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CRIMINAL JURISDICTION IN THE NATIONAL PARKS--A CLARIFICATION

During the year 1966, the 50th anniversary of the National Park Service, a record 137 million Americans will visit the 231 areas administered by the Service. An increasingly pressing problem for the Service's Ranger Division is the effective and efficient administration of justice. During the 1965 calendar year a service wide report showed a 35.7% increase in serious offenses. They included murder, manslaughter, rape, robbery, burglary, larceny and auto theft. These offenses totalled 1,284 compared to 946 in 1964. In addition there were 25,060 misdemeanors and petty crimes reported for the same period. The "petty crimes" involved attacks on persons and property; lewd and disorderly conduct; traffic, boating and fishing violations; vandalism; etc. To complete the picture, 1,842 traffic accidents resulting in property damage totaling \$947,024 were investigated by National Park Service officers.¹

Unfortunately, those who prey on the public at home have found him to be an "easy mark" at his weekend retreat and in his summer vacation spots. The increase in crime in the National Parks "may logically be attributed to our unique exposures. For example, park visitors being on the so-called carefree vacation, are not likely to be overly security-conscious of their persons or property, and are ideal prey for the criminal"²

As it relates to the National Parks, the concept of jurisdiction, that is, the authority, power, or right to act, has been an elusive one. The courts and administrative agencies of the federal government have spoken of three "types" of jurisdiction: exclusive, concurrent, and proprietary.

Areas of exclusive jurisdiction are "federal reservations" or "federal enclaves" over which state and local governments have no authority.³ Exclusive jurisdiction is acquired by three means: 1) Federal acquisition of land with state consent under Article I, section 8, clause 17 of the United States

1. National Park Service, Informational Memorandum Analysis of Summary Reports—Law Enforcement and Traffic Safety, 1965 Calendar Year.

2. *Ibid.*

3. Examples of National Parks under the exclusive jurisdiction of the United States are: Yellowstone, Yosemite, Rocky Mountain.

Constitution; 2) Through the transfer of jurisdiction by cessation from the state to the federal government;⁴ 3) Finally, by retaining exclusive legislative jurisdiction over a federally owned area within the state at the time the state is admitted to the Union.⁵

Where the United States exercises exclusive jurisdiction, the National Park Service is free to react to the rising incidents of criminal activity by dedicating more manpower to the prevention effort and by practicing police routines in a more professional manner. In these areas the Service is master of its own criminal house.

The authority of the federal government to deal with criminal matters in those National Parks where the United States does not have exclusive jurisdiction is infinitely less clear. The applicability of many of the federal criminal statutes is also in doubt in these areas.

The term "concurrent jurisdiction" has been used to define that kind of jurisdiction which arises when a state reserves to itself in a consent or cessation statute the right to exercise concurrently with the United States, all of the authority which would otherwise amount to exclusive federal jurisdiction.⁶ Where both state and federal courts have concurrent jurisdiction, the court which first takes cognizance of a matter has the right to retain it to a conclusion.⁷

For reasons which shall be discussed later, it is submitted that a better definition of concurrent criminal jurisdiction as it applies to the National Parks might be: The authority of a state to enforce such criminal laws as are not inconsistent with federal statutes and regulations, in a manner which does not interfere with the federal function in the area.

The National Park Service has defined "proprietary jurisdiction" as those instances in which the federal government has acquired some right or title to an area in a state but has not obtained any measure of the state's authority

4. *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525 (1885).

5. *Ibid.* (dictum).

6. See, Annot., 74 L. Ed. 761 (1929).

7. *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941).

over the area.⁸ It has been said that acquisition of "proprietary jurisdiction" is concurrent with any interest of the United States in real property.⁹ It is widely assumed that the United States does not have criminal jurisdiction per se in areas of proprietary jurisdiction. It is here contended, also for reasons which shall be examined later, that the term "proprietary jurisdiction" as it refers to federal criminal jurisdiction within the National Park System is a non sequitur.

It is the position of this article that wherever the federal government operates an area as a National Park, it has at least concurrent criminal jurisdiction with the state, with all of the incidents and authority which the term "criminal jurisdiction" implies. This is a substantial deviation in the thinking in most "proprietary areas" administered by the National Park Service. In these areas there is confusion as to exactly how much authority the Ranger Division has in investigating criminal matters and from what sources this authority is derived. Because of the bewildering and indecisive views on the applicability of the federal criminal statutes in areas of less than exclusive jurisdiction, these important tools are seldom used in such areas.

AUTHORITY OF THE FEDERAL GOVERNMENT IN CRIMINAL MATTERS REGARDLESS OF THE JURISDICTIONAL STATUS OF A PARK

In areas of exclusive jurisdiction the authority of the federal government to deal with criminal matters has never been seriously questioned. Article I, section 8, clause 17, of the Constitution, provides the Congress shall have the power "To exercise exclusive Legislation . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings." In such an area (Yellowstone National Park is a good example) all of the statutory tools which Congress has provided are free

8. Examples of National Parks under the proprietary jurisdiction of the United States are: Grand Teton, Grand Canyon, Bryce Canyon.

9. *Kohl v. United States*, 91 U.S. 367 (1875).

for use and are used by the Protective Division of the park ranger force.¹⁰

The authority of the federal government to deal with criminal matters in areas of less than exclusive jurisdiction stems from three constitutional provisions dealing with property protection and control, Congressional authority to make all needful laws, and the supremacy of federal laws.

The property clause states that "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States or of any particular State."¹¹

The meaning of this clause, the kind of authority derived from it, and the extent of that authority, have frequently been clouded by the reported decisions. For instance, in *Ranier National Park Co. v. Martin*, the court held the State of Washington had jurisdiction over lands held by the United States in a proprietary capacity, but with the important exception that the State could not exercise any jurisdiction which would destroy or interfere with the use by the federal government of the property it had purchased.¹² The court did not examine the jurisdiction of the United States over the area and was content to announce the State had authority to act if its actions did not interfere with the use of the federal government.

In its equivocal decision in *Camfield v. United States*, the Court said that with respect to public lands belonging to the United States and located within the boundaries of a state, the federal government had the rights of an "ordinary proprietor." It then added the somewhat contradictory proviso that these rights were analagous to the police power of the States.¹³ With this kind of "tail chasing" it is small wonder that Park Service officials are unclear as to the kind and extent of their authority in the "proprietary areas."

10. See generally, Brown, *The Administration of Law in Yellowstone National Park*, 14 Wyo. L.J. 9 (1959).

11. U.S. CONST. art. IV, § 3, cl. 2.

12. *Ranier Nat'l Park Co. v. Martin*, 18 F. Supp. 481 (W.D. Wash. 1937), *aff'd*, 302 U.S. 661 (1938).

13. *Camfield v. United States*, 167 U.S. 518 (1897).

On the other hand, and in a somewhat more decisive fashion, the Court stated in *McKelvey v. United States* that Congress could prescribe rules respecting the use of the public lands and in so doing could sanction some uses and prohibit others.¹⁴ In *United States v. Trinidad Coal Co.*, the Court added that all of the public lands were held in trust for the citizens of the United States and that it was the duty of Congress to determine how the trust should be administered. The Court further stated that administrative decisions with respect to these lands were rights incident to proprietorship. But more than this, the Court implied that the real authority of the United States over these lands stemmed not from mere proprietorship but from the power of the United States as a sovereign over the property belonging to it.¹⁵

It would seem that the *Trinidad* and *McKelvey* cases lend credence to the theory that the federal government may prohibit criminal activity within the confines of the National Parks. Certainly the criminal element has made growing use of the Parks and the large concentrations of people attracted by them for their illegal activity. It follows that this type of use is one which Congress is constitutionally empowered to prohibit.

The supreme power of the government to protect its property is demonstrated by *Hunt v. United States*, wherein it was held that a state could not enforce its game laws against federal employees who, upon direction of the Secretary of Agriculture, destroyed a number of wild deer in a national forest (which was not under the exclusive jurisdiction of the United States) because the deer, by overbrowsing upon and killing young trees, bushes, and forage plants, were causing damage to the land. The Court said that the conduct of the federal employees was necessary to protect the lands of the United States from serious injury. The authorization given by the Secretary of Agriculture was held to be within the authority conferred by Congress, and the power of the federal government to protect its property was said to be

14. *McKelvey v. United States*, 260 U.S. 353 (1922); accord, *Light v. United States*, 220 U.S. 523 (1911).

15. *United States v. Trinidad Coal Co.*, 137 U.S. 160 (1890).

beyond question regardless of the game laws or any other state statute.¹⁶

This principle hardly needs amplification in light of the supremacy clause.¹⁷ In 1819, Chief Justice Marshall enunciated for the Supreme Court what has become a basic tenet of American Constitutional law:

If any one proposition could command the universal assent of mankind, we might expect it would be this: that the government of the Union, though limited in its powers, is supreme within its sphere of action But this question is not left to mere reason. The people have, in express terms, decided it, by saying, "this Constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land"¹⁸

By implication, this principle also stands for the proposition that wherever federal criminal statutes or federal regulations apply they may be enforced without interference from the state. Conversely, no state statute may be enforced when its enforcement will interfere with federal policies in the area.

Article I, section 8, clause 18 of the Constitution states that the Congress shall have power "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Under this clause, the federal government has undisputed authority to protect the proper carrying out of the functions assigned to it by the Constitution without regard to whether the functions are carried out on land owned by the United States or by others, and without regard to the jurisdictional status of the land upon which the functions are carried out. Where such functions involve federal use of property, the Congress may, regardless of the jurisdictional status of such property, make

16. *Hunt v. United States*, 278 U.S. 96 (1928).

17. U.S. CONST. art. VI, cl. 2 provides that, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

18. *McCulloch v. Maryland*, 4 Wheat. 316 (1819).

such laws with respect to the property as may be required for effectively carrying out those functions.¹⁹

It is submitted that together, these three provisions in the Constitution (property protection and control of use, authority to make needful laws, and supremacy of federal laws) grant to the United States concurrent (with the state) criminal jurisdiction over those National Parks which are not under the exclusive jurisdiction of the United States. Putting it another way, there are only two kinds of criminal jurisdiction in the National Parks: that which is reserved to the United States exclusively and that which the United States exercises concurrently with the state. Further, although a particular area may be under the concurrent criminal jurisdiction of the state and of the federal government, the concurrent criminal jurisdiction which is exercised by the state cannot and does not extend to any matter that is not consistent with full power in the United States to protect its land, to control their use, and to prescribe in what manner others may acquire rights in them.

FUNCTION AND PURPOSES OF THE NATIONAL PARK SERVICE

In determining whether or not criminal sanctions are "necessary and proper" within the meaning of Article I, section 8, clause 18 of the Constitution, it becomes necessary to look at the function and purposes of the federal government within an area which has been designated as a "National Park." That purpose is set forth in Title 16, section 1 of the *United States Code*:

[The National Park Service] shall promote and regulate the use of the Federal areas known as national parks . . . by such means and measures as conform to the fundamental purpose of the said parks . . . which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.²⁰

19. *Arizona v. California*, 283 U.S. 423 (1931); *accord*, *James Stewart & Co. v. Sadrakula*, 309 U.S. 94 (1940).
20. 39 Stat. 535 (1916), 42 Stat. 1488 (1923), 43 Stat. 1176 (1925), 48 Stat. 389 (1934), 16 U.S.C. § 1 (1964).

If one of the purposes of the Service is to "provide for the enjoyment" of the national parks it would seem that the Service is under an affirmative obligation to protect the visitor from criminal deprivations. It is hard to see how the obligation could be any less because the deprivation was rape or theft rather than disorderly conduct or reckless driving. The question is not as foolish as it sounds because in many areas administered by the Service it is thought that the federal criminal code does not apply while there seems to be no question of the applicability of federal regulations regardless of the jurisdictional status of the area. The Park Service is not alone in its confusion however. Federal courts presented with the question of the applicability of federal criminal statutes in areas of less than exclusive jurisdiction have held both ways.

Congress apparently felt the Park Service should be equipped to deal with criminal activity in the national parks. In Title 16 of the *United States Code* Congress provided:

All persons employed in the National Park Service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the national forests and national parks and any person so arrested shall be taken before the nearest United States Commissioner, within whose jurisdiction the national forest or national park is located, for trial; and upon sworn information by any competent person any United States Commissioner in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws and regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said laws and regulations.²¹

One of the interesting but unanswered questions presented by this section is whether or not it grants authority to Park Service officers to arrest persons for violations of state law in areas of less than exclusive jurisdiction. It is a question which comes up frequently with regard to viola-

21. 33 Stat. 873 (1905), 16 U.S.C. § 10 (1964).

tions of state liquor laws, particularly "minor in possession" and "open bottle" laws.

NATIONAL PARK SERVICE REGULATIONS

The authority of the Secretary of the Interior to issue regulations applicable in the national parks is contained in section 3 of Title 16, *United States Code*.²² In this section the Secretary is authorized to make and publish the rules and regulations he deems necessary. The violation of these regulations is made punishable by a fine of not more than \$500 or imprisonment for not exceeding 6 months or both. The authority of the Secretary to make such regulations was upheld in *Robbins v. United States*.²³

National Park Service regulations are contained in Title 36 of the *Code of Federal Regulations*. It has been held that they have the "force of law."²⁴ These regulations set forth the management policies of the Department of Interior and regulate the use of the areas. In the latter function, Title 36 constitutes a limited and incomplete petty offense code. For instance, regulations concerning reckless driving,²⁵ disorderly conduct,²⁶ soliciting,²⁷ fraudulently obtaining accommodations,²⁸ limitations on vehicle speed,²⁹ driving under the influence,³⁰ and "tampering" with a parked motor vehicle,³¹ are set forth.

22. 39 Stat. 535 (1916), 41 Stat. 732 (1920), 45 Stat. 235 (1928), 72 Stat. 152 (1958), 16 U.S.C. § 3 (1964).

23. *Robbins v. United States*, 284 Fed. 39, 45-46 (8th Cir. 1922):

We are of the opinion that the power of the government to regulate traffic on those highways [within Rocky Mountain National Park] as it has done by congressional enactment and rules thereby authorized, rests on the secure footing that it is a valid exercise of control over the property of the government, even though it is of the nature of police power, and that it is sustained by section 3, article IV, of the Federal Constitution, which entitles the government to make all needful regulations respecting its territory and property Certainly the duty was imposed upon the Secretary to regulate the traffic on the highway in a manner that would best promote the safety and accommodation of the public

24. *United States v. Petersen*, 91 F. Supp. 209 (S.D. Cal. 1950), *aff'd*, 191 F. 2d 154 (1951), *cert. denied*, 342 U.S. 885 (1951).

25. 36 C.F.R. § 1.58 (1960).

26. 36 C.F.R. § 1.23 (1960).

27. 36 C.F.R. § 1.22 (1960).

28. 36 C.F.R. § 1.26 (1960).

29. 36 C.F.R. § 1.42 (1960).

30. 36 C.F.R. § 1.53 (b) (1960).

31. 36 C.F.R. § 1.64 (1960).

Within the Protective Division of the ranger force, and depending a great deal on the individual attitude of the United States Commissioner in the area, it has become standard operating procedure to make use of the disorderly conduct regulation as a sort of "catch-all" provision. Whether this is desirable from the standpoint of a fair administration of justice is open to question. That it is necessary in those areas of less than exclusive jurisdiction where it is believed the Federal Criminal Code does not apply, is beyond doubt. Under that situation the disorderly conduct regulation constitutes the only tool the Protective Division has. This writer has, on more than one occasion, participated in investigations which under any other circumstances would have resulted in charges of larceny, assault, assault and battery, or burglary, but which terminated by bringing the accused to trial on a charge of disorderly conduct.

THE FEDERAL CRIMINAL CODE

Most of the substantive criminal statutes contained in Title 18 of the *United States Code* are operable in areas over which the United States has "special maritime or territorial jurisdiction." Section 7 of Title 18 defines territorial jurisdiction as:

Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the state in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.³²

The importance of this definition can be seen in *Krull v. United States*,³³ which was a prosecution under the federal rape statute. The government contended that the offenses were committed in Chickamauga and Chattanooga National Parks. The court said:

The statute . . . makes rape a crime under federal law when committed within the special maritime or

32. 18 U.S.C. § 7 (1964).

33. *Krull v. United States*, 240 F.2d 122 (5th Cir.), cert. denied, 353 U.S. 915 (1957).

territorial jurisdiction of the United States. It becomes necessary, therefore, not only to prove that the offenses charged by these two counts were committed, but also to establish the situs where committed and show that such situs was within the jurisdiction of the United States.³⁴

Three viewpoints have been expressed regarding the kind of jurisdiction necessary for the federal criminal statutes to apply. It has been held in numerous cases that the area must be within the "exclusive" jurisdiction of the federal government.³⁵ These courts have apparently ignored the word "concurrent" used in section 7 of Title 18. On the other hand, in *United States v. Schuster*,³⁶ the court did recognize that "concurrent" jurisdiction was sufficient to make the federal criminal statute applicable. Finally, in *Mannix v. United States*, the court did not seem at all concerned with the jurisdictional status of the situs of the crime. Attempted rape "was committed on the grounds of the United States Public Health Service in Montgomery County, Maryland, the same being land reserved and acquired for use of the United States and by reason of this the United States District Court had jurisdiction."³⁷ With such contradiction in the courts it is not hard to understand why the Ranger Division has been hesitant to charge suspects with violations of federal criminal statutes.

The Assimilative Crimes Act³⁸ (adopting criminal laws of the states for areas within federal jurisdiction) is made operable under the same jurisdictional conditions as the other substantive crimes in Title 18. In fact, the act specifically refers to the definition of "special maritime and territorial jurisdiction" contained in section 7. There is no other statute

34. *Id.* at 127.

35. *United States v. Lewis*, 111 Fed. 630 (C.C.W.D. Tex. 1901).

36. *United States v. Schuster*, 220 F. Supp. 61 (E.D. Va. 1963).

37. *Mannix v. United States*, 140 F.2d 250 (4th Cir. 1944); *accord*, *United States v. Au Young*, 142 F. Supp. 666 (D. Hawaii 1956).

38. 18 U.S.C. § 13 (1964) provides:

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

than the Assimilative Crimes Act which would be of greater help to the National Park Service in its effort to maintain law and order within the areas it administers. It is, however, subject to the same question of applicability as the other federal criminal statutes.

CONCLUSION

Many areas administered by the Park Service are relatively isolated and distant from population centers. Nevertheless, an inordinate number of citizens are drawn to these areas every year. Because of the influx and concentration of people there is a very real problem of maintaining law and order. One of the purposes of the Ranger Division is the prevention and investigation of illegal activity. The visiting public expects protection from these uniformed officers and should be entitled to it. Certainly they do not contemplate (nor do they follow) the practice of making certain types of complaints to a state law enforcement agency and others to a federal agency. The existence of two or three (federal, state, and county) enforcement agencies, drawing their authority from different sources and administering different laws, is confusing and a source of potential inter-governmental irritation. The practice followed in most areas of less than exclusive jurisdiction has been for state and local officers to demur in favor of the Park Ranger Protective Division. In such situations, however, state and local officers have rendered valuable assistance when called upon in time of emergency.

The withdrawal of state and local officers from the National Parks has, in most instances, been of necessity. Because of the isolated nature of the areas and the small resident population, the States and their sub-divisions have had neither the manpower nor the funds to police the Parks.³⁹

39. For instance, Grand Teton National Park, a "proprietary" area, is located in Teton County, Wyoming. According to the 1960 census the county had a population of 3,620 persons. This year nearly three million persons will visit Grand Teton National Park. The sheriff's department in Teton County consists of three men and is located at the county seat in Jackson, some 50 miles south of the North Entrance to the Park. Jackson and the surrounding area also have large crowds of visitors during the "season." The Jackson Police Department, Teton County Sheriff's Department, and the Wyoming Highway Patrol are kept extremely busy during this period. It is impractical and impossible for the Teton County Sheriff to investigate all of the offenses committed within the Park, to say nothing of attempting a prevention effort.

Clearly no state or local law enforcement agency should be expected or compelled to perform that function.

The whole thrust of this article has been toward the proposition that federal government does have criminal jurisdiction in the National Parks, regardless of their jurisdictional status. This jurisdiction is derived from the Constitution through the property clause with added vitality from the necessary and proper clause and the supremacy clause.

Reason and necessity add force to the proposition that the federal government does not and cannot hold the National Parks in a "proprietary" capacity. That capacity connotes an affirmative obligation on the part of the federal government to protect the Park visitor from illegal activity of whatever sort, and to bring to justice the perpetrators of that activity. Once it is established that the United States Government has concurrent criminal jurisdiction in the National Parks, a variety of statutory tools become available for use in effectively and efficiently administering justice within these areas. After the jurisdictional problem is hurdled, the worthy goals of crime prevention, detection, and the apprehension of law breakers, are within the grasp of the Park Service. Those goals can then be readily achieved by a dedication of more manpower to the prevention effort and by practicing police routines in a more professional manner.

Resolution of the jurisdictional problems can only come from the courts through an adjudicated case. The answers to these problems will be given only when the National Park Service elects to charge suspects, in areas where the United States does not have exclusive jurisdiction, with violation of federal criminal statutes and the United States Attorney in the particular district chooses to prosecute.

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