refund
 or replacement

We will accept personal checks, cashier's checks
 or money orders payable to P.L.E.A.
 Allow 2-4 weeks for delivery

Item #1 Embroidered Sweatshirts



Heavyweight 9oz Sweatshirt available
in forest green, red, navy, and black
s-xl \$ 18.95
size 2xl \$ 20.95

Item #2 Embroidered Golf Hats



Available in white or black,
One size fits all
\$ 9.95

Item #3 Embroidered Golf Shirts



Hanes 100% Cotton Pique Knit,
Available in white, red, ash, black,
navy and forest green
s-xl \$ 22.95
2xl \$ 24.95

Item #4 Embroidered Golf Shirts



Outer Banks 100% cotton pique knit
w/contrast collar Colors: red body
w/navy collar & forest placket, jade body
w/ royal collar & concord placket,
wine body w/navy collar & forest placket,
concord body w/ navy collar & jade
placket
s-xl \$ 24.95
2xl \$ 26.95

Item #5 Silk Screened T-Shirts



100% Cotton, available in white
and black
s-xl \$ 10.95
2xl \$ 12.95
3xl \$ 12.95

Item #6 Embroidered Cotton Poplin Jacket



Color: forest green w/ tan lining
s-xl \$ 55.95
2xl \$ 57.95
3xl \$ 59.95



PARK LAW ENFORCEMENT ASSOCIATION



* APPLICATION FOR MEMBERSHIP *

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TITLE _____ AGENCY _____

AGENCY/FIRM _____

ADDRESS (Street/POB) _____

CITY _____ STATE _____ ZIP _____

WORK PHONE _____ NEW MEMBERSHIP _____ OR RENEWAL _____

ANNUAL MEMBERSHIP DUES

Individual	\$ 20.00
Agency	\$ 70.00
State Affiliate	\$150.00 1st Year
State Affiliate	\$ 70.00 Renewal



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VISA AND MASTERCARD ACCEPTED _____

ACCOUNT NUMBER _____ VISA _____ MC _____

EXP. DATE _____

ACCOUNT NAME _____ SIGNATURE _____

MAKE CHECKS PAYABLE TO THE NATIONAL RECREATION AND PARK ASSOCIATION (NRPA)

PAT CARTRIGHT

NATIONAL RECREATION AND PARK ASSOCIATION
2775 SOUTH QUINCY STREET, Suite 300
ARLINGTON, VA. 22206-2204
800/626-6772



NATIONAL RECREATION
AND PARK ASSOCIATION

P.L.E.A. IS
AFFILIATED WITH THE
NATIONAL RECREATION
AND PARK ASSOCIATION

AGENCY MEMBERSHIPS

Recently requests were made of the P.L.E.A. Board of Directors to establish Agency Memberships. The stated reason for this move was to assist agencies in joining officially. Many agencies have little trouble paying for an "agency membership" but balk at paying individual memberships, even though these memberships are in strictly professional organizations. By designing a new membership category many agencies were able to join en masse. Because of the inequities in agency size across the nation, benefits had to be strictly managed in this category. Thus the following benefits are offered to Agency Members: (1) Full membership privileges to the agency as in individual memberships, and (2) Reduced rates for official P.L.E.A. Functions (Conferences, Educational Events, etc., for all agency employees without the need for each employee to join P.L.E.A. individually. Because of the cost of printing and distributing PLEA only one copy of PLEA would be sent to Agency Members. Though the Board of Directors authorized reprinting and distribution by these members. P.L.E.A. membership is decidedly inexpensive when compared to other professional organizations. The Agency Membership allows agencies to financially support P.L.E.A. and receive benefits from that membership.

INDIVIDUAL MEMBERSHIPS

- (1) One vote per membership on official P.L.E.A. issues.
- (2) Four issues per year of PLEA: Journal of the Park Law Enforcement Association.
- (3) Membership I.D. Card.
- (4) P.L.E.A. Patch.
- (5) P.L.E.A. Window Decal.
- (6) Bi-Annual Park Law Enforcement Agency Directory.
- (7) Reduced Rate for P.L.E.A. Sponsored Conferences and Educational Events.
- (8) Access at a reduced rate (or free as available) of special P.L.E.A. sponsored publications.
- (9) Eligible for election to the Board of Directors and appointment to various committees.

STATE AFFILIATES

State Affiliates are groups within states which have organized along the guidelines established by the P.L.E.A. Board of Directors. State Affiliate receive one seat on the Board of Directors automatically and take an intimate role in developing the future of P.L.E.A. There is a \$150.00 affiliation fee. If your state is not currently an affiliate contact the President of P.L.E.A. for details on how to start.

JOURNAL OF THE PARK LAW ENFORCEMENT ASSOCIATION



NATIONAL RECREATION AND PARK ASSOCIATION

2775 South Quincy Street • Suite 300 • Arlington, Virginia 22206-2204

MEMBERSHIP APPLICATION

CLP CLA CTRS CTRA
(Check if Applicable)

CIRCLE ONE (Mr., Mrs., Miss, Ms., Dr., Sen., etc.)

LAST NAME (If not enough space, spell out above address) FIRST NAME AND M.I.

OCCUPATIONAL TITLE OR POSITION (Abbreviate if necessary)

EMPLOYER OR ORGANIZATION (Abbreviate if necessary)

MAILING ADDRESS (Street or post office box)

CITY STATE ZIP (in the US)

FOREIGN COUNTRY (Abbreviate if necessary)

PHONE
(Check One) Home Office AREA CODE PREFIX NUMBER

(Check One) NEW MEMBER RENEWAL STATE ASSOCIATION MEMBER

Membership Category and Dues

Professional (Based on salary)

Annual Salary	Annual Dues
0-14,999	\$ 45.00
15,000 - 19,999	65.00
20,000 - 29,999	90.00
30,000 - 35,999	130.00
40,000 - 49,999	160.00
50,000 and over	215.00

- Retired Professional 45.00
 - Student (SB is primary affiliation) 30.00
 - Associate (Limited to those not employed in field) 50.00
 - Citizen Board Member 35.00
 - Corporate 240.00
 - Nonprofit Association 185.00
- If your agency is an agency member of NRPA with a special package, you are eligible for reduced dues.
- Professional* 60.00
 - Student* 25.00

The following must be completed to use the reduced dues structure.
Organization Name _____
Membership Number _____

For information on special package, contact Membership Dept. NRPA

Friends of Parks and Recreation (Annual Fee) 15.00
(Includes Friends of Parks and Recreation News magazine only)

Also available on a subscription basis 15.00

Friend/Associate	25.00
Friend/Contributor	50.00
Friend/Supporting	100.00
Friend/Benefactor	250.00
Friend/Patron	500.00
Friend/Fellow	1,000.00

(All friend categories limited to those not employed in the field)

Send Information On:

- NRPA Insurance Programs
- NRPA Certification Program
- Latest Publication Catalog
- State Society Membership
- Ethnic Minority Society
- European Recreation Society
- Park Law Enforcement Association
- MLDAs Long Distance Service
- Alamo Rent A Car Program

Check One Branch or Section of Choice

(One branch or section is included with membership. If you desire affiliation in more than one branch or section, number in order of preference and add \$15 under Optional Fees for each additional branch or section.)

American Park and Recreation Society (APRS)
 Armed Forces Recreation Society (AFRS)
 Citizen and/or Board Member (CBM)
 Commercial Recreation and Tourism Section (CRTS)
 Leisure and Aging Section (LAS)
 National Aquatic Section (NAS)
 National Society for Park Resources (NSPR)
 National Therapeutic Recreation Society (NTRS)
(Therapeutic Recreation Journal included in Professional Membership Services.)
 Student Branch (SB)
(This branch is automatically the primary affiliation of NRPA student members. To be included in any other branch, student must pay for additional branch.)
 Society of Park and Recreation Educators (SPRE)
 Friend of NRPA

Form of Payment

Overseas Postage

If mailing address is outside U.S. ADD \$6

Total payment enclosed (Do not send cash) \$ _____

Check # _____

Enclosed is my tax deductible contribution of \$ _____

Bill to: Visa MasterCard

Number _____

Expires Mo. _____ Year _____

TO ACTIVATE MEMBERSHIP BY PHONE WHEN USING VISA OR MASTERCARD
CALL TOLL FREE 1-800-626-NRPA

Signature _____

Date _____

RATES

Your dues support the many NRPA programs and services that are designed to expand the park, recreation and leisure movement. These include subscriptions to NRPA publications: Parks & Recreation magazine —\$18.00. Therapeutic Recreation Journal \$6.00. Your membership category determines which of these publications you receive.

NOTE: THESE RATES ARE NOT TO BE CONFUSED WITH SUBSCRIPTION RATES.

FOR NRPA USE ONLY:

KEY NO. _____

JOIN _____

EXP. _____

ETHNICITY INFORMATION (RESPONSE IS VOLUNTARY)

American Indian White Male
 Asian Hispanic Female
 Black Other

This information will assist NRPA to develop a profile of our membership.

Optional Fees

Must hold membership to purchase:

National Job Bulletin (\$35.00)

PIN (\$18.00)

Recreation...Access in the 90's (\$25.00)

Journal of Leisure Research

\$25 — Domestic

\$20 — SPRE Member

\$28 — Foreign

Recreation and Parks Law Reporter (\$50.00)

Legal Issues in Recreation Administration (\$50.00)

Membership Certificate (\$7.50)

Professional members only

Print name as to appear _____

Membership Laminated Walnut Plaque

Professional members only (\$37.50)

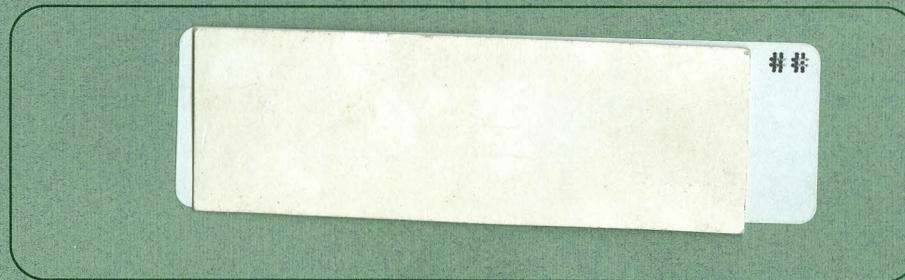
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Additional Branches (\$15.00)



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