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National Park Justice: A History of the Federal Court in Yellowstone

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NATIONAL PARK JUSTICE: A HISTORY OF THE FEDERAL COURT IN YELLOWSTONE

Travis Jordan*

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I. Introduction

Congress established Yellowstone National Park in 1872 to preserve its natural curiosities for the benefit and enjoyment of the people. Federal law prohibited poaching, settlement, and destructive acts in the park, but these protections suffered a serious flaw—Yellowstone lacked a justice system to enforce the law.

For 22 years, the park operated on the fringe of the frontier. Early park officials, armed only with the authority to expel trespassers, failed to rein in criminal activity. Then, the Wyoming Territory attempted to establish a court in the park. When Wyoming’s effort failed, Yellowstone was placed under military supervision. Several high-profile crimes finally prompted legislative action; Congress authorized the appointment of a United States Commissioner to adjudicate petty offenses in Yellowstone. Next, Congress reinstated civilian control and park officials developed a professional police force to enforce the park’s regulations.

Today, a United States Magistrate Judge presides over the day-to-day judicial responsibilities in Yellowstone. Park law enforcement issues approximately 5,000 citations each season and the Magistrate Judge manages nearly 1,000 misdemeanor criminal cases every year. Many individuals deserve credit for the success of Yellowstone’s modern justice system. In 1959, Commissioner James W. Brown authored a law review article discussing the role of the United States Commissioner in Yellowstone. This article builds on Commissioner Brown’s work and focuses on the events and individuals that led to the creation of a federal court in Yellowstone.

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1 See infra Part II.A.
2 See infra Part II.A.
3 See infra Parts II.B, III.
4 See infra Parts III.A, III.C.
5 See infra Part V.
6 See infra Part VI.
This article also discusses the evolution of Yellowstone’s judicial system over the last 150 years.

II. Yellowstone’s Organic Act

The creation of Yellowstone in 1872 ushered in a new era of federal land management. Congress had previously reserved the Yosemite Valley for public use in 1864, but gave the State of California the responsibility of protecting the land.\(^8\) Yellowstone was different. For the first time, the federal government assumed the responsibility of managing a park.\(^9\)

A. Early Civilian Supervision

Congress believed federal protection was necessary to preserve the “remarkable curiosities” located at the headwaters of the Yellowstone and Missouri Rivers.\(^10\) The Act of March 1, 1872, also known as Yellowstone’s Organic Act, placed Yellowstone “under the exclusive control of the Secretary of Interior.”\(^11\) Congress required the Secretary to protect the timber, minerals, and natural wonders in the park.\(^12\) Congress also directed the Secretary to prevent unauthorized settlements and the wanton destruction of fish and wildlife.\(^13\) The Organic Act, however, provided the Secretary with limited enforcement power and no funding. The Act only authorized the Secretary to remove trespassers from the park.\(^14\)

The Secretary of Interior appointed explorer and Montana vigilante, Nathaniel Pitt Langford, as the first civilian superintendent of Yellowstone on May 10, 1872.\(^15\) At the time, the closest civilian authority was located 140 miles away from the park’s exterior boundary.\(^16\) Langford assumed the role without a salary because Congress was initially reluctant to appropriate any funding for park operations.\(^17\) Superintendent Langford was notably absent from the park, and he failed to

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\(^12\) Id. § 2.

\(^13\) Id.

\(^14\) Id. § 1.

\(^15\) Haines, supra note 9, at 180; see also Olin D. Wheeler, Nathaniel Pitt Langford: The Vigilante, the Explorer, the Expounder, and First Superintendent of the Yellowstone Park, in 15 Collections of the Minnesota Historical Society 630, 636 (1915).


\(^17\) Id. at 37–38.
respond to reports of widespread poaching during the winter of 1874–75.\textsuperscript{18} Correspondence between Langford and the Secretary of Interior became strained before ceasing entirely.\textsuperscript{19} Philetus W. Norris replaced Superintendent Langford on April 19, 1877.\textsuperscript{20}

On June 28, 1878, Congress approved its first appropriation for Yellowstone.\textsuperscript{21} Congress provided $10,000 for the park’s “protection and improvement.”\textsuperscript{22} Similar appropriations were authorized for fiscal years 1879 through 1881.\textsuperscript{23} Superintendent Norris relied on these early funds to construct roads and establish a headquarters inside the park’s northern boundary at present-day Mammoth, Wyoming.\textsuperscript{24} Norris was also the first superintendent to press for a “seat of justice” in Yellowstone.\textsuperscript{25} He argued that Yellowstone needed a court because “moral suasion” and appeals “from the muzzles of Winchester rifles” were not effective at enforcing park regulations.\textsuperscript{26} Specifically, Norris recommended that Wyoming’s territorial government assume legal jurisdiction over Yellowstone.\textsuperscript{27} In his final year as superintendent, Norris also suggested the creation of a small force of men to protect game, prevent fire and vandalism, and restrain “unworthy visitors” at geyser basins.\textsuperscript{28} Norris’s recommendations were timely. The Northern Pacific Railroad reached Livingston, Montana in 1882 which provided visitors with easier access to the park’s northern entrance.\textsuperscript{29} This new wave of park visitors largely included industry leaders, senior government officials, and foreign dignitaries.\textsuperscript{30}

\begin{itemize}
\item \textsuperscript{18} See Haines, supra note 9, at 214–15; P. W. Norris, Annual Report for Yellowstone National Park 842 (1877) [hereinafter, all annual reports for Yellowstone National Park are short form cited as [Author], [Year] Superintendent’s Report]. For access to most annual reports of superintendents for YNP, see the Yellowstone Nat’l Park Heritage & Rsch. Ctr., Yellowstone National Park Superintendent’s Annual Reports, Montana Memory Project, https://www.mtmemory.org/nodes/view/12997 (last visited Apr. 4, 2022).
\item \textsuperscript{19} Haines, supra note 9, at 214.
\item \textsuperscript{20} Id. at 216.
\item \textsuperscript{21} U.S. Sec’y of the Interior, Laws and Regulations Relating to the Yellowstone National Park Wyoming 21 (1908) [hereinafter Laws and Regulations Relating to YNP].
\item \textsuperscript{22} Id.; H.R. 3785, 45th Cong. (1878) (enacted).
\item \textsuperscript{23} Laws and Regulations Relating to YNP, supra note 21, at 21; 8 Cong. Rec. 1867 (1879) (reporting to the House of sundry civil bill for the fiscal year 1880); H.R. 5207, 46th Cong. (1880) (enacted); 11 Cong. Rec. 2168, 2314 (1881) (allocating $15,000 “[t]o enable the Secretary of the Interior to protect, preserve, and improve Yellowstone National Park”).
\item \textsuperscript{24} Haines, supra note 9, at 242; see also P. W. Norris, Fifth Annual Report of the Superintendent of the Yellowstone National Park 16, 23–24 (1881).
\item \textsuperscript{25} Norris, 1881 Superintendent’s Report, supra note 24, at 26–27.
\item \textsuperscript{26} Id.
\item \textsuperscript{27} Id. at 27; see also Haines, supra note 9, at 311.
\item \textsuperscript{28} Norris, 1881 Superintendent’s Report, supra note 24, at 27–28.
\item \textsuperscript{29} P. H. Conger, Annual Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior 10 (1882).
\item \textsuperscript{30} Haines, supra note 9, at 282.
\end{itemize}
P.H. Conger replaced Norris as Park Superintendent in 1882. Conger conveyed frustration that his admonishments and orders did nothing to prevent visitors from stuffing logs into geysers, collecting specimens, and leaving campfires unextinguished.31 Poaching also continued. In March 1883, Conger foiled a scheme furnishing poached deer and elk meat to a park hotel operator.32

Congress considered several measures in 1883 to address Yellowstone’s dire state of affairs. One bill proposed granting the United States District Court for the Territory of Montana jurisdiction over a limited number of criminal matters arising from the park.33 United States Senator George Vest of Missouri introduced legislation making the possession of poached wildlife from the park a crime subject to prosecution in any federal court.34 In the end, Congress settled on a bill that focused on funding park law enforcement.

The Act of March 3, 1883, provided appropriations for the Secretary of Interior to hire 10 assistant superintendents.35 Congress required the assistants to reside continuously in Yellowstone and directed them to enforce park regulations.36 Unfortunately, the first group of assistant superintendents were inexperienced political appointees who had largely never set foot in the park.37 The local press ridiculed the assistants, labeling them “the rabbit catchers.”38 Adding insult to injury, the assistants were concentrated at the park headquarters in Mammoth and forced to furnish their own quarters, horses, and equipment on a relatively meager salary.39

Notably, the Act of March 3, 1883, also authorized the Secretary of Interior to call on the military to remove persons suspected of taking game or destroying park features:

The Secretary of War, upon the request of the Secretary of Interior, is hereby authorized and directed to make the necessary details of troops to prevent trespassers or intruders from entering the park for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law, and to remove such persons from the park if found therein.40

33 H.R. 3751, 47th Cong. § 3 (1882).
34 S. 221, 48th Cong. § 4 (1883).
36 Id.
37 Haines, supra note 9, at 292–94.
38 Id.
40 22 Stat. at 627.
A cavalry troop passed through a portion of Yellowstone in the summer of 1883, but it was not ordered to protect the park that season.\footnote{Captain Moses Harris, \textit{Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior} (1889).} Yellowstone now had a small civilian police force, but it still lacked a fully functioning justice system.

\textbf{B. Wyoming Territorial Jurisdiction}

Several shootings during the 1883 season prompted the Territory of Wyoming to assert legal jurisdiction over Yellowstone. On March 17, 1883, a teamster sustained two gunshot wounds in a drunken quarrel at a boarding house.\footnote{Haines, \textit{supra} note 9, at 270–71.} A lynching party formed with plans to deliver a swift verdict but an assistant superintendent intervened and brokered a settlement.\footnote{\textit{Id.}} The perpetrator assigned his overdue wages to the teamster as restitution and agreed to serve as the victim’s nurse during the recovery.\footnote{\textit{Id.}} Superintendent Conger notified the Secretary of Interior and Wyoming’s territorial government of the incident.\footnote{Conger, 1883 \textit{Superintendent’s Report}, \textit{supra} note 32, at 7.} As a result, the Secretary and Territorial Governor William Hale discussed assigning a judge from the Third Judicial District in Uinta County, Wyoming to hold court in the park during the summer months.\footnote{Letter from H. M. Teller, U.S. Sec’y of the Interior, to William Hale, Governor of Wyoming (May 25, 1883), \textit{in S. Exec. Doc. No. 48-47}, at 34 (1884).} The territorial government agreed to address the matter with the Uinta County Commissioners, and if necessary, enact a territorial law in the next legislative session.\footnote{Letter from E. S. N. Morgan, Acting Governor of Wyoming, to H. M. Teller, U.S. Sec’y of the Interior (June 4, 1883), \textit{in S. Exec. Doc. No. 48-47}, at 7.}

Meanwhile, on August 20, 1883, a dispute erupted at a hotel in Mammoth between two men employed by the Yellowstone Park Improvement Company, one of the earliest concessioners in the park.\footnote{Lee H. Whittlesey, \textit{Death in Yellowstone: Accidents and Foolhardiness in the First National Park} (1995).} The quarrel later reignited outside the park at a beer hall in Gardiner, Montana, resulting in the shooting death of John Zutavern.\footnote{\textit{Id.}} The shooter, George Weber, fled back into Yellowstone where two professional hunters arrested him.\footnote{\textit{Id.}} Weber was subsequently tried in Bozeman, Montana and convicted of second-degree murder.\footnote{\textit{Id.}} Although the Zutavern murder occurred in a neighboring gateway community, Superintendent Conger identified
the incident as another example of why Yellowstone needed its own legal machinery to “compel the obedience to rules” of the park.

The Wyoming Territorial Legislature took action on March 6, 1884, enacting a statute “to render operative and effectual the laws of the Territory of Wyoming within that portion of the Yellowstone National Park lying within said Territory[.]” The 1884 Act incorporated Wyoming’s portion of Yellowstone into Uinta County and authorized the appointment of two justices of the peace and two constables to serve the park. The law granted justices of the peace civil and criminal jurisdiction to hear cases arising from territorial law. The 1884 Act also incorporated by reference the federal laws and regulations governing Yellowstone and gave the territorial justices jurisdiction to adjudicate those criminal violations.

Superintendent Conger was surprised by the territorial law and questioned its validity. Conger expected the federal judge presiding over the Wyoming Territory to appoint a United States Commissioner to adjudicate violations of park regulations. A United States Commissioner was the precursor to the United States Magistrate Judge. Commissioners had a rich history in English and colonial tradition and assisted federal judges with certain duties. Congress authorized commissioners to accept bail in federal criminal cases in 1793. Commissioners were also allowed to receive affidavits in criminal cases and take depositions in civil actions. But the United States Commissioner that Conger expected never arrived and Conger left the park at the end of 1884. The new superintendent, D.W. Wear, raised similar questions about the validity of the territorial law and asked Congress to establish a federal court in Yellowstone.

Both Superintendents’ concerns about the territorial law were justified. The territorial law forced assistant supervisors to cooperate with territorial officials in
enforcing park regulations.\textsuperscript{64} One historian bluntly described the territorial officials appointed to serve in the park as "unlettered products of the frontier, capable of meting out only the rudest justice, and certainly strangers to the fine points of the law."\textsuperscript{65} In one documented "trial" under the 1884 Act, the territorial court adjourned to the saloon and rendered its verdict.\textsuperscript{66} Enforcement under the territorial law was also aggressive, particularly due to how fines were allocated:

\begin{quote}
[O]ne-half of all the fines assessed against offenders under the provisions of this act shall be paid to the officer or other person who appears as the prosecuting witness or informer, and the residue shall be paid into the Territorial treasury as is hereinbefore provided.\textsuperscript{67}
\end{quote}

This fine structure and enforcement system was ripe for abuse and ultimately led to the repeal of the territorial law.

In the summer of 1885, Superintendent Wear fiercely pursued visitors who left their campfires unextinguished.\textsuperscript{68} The policy was profitable for territorial and park officials because leaving a campfire burning resulted in what was then a hefty $50 fine.\textsuperscript{69} Territorial constables notoriously brought cases with trivial evidence such as the discovery of a single live ember or the presence of warm ground beneath a fire ring.\textsuperscript{70} That summer, officials took enforcement of the territorial law too far. A constable stationed at the Lower Geyser Basin apprehended a wagon party for allegedly failing to put out a campfire. The wagon party included Iowa Congressman Lewis E. Payson and Joseph Medill, editor of the Chicago Tribune.\textsuperscript{71}

Justice of the Peace Hall, a man previously employed as a woodcutter, conducted the trial against the wagon party.\textsuperscript{72} Evidence entered at trial showed that the campfire was reasonably constructed on a bare patch of ground and that the wagon party sprinkled the fire with a large bucket of water and covered it completely with sand before leaving.\textsuperscript{73} Notwithstanding the evidence, Hall fined the party $50 and costs.\textsuperscript{74} Congressman Payson, learned in the law and a former opinion, are of very questionable validity, even within that portion of the Park lying wholly within Wyoming Territory, and certainly none in that portion lying in other Territories.\textsuperscript{75})

\begin{itemize}
  \item \textsuperscript{64} Haines, supra note 9, at 294.
  \item \textsuperscript{65} Id. at 313.
  \item \textsuperscript{66} Id.
  \item \textsuperscript{67} Act of Mar. 6, 1884, ch. 103, § 17, 1884 Wyo. Territory Sess. Laws 177, 183.
  \item \textsuperscript{68} Haines, supra note 9, at 321.
  \item \textsuperscript{69} Id.
  \item \textsuperscript{70} Id. at 322.
  \item \textsuperscript{71} Id.
  \item \textsuperscript{72} Id. at 321; Cramton, supra note 16, at 44.
  \item \textsuperscript{73} Haines, supra note 9, at 322.
  \item \textsuperscript{74} Cramton, supra note 16, at 44.
\end{itemize}
judge, announced his intention to appeal the decision and challenge the validity of the 1884 Act. Justice of the Peace Hall was unfamiliar with the finer points of the law and bewildered by Payson’s defense, so he asked Payson to advise the court of its rights. Payson and Hall then agreed to settle the matter for one dollar plus costs.

The case against Congressman Payson and Medill’s wagon party was the death knell for the territorial law. Joseph Medill wired an account of the trial to the Chicago Tribune stating, “in a national park the national laws and regulations should be enforced by a national tribunal.” W. Hallett Phillips, a special agent appointed by the United States Department of Interior to investigate affairs in the park during the 1885 season, recounted the events at the wagon party trial and called the arrest unjustifiable. In his report to the Secretary of Interior, Phillips also questioned the validity of the territorial law and recommended the appointment of two United States Commissioners so that the public was not subject to “the mercy of ignorant or unscrupulous men, appointed under Territorial law.”

These events forced Congress to take immediate interest in the territorial statute. In December 1885, United States Senator George Vest introduced legislation authorizing a commissioner to preside over all park regulation violations. The measure was reported from the committee but languished after several senators lodged objections on the Senate floor. The House of Representatives took a different approach. Several congressmen introduced bills authorizing the territorial court in Yellowstone, but those too failed. Other members of Congress, upset at the state of affairs in the park, unsuccessfully attempted to suspend the appropriation that funded the superintendent’s salary.

While Congress did not reach a consensus on Yellowstone that session, the damage from the wagon party trial was done. Just two years after the enactment of the 1884 Act, Wyoming’s territorial legislature repealed the territorial law on

75 Id.
76 Haines, supra note 9, at 322.
77 Cramton, supra note 16, at 44.
78 Haines, supra note 9, at 322.
79 Id. at 323.
81 Id.
82 S. 101, 49th Cong. § 6 (1885).
83 See 18 Cong. Rec. 1144–54 (1887).
84 See H.R. 2879, 49th Cong. (1886); H.R. 4089, 49th Cong. (1886).
85 Haines, supra note 9, at 324; see also H.R. 9478, 49th Cong. ll. 1537–51 (1886) (restoring the appropriation for the superintendent’s salary).
March 10, 1886. The first effort to exercise judicial authority over Yellowstone failed. In its wake, park officials were again unable to prosecute violations of park regulations. It would take eight years and several more high-profile incidents for Congress to adopt a new approach for adjudicating criminal activity in the park.

III. Military Supervision

Following Wyoming’s repeal of the territorial law, Superintendent Wear renewed his plea for Congress to establish a federal court in Yellowstone with exclusive jurisdiction over misdemeanor offenses. Superintendent Wear’s remaining tenure, however, was short-lived. In 1886, the House of Representatives succeeded in its effort to eliminate the $20,000 appropriation supporting the salaries for the superintendent and assistants. This action effectively ended the first era of civilian administration over Yellowstone National Park. With no other options available, the Secretary of Interior invoked the provision in the Act of March 3, 1883 that authorized the military to police the park.

On August 20, 1886, Captain Moses Harris, accompanied by 50 men from the First United States Cavalry, relieved Superintendent Wear and assumed command of Yellowstone. Harris stationed his men at various points across the park in what is described as a “hasty turnover.” During the 1886 summer season, residents living in the vicinity of the park “were emboldened by the obvious fact” that the park rules and regulations were no longer enforceable. The arrival of the cavalry, however, helped fill the vacuum created by the repeal of the 1884 Act and the park’s superintendent’s dismissal. Captain Harris immediately sent men to fight the wildfires that former Superintendent Wear alleged were set maliciously by his foes. Cavalry detachments were also sent to lesser-visited areas of the park to search for poachers.

Captain Harris’s enforcement power was technically limited to Yellowstone’s Organic Act authorizing only the expulsion of trespassers. Federal law, however,
did not prevent Harris from using extra-legal methods to enforce park regulations. In October 1886, Harris wrote to Secretary of Interior Lucius Lamar and remarked that while the military’s methods might “at times appear harsh and arbitrary,” such procedures were “indispensable to the proper protection of life and property.”96 When troops found names inscribed in formations, it was not uncommon for the military to force visitors “back over long distances” to rub and wash out the writings.97 In another instance, a man accused of assaulting a maid at the Lake Hotel was marched out of the park by soldiers riding at a healthy pace causing the suspect to nearly collapse from exhaustion.98 Early military commanders interpreted “the regulations of the Secretary as having the force of law,” allowing them to “act as vigorously as possible under them.”99 When addressing poachers, expulsion was rarely effective, so cavalry patrols took to confiscating personal property found on the transgressors.100

Military supervision of Yellowstone was subject to immediate criticism. Former Superintendent Wear leveled charges in the media that the troops were improperly managing the park.101 Captain Harris responded that the allegations of “harsh and arbitrary military rule” were based on “contempt for authority.”102 Others believed that Wear’s criticisms were rooted in the bitterness of his untimely ouster.103 Undeterred, Captain Harris continued his duties and bolstered the military’s headquarters at Mammoth and its outposts throughout the park.104 Notably, Harris deployed a military detachment at the Upper Geyser Basin after impatient tourists were caught “soaping geysers” in an effort to prematurely stimulate eruptions.105 “Soaping” was subsequently prohibited, not only to protect thermal features, but to address a pressing concern that the practice created a disproportionate demand for soap products in the local community.106 Meanwhile, proponents of Yellowstone and

96 Harris, 1886 Superintendent’s Report, supra note 90, at 7; see also Haines, supra note 90, at 5.
97 Captain George S. Anderson, Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior 7 (1892).
100 Id.
101 Haines, supra note 90, at 5.
102 Captain Moses Harris, Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior 3–4 (1888).
103 See Haines, supra note 90, at 5.
104 See id. at 5–6.
105 Id. at 17–18.
106 Id.
Wyoming’s territorial delegation in Congress continued efforts to enact legislation authorizing a United States Commissioner for the park.107

A. Stagecoach Robbery of 1887

A botched stagecoach robbery played an important role in the beleaguered effort to secure a justice system for the park. In April 1887, Captain Harris received reports that teamster William James, hired to transport construction materials for a hotel at Canyon Village, was poaching in the park.108 James was arrested, admitted guilt, had his personal possessions confiscated, and was expelled from the park.109 Unable to secure employment due to his reputation, James loitered around Gardiner and continued to enter the park despite the expulsion order.110

James then hatched a plan with his associate, Charley Higgenbotham, to rob the quartermaster who was traveling to pay the troops stationed at Mammoth.111 On the evening of July 4, 1887, the two masked robbers took their positions a mile inside the park on the road between Gardiner and Mammoth.112 James and Higgenbotham immediately bungled the scheme. They missed the quartermaster’s buggy and instead held up an evening stagecoach carrying several prominent visitors including Judge John F. Lacey of Iowa.113 Shortly after the stop, Higgenbotham accidentally discharged his pistol causing the horses attached the stage to gallop away.114 The two robbers made off with only $16 and a distinctive 1811 Napoleon coin owned by Judge Lacey.115

Both robbers would have escaped arrest had James’ arrogance not gotten in the way. Two months later, Williams James went camping with two other men and bragged about money.116 James then passed around the Napoleon coin, confessed that he held up the stagecoach, and revealed the details of the robbery.117 The two men who shared the camp with James stepped forward and shared what they knew with the authorities.118 The information about Judge Lacey’s Napoleon coin led

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107 See H.R. 4452, 50th Cong. § 2 (1888) (unenacted).
108 Haines, supra note 90, at 11.
109 Captain Moses Harris, Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior 4, 25 (1887).
110 Haines, supra note 90, at 12.
111 Id. at 13.
112 Id. at 12–13.
113 Id. at 13.
114 Id.
115 Id. at 12–13.
116 Id. at 13.
117 Id.
118 Id. at 14.
to the arrest of James and Higgenbotham in mid-October. The two men were charged with a felony, found guilty in federal court, and served a year in prison.

The stagecoach robbery of 1887 marked an important milestone in Yellowstone’s legal history because Judge Lacey was elected to the United States House of Representatives the following year. A prominent conservationist, Representative Lacey would go on to shepherd several significant bills through Congress including the Yellowstone Game Protection Act of 1894.

**B. Congressional Stalemate, Wyoming Statehood, and Yellowstone’s Provisional Commissioners**

In the years following the 1887 stagecoach robbery, a consensus formed amongst the military supervisors, territorial officials, and Wyoming’s United States District Court that Yellowstone needed a United States Commissioner. But a powerful influence—the Northern Pacific Railroad—deadlocked the congressional effort to authorize a commissioner.

The Northern Pacific Railroad had long sought to build a branch line to the mining town of Cooke City, Montana. This line would run through Yellowstone. Jay Cooke, the project’s financier, not only held mining interests in the area but envisioned capturing profits from the park’s tourists. After completing its line to Livingston in 1882, the Northern Pacific conducted a preliminary survey to extend service into Yellowstone. By 1885, it secured interests in several park properties managed by concessioners. The branch line, however, required a charter from Congress and was met by strong opposition from Yellowstone’s advocates on Capitol Hill. The Northern Pacific’s plan to build its branch line created a congressional impasse pitting industrialists against conservationists, and for nearly a decade, the logjam stalled all Yellowstone-related legislation. During this time, military rule continued in the park.

In the summer of 1889, Captain Harris transferred authority over the park to Captain Boutelle. In his final report, Harris lauded the military’s accomplishments

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119 Id.
120 Id.
124 See Haines, supra note 90, at 31–32.
125 See *id.* at 31–32, 41–42.
126 *Id.* at 34–39.
127 *See id.* at 34–38.
128 Harris, 1889 Superintendent’s Report, *supra* note 41, at 1, 12.
in bringing order to Yellowstone but recommended a larger military garrison and called for the installment of a civilian police force. 129 Harris’s successor, Captain Boutelle, shared similar hopes that Congress would provide the park with its own commissioner. 130 Without action from Congress, Yellowstone’s military supervisors maintained the status quo, established a garrison at the newly completed Fort Yellowstone in Mammoth, and made plans to add an infantry company to patrol Yellowstone’s geyser formations. 131

Wyoming’s territorial government supported military supervision of Yellowstone but also called for a civil justice system. 132 In an 1889 report, Governor Francis E. Warren urged Congress to act:

The necessity of providing some means for punishing violations of the law in the Park are very urgent, and the absence of such provision may be justly regarded as a reproach to the legislative branch of our Government . . . . An offender can be escorted by the military force out of the Park for defacing the formation or any spoliation of natural curiosities, but for murder, or theft of private property, there is no civil magistrate to act, and a perplexing problem is met. 133

During this time, Wyoming was also on the cusp of its long-fought effort to secure statehood, culminating in admittance to the Union in 1890. 134 Through Wyoming’s admission, Congress reaffirmed the federal government’s jurisdiction over the park:

That nothing in this act contained shall repeal or affect any act of Congress relating to the Yellowstone National Park, or the reservation of the park as now defined, or as may be hereafter defined or extended, or the power of the United States over it; and nothing in the act shall interfere with the right and ownership of the United States in said park and reservation as it now is or may hereafter be defined or extended by law; exclusive jurisdiction over the same; but nothing in this proviso contained shall be construed to prevent the service within said park of civil and criminal process lawfully issued by the authority of said State . . . . 135

129 See id. at 10–11.
130 Captain F. A. Boutelle, Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior 11 (1890).
131 See id.; Anderson, 1892 Superintendent’s Report, supra note 97, at 5.
133 Id. at 617.
134 Id. at 564; An Act to Provide for the Admission of the State of Wyoming into the Union, ch. 664, 26 Stat. 222 (July 10, 1890).
135 § 2, 26 Stat. at 222.
Proponents for a federal judge in Yellowstone, including Wyoming’s United States Senator Joseph M. Carey, argued that Wyoming’s statehood act resolved any doubt that Congress intended to exercise federal jurisdiction over criminal matters arising within the park.136

In November 1890, Captain Boutelle and Senator Carey initiated their own effort to appoint a commissioner in Yellowstone.137 The following spring, Judge John Riner of the United States District Court for the District of Wyoming appointed acting army surgeon Samuel S. Turner as a United States Commissioner.138 Turner served as a contract doctor for Fort Yellowstone.139 Because Turner was not a commissioned officer, he was one of the few civilians available to serve in the position and took his oath of office on June 26, 1891.140 Turner, however, left the park at the end of the 1891 season. During his short tenure, Turner presided over one hearing involving Henry Bentson, a bellboy at the Mammoth Hot Springs hotel charged with “taking and carrying away personal property with intent to steal and purloin the same.”141 Turner referred the matter to the United States District Court for Wyoming in Cheyenne where Bentson was found guilty and served seven months in the Laramie County jail.142

By 1891, Captain George S. Anderson with the Sixth Cavalry replaced Captain Boutelle as acting superintendent of Yellowstone.143 After Turner left the park, Anderson pursued the appointment of a new commissioner.144 Ellery C. Culver, an employee of the Yellowstone Transportation Company, assumed the role on April 12, 1892.145 Culver had worked several seasons in the park holding various roles but was not considered as qualified as Turner.146 In fact, the appointment of both Turner and Culver as commissioners seems questionable because neither men were “learned in the law,” nor was the position authorized by Congress.147 Most likely, the appointments were the result of necessity and frontier practicality given Yellowstone’s isolation. Regardless, the park’s new legal machinery remained partially defective because Turner and Culver still lacked jurisdiction to preside

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137 Haines, supra note 90, at 65.
138 Id.
139 Id.; see also H.R. Rep. No. 52-1956, at 213 (1892).
140 Haines, supra note 90, at 65.
141 Id.
144 Haines, supra note 90, at 65.
145 Id. at 23; see also H.R. Rep. No. 52-1956, at 214.
over misdemeanor trials.148 At most, these early commissioners could accept bail and refer defendants to the federal court in Cheyenne for trial.149

C. Poaching and the Arrest of Ed Howell

By 1893, newly enacted game laws in Wyoming, Montana, and Idaho created an urgent need for Captain Anderson to address poaching within Yellowstone.150 Wyoming, in particular, adopted stringent laws with severe penalties.151 According to Anderson, the enforcement of wildlife laws in adjacent states resulted in “more bold and more active” poaching in the park.152

Military orders had previously prohibited the discharge of firearms in the park.153 To combat poaching, Captain Anderson prohibited firearms with an exception for “people of undoubted reliability.”154 Anderson also started seizing firearms from individuals entering and exiting through the north entrance near Mammoth.155 Visitors transiting through Yellowstone had their firearms sealed with wax with admonitions not to break the seal within park boundaries.156 Park regulations in 1893 formalized these firearm restrictions.157 For over a century, the park’s general restrictions remained in effect until Congress broadly authorized individuals in 2009 to lawfully possess firearms “in compliance with the law of the State in which the unit of the National Park System . . . is located.”158

Captain Anderson recognized that the 1893 restrictions on firearms in the park had “little effect” on preserving wildlife, and he renewed the request to prosecute poachers.159 Shortly after, a notable poaching incident finally pushed Congress to establish a federal court in Yellowstone. In the winter of 1893–94, Ed Howell and an unidentified partner hauled a sled into the park from Cooke City, Montana and established a winter camp for poaching bison in the vicinity of Pelican Creek.160

148 See S. Rep. No. 52-322, at 2 (1882); Haines, supra note 90, at 65.
149 See Haines, supra note 90, at 65.
151 Id.
152 Id.
153 Id.
154 See Haines, supra note 90, at 4.
155 Anderson, 1891 Superintendent’s Report, supra note 143, at 8; Anderson, 1892 Superintendent’s Report, supra note 97, at 7.
156 Anderson, 1891 Superintendent’s Report, supra note 143, at 8.
157 Id.; Colonel S. B. M. Young, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 9 (1897).
159 Anderson, 1893 Superintendent’s Report, supra note 150, at 11.
160 Haines, supra note 90, at 62.
At the time, a bison scalp was valued between $100–$300, and Howell planned to kill bison, hang the scalps in a tree, and use packhorses in the spring to realize the fruits of his criminal endeavor. Although a quarrel drove off Howell’s partner, the dispute did not prevent Howell from executing his plan.

In February 1894, a military scouting party entered the Pelican Valley to report on the bison and discovered sled tracks in the direction of Cooke City. Captain Anderson received a corresponding report that Ed Howell, a well-known poacher, had recently passed the Soda Butte Station to collect supplies in Cooke City. Anderson ordered a military detachment to the Pelican Valley to investigate. On March 13, 1894, the detachment came across snowshoe tracks and a cache of six bison scalps hanging from a tree. Shortly after, a cavalry scout, Felix Burgess, spotted a man in the valley below pursuing a herd of bison followed by several shots and the sight of the culprit removing the scalps. Burgess skillfully crossed 200 yards of open snow to get within pistol range of the poacher who was not only armed with a rifle but traveled with a dog for signaling the presence of interlopers. With the wind in his favor, Burgess arrested Ed Howell and started the long march to the Fort Yellowstone guardhouse in Mammoth.

On the way to Fort Yellowstone, the detachment crossed paths with the Yellowstone National Park Game Expedition sponsored by Forest and Stream magazine. Conservationist Emerson Hough, an expedition member and Forest and Stream correspondent, caught the scoop on Howell’s arrest, wrote a dispatch on site, and sent it with Howell’s military captors. At Fort Yellowstone, the story was telegraphed to Forest and Stream editor George Bird Grinnell. Dismayed, Grinnell published the story and plotted a course for the nation’s capital to lobby Congress with his influential friends. Just 13 days after Howell’s arrest, Representative John Lacey, the former Iowa judge turned congressman, introduced a bill to protect game and punish crimes in Yellowstone National Park.

161 Id.
162 Id.
164 Id.
165 Id.
166 Id.
167 Id.
168 Haines, supra note 90, at 63.
169 Id.
170 Id.
171 Id.
172 Id.
173 Id.
IV. The United States Commissioner Era

Representative Lacey’s bill cleared Congress like a rifle shot. Congress enacted the legislation into law only 42 days after its introduction. The arrest of Ed Howell successfully united the public behind the legislation. The swift political victory was also the result of good timing because the legislative logjam over Yellowstone caused by the Northern Pacific Railroad had just cleared. By 1893, the Northern Pacific’s influence in Congress waned as mismanagement, a financial panic on Wall Street, and competition from the Great Northern Railway put the company into bankruptcy. The political winds had finally changed in Yellowstone’s favor.

The Act of May 7, 1894, fundamentally changed the legal landscape in Yellowstone. The Act clarified the park’s jurisdiction, authorized a United States Commissioner to adjudicate misdemeanor offenses, and established criminal penalties. Also known as the Yellowstone Game Protection Act (and Lacey Act of 1894), Congress declared that the park “shall be under the sole and exclusive jurisdiction of the United States.” Under the law, however, adjoining states retained the right to serve criminal and civil process in the park to avoid creating a harbor for fugitives. The Yellowstone Game Protection Act also provided that offenses committed in the park not punishable by federal law “shall be subject to the same punishment as the laws of the State of Wyoming.” Finally, the Act placed the entire park under the jurisdiction of the United States District Court for Wyoming. To this day, the District of Wyoming is the only federal court in the United States with jurisdiction in multiple states.

While Yellowstone’s Organic Act prohibited the “wanton destruction” of wildlife, it carried no penalties other than expulsion. In order to bolster poaching protections, the Yellowstone Game Protection Act expressly prohibited hunting and made the possession and transportation of unlawfully taken wildlife a misdemeanor offense. The new wildlife protections extended to transportation

177 28 Stat. 73.
178 Id. § 1.
179 Id.
180 Id. § 3.
181 Id. § 2.
184 § 4, 28 Stat. at 73–74.
companies, making stagecoaches and railroads subject to criminal prosecution for receiving illegally taken wildlife.\textsuperscript{185} Congress also provided the Secretary of Interior with discretion to adopt regulations punishing the “spoliation of timber, mineral deposits, [and] natural curiosities,” displacing the questionable assortment of military orders that previously governed the park.\textsuperscript{186}

Finally, the Yellowstone Game Protection Act authorized a United States Commissioner to reside in the park.\textsuperscript{187} The Act granted the commissioner jurisdiction to adjudicate and issue punishments for misdemeanor crimes and petty offenses that occurred in the park.\textsuperscript{188} Moreover, the Act provided the United States District Court for Wyoming with jurisdiction to hear any appeals challenging the commissioner’s judgments.\textsuperscript{189} The United States District Court for Wyoming maintained its role in handling felony cases, but the Act authorized the commissioner to conduct preliminary proceedings in felony cases, including informing the accused of their rights, conducting probable cause hearings, and, if appropriate, fixing bail.\textsuperscript{190} To support the new court, the Act assigned a Deputy United States Marshal to the park and provided measures for constructing a jail and office for the Commissioner.\textsuperscript{191} Twenty-two years after its creation, Yellowstone finally had its own justice system.

The impact of the Yellowstone Game Protection Act also reached beyond the park and was significant because it influenced future legislative enactments. First, the authorization of Yellowstone’s commissioner prompted Congress to reconstitute the entire United States Commissioner system in 1896.\textsuperscript{192} The commissioner reforms of 1896 included two notable changes—Congress established a renewable four-year term for all commissioners and made their appointment and removal subject to the discretion of the relevant federal district court.\textsuperscript{193} Congress subsequently provided all commissioners with authority to try petty offenses occurring under exclusive federal jurisdiction, much like the authority granted to Yellowstone’s commissioner.\textsuperscript{194} Second, the Yellowstone Game Protection Act served as a model for the nation’s oldest wildlife protection statute.\textsuperscript{195} The Lacey Act of 1900 created federal criminal penalties for the possession, transportation, and sale of illegally

\textsuperscript{185} Id.
\textsuperscript{186} Id.
\textsuperscript{187} Id. § 5.
\textsuperscript{188} Id.; see also Brown, supra note 7, at 12.
\textsuperscript{189} § 5, 28 Stat. at 74–75.
\textsuperscript{190} Id.; see also Brown, supra note 7, at 12.
\textsuperscript{191} §§ 6, 9, 28 Stat. at 75.
\textsuperscript{192} See Act of May 28, 1896, ch. 252, §§ 19–23, 29 Stat. 140, 184–86; McCabe, supra note 60, at 45.
\textsuperscript{193} § 19, 29 Stat. at 184.
\textsuperscript{194} See Act of Oct. 9, 1940, ch. 785, 54 Stat. 1058.
\textsuperscript{195} See supra notes 177–186 and accompanying text.
taken wildlife, fish, and plants.\textsuperscript{196} Considered Representative Lacey’s trademark legislative achievement, the Lacey Act’s wildlife protections mirror those in the Yellowstone Game Protection Act.\textsuperscript{197} Finally, the establishment of the first United States Commissioner in Yellowstone inspired Congress to authorize commissioners at other national parks following the establishment of the National Park Service (NPS) in 1916.\textsuperscript{198}

\textbf{A. Commissioner John W. Meldrum}

Now that the park had a justice system, it needed a commissioner. United States District Judge John Riner, then Wyoming’s sole federal judge, made the appointment.\textsuperscript{199} At the time, John W. Meldrum was reading law under the apprenticeship of Judge Riner.\textsuperscript{200} Meldrum reportedly approached Riner and said, “Judge, you know my capabilities. I would like to go to Yellowstone National Park.”\textsuperscript{201} Judge Riner appointed John Meldrum as the United States Commissioner of Yellowstone on June 20, 1894.\textsuperscript{202}

John Meldrum’s path to commissioner took many turns. Born in Caledonia, New York on September 17, 1843, Meldrum worked as a wagon maker before enlisting with the Union Army in 1863.\textsuperscript{203} After serving in the Wilderness Campaign, Meldrum was medically discharged from the military in 1864.\textsuperscript{204} Meldrum later worked as a tradesman in Arkansas when his brother, who lived in Wyoming, encouraged him to buy a threshing machine and settle out west.\textsuperscript{205} Recently married, John Meldrum moved to Cheyenne in 1867.\textsuperscript{206}


\textsuperscript{200} Joffe, \textit{Meldrum Continued}, supra note 199, at 106–07.

\textsuperscript{201} Id. at 107.

\textsuperscript{202} Haines, supra note 90, at 67.


\textsuperscript{204} See id. at 13–15.

\textsuperscript{205} Id. at 18–27.
In Wyoming, Meldrum worked a family ranch and contracted his thresher. Meldrum opened a meat market in Laramie, Wyoming, in 1870, and also secured employment with the Union Pacific Railroad. Soon Meldrum entered politics. Appointed Clerk of the Circuit Court in Laramie, Meldrum went on to win elections for county commissioner and territorial senator. In 1882, Republicans nominated Meldrum to run for the territorial delegate seat in Congress, but he was defeated by Cheyenne banker Morton E. Post.

After a brief stint living in California, Senator Carey successfully encouraged Meldrum to return to Wyoming and serve as its Territorial Secretary. When Wyoming was admitted to the Union in 1890, Territorial Governor Francis E. Warren was in Boston so Meldrum, serving as acting governor, issued Wyoming’s statehood proclamation.

Meldrum arrived in Yellowstone in July 1894 and took residence at the Mammoth Hotel while the government solicited bids for the construction of the commissioner’s residence. Within weeks, Meldrum had his first case. Captain Anderson had released the infamous poacher, Ed Howell, from detention on April 25, 1894, and permanently expelled him from the park. On July 28, 1894, Anderson discovered Howell in a barber’s chair at one of the park’s hotels and placed Howell under arrest. Appearing before Commissioner Meldrum on August 8, Howell was convicted of unlawfully reentering the park, fined $50 dollars, and sentenced to a month in jail. The outcome was poetic justice—Ed Howell was the first person convicted under the very law he was instrumental in enacting.

After the Howell trial, Meldrum turned his attention to the construction of the commissioner’s residence. Meldrum personally supervised the work after discovering that the crew had taken to “filling up” the soldier tasked with inspecting the work with beer. Contractors completed the commissioner’s residence in December

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206 Id. at 28.
207 Id. at 31–36.
208 Id. at 39–41.
209 Id. at 41–42.
210 Id. at 42.
211 Id. at 43–44.
212 Id. at 44–45.
213 Joffe, Meldrum Continued, supra note 199, at 108, 110–11.
215 Id.
216 Id.; see also Haines, supra note 90, at 67.
Located near the park headquarters in Mammoth, the residence included living quarters, an office, and jail cells. Commissioner Meldrum soon found the jail cells in his residence “unacceptable,” and the military subsequently held inmates at the Fort Yellowstone guardhouse. Meldrum continuously occupied the residence until his retirement in 1935.

In 1895, Captain Anderson reported that the Yellowstone Game Protection Act “had a most healthy effect” on poachers. The military detachment stationed in Yellowstone continued to interdict poachers on the Wyoming and Montana side of Yellowstone, but Anderson claimed deficient wildlife laws in Idaho hindered efforts to curb poaching in western sections of the park. Armed with an additional $2,000 appropriation from Congress, Anderson increased patrols in west Yellowstone. Eventually, James Courtenay was arrested in 1886 for possessing bison scalps but testified the animals were taken in Idaho outside the park. Anderson was certain of Courtenay’s guilt, but without additional evidence, Commissioner Meldrum acquitted Courtenay. However, a United States Marshal arrested a taxidermist who ignored a subpoena to testify at the Courtenay hearing and transported him to Cheyenne to face justice. Despite Courtenay’s acquittal, Anderson’s campaign showed signs of success as word spread on the Idaho side of the park that poaching was now subject to prosecution.

Commissioner Meldrum’s docket reflected the military’s effort to curb poaching in the park. In 1898, Meldrum adjudicated three cases for violations “of the act of Congress approved May 7, 1894” and left two cases pending because the defendant could not be located. During this period, Meldrum also considered ten violations of park regulations and two cases of assault. An unspecified number of matters

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218 Id. at 1.
219 Id. at 3.
220 Id. at 3–4.
221 Id. at 2.


223 See id. at 11–12.


225 Id.
226 Id.
227 Haines, supra note 90, at 70.
228 See id.

229 See Young, 1897 SUPERINTENDENT’S REPORT, supra note 156, at 19–20; James B. Erwin, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 20–21 (1898).

230 See Young, 1897 SUPERINTENDENT’S REPORT, supra note 156, at 19–20; Erwin, 1898 SUPERINTENDENT’S REPORT, supra note 229, at 20–21.
involving unextinguished campfires were not brought before Meldrum because the parties were considered sufficiently punished after the military marched parties back to comply with the rules.231

A stagecoach robbery in 1897 delivered an embarrassment to Yellowstone’s military supervisors, but it became one of the most “interesting” cases that Meldrum described from his 30 year service as commissioner.232 Fifteen stagecoaches and an army ambulance were robbed four miles from the Canyon Hotel while traveling to the Norris Geyser Basin.233 Two armed men stopped the convoy and stole over $600. Witnesses noticed one of the men spoke with a German accent and had a piece of russet leather sewn around the muzzle of his pistol.234 The robbery victims included several military officers, including General Hawkins, his son-in-law Lieutenant Reynolds, their wives, and Doctor Godfrey. The robbery was reported at the Norris soldier station, and a sergeant under the influence of liquor proceeded to make a number of unwarranted arrests.235 Fortunately, a duty officer, Lieutenant Elmer Lindsley, intervened and prepared a more measured response. Lindsley immediately put the roads leading from the park under surveillance and led a party to investigate the scene.236

Under pressure to apprehend the suspects, the acting military superintendent, Colonel S. B. M. Young, approached Commissioner Meldrum for assistance.237 Colonel Young encouraged Meldrum to travel to Aldridge, Montana and solicit the aid of none other than Ed Howell “who knew all the bad men and poachers around the park.”238 Meldrum agreed and convinced Howell to serve as a scout. Meldrum, however, refused Howell’s request to ride back to Mammoth in his company, responding, “I can’t afford to be seen riding with you.”239

The investigation led to the arrest of “Little Gus” Smitzer and George “Morphine Charley” Reeb.240 Howell identified a horse track at the scene made by an animal owned by George Reeb.241 Lieutenant Lindsley collected additional circumstantial evidence from an abandoned campsite near the robbery, including the russet leather enclosure used on the muzzle of the pistol later shown to fit the

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231 See Young, 1897 SUPERINTENDENT’S REPORT, supra note 156, at 20.
232 See Joffe, MELDRUM CONTINUED, supra note 199, at 112.
233 Haines, supra note 90, at 202.
234 Id.
235 See id. at 202–03.
236 Id. at 205.
237 Id.
238 Id.
239 Id.
240 See id. at 205–06; Joffe, MELDRUM CONTINUED, supra note 199, at 112–116.
241 Haines, supra note 90, at 205.
end of Reeb’s belt, two labels from milk cans sold to Reeb on credit in Gardiner, and the tips of two stolen fishing rods from the robbery.242

Commissioner Meldrum held the preliminary hearing in the billiard room at the National Hotel in Mammoth.243 The two robbery suspects were later tried before the United States District Court for Wyoming in Cheyenne, found guilty, and sentenced to 18 months in federal custody.244 After serving their sentences, the two men returned to Yellowstone. Reeb thanked Meldrum for the incarceration that broke his morphine habit, and Smizer requested Meldrum’s assistance in securing employment.245 Commissioner Meldrum arranged for Smizer to work at a local ranch where he served faithfully.246 The Boone and Crockett Club condemned Ed Howell’s involvement in the arrest given his reputation as a poacher, but Howell still received a $150 reward for his role as a scout.247 Despite Lieutenant Lindsley’s success in apprehending the two highwaymen, many blamed Yellowstone’s military detachment for failing to prevent the stagecoach robbery in the first instance.248

B. Emerging Twentieth Century Challenges

As Yellowstone entered the 20th century, officials were forced to shift their attention to a new challenge—visitor safety. In Meldrum’s first six years as commissioner, park visitation nearly tripled with 8,928 tourists entering Yellowstone during the 1900 season.249 Around that time, Major John Pitcher, the acting superintendent, remarked “[t]he American people, or at least the traveling public of the United States, seem at last to have awakened to the fact that there are many wonderful things to be seen on our own continent . . . .”250 This influx of visitors created new challenges for Yellowstone’s young justice system, including a need to address human-wildlife interactions, automobile traffic, and disorderly conduct. These concerns soon replaced poaching as the primary concern facing the park.

Earlier concerns of poaching were stemmed by military supervision, civilian scouts, and a functioning justice system. Commissioner Meldrum took pride in reporting “I deem it a fact worthy of mention that during [the 1901 season] no complaint has been entered against any person killing large game in the Park.”251

242 Id. at 205–06; Joffe, Meldrum Continued, supra note 199, at 114.
243 Haines, supra note 90, at 206.
244 Id.
245 Id.
246 Id.
247 Id.
248 Rust, supra note 98, at 52–53.
249 Compare George W. Goode, 1900 SUPERINTENDENT’S REPORT 4, with Anderson, 1895 SUPERINTENDENT’S REPORT, supra note 222, at 4.
Poaching still occasionally occurred, but the presence of the United States Commissioner and criminal penalties proved to serve as an important deterrent. Commissioner Meldrum typically handed out hefty fines for poaching and ordered the forfeiture of firearms and traps.252 With poachers on the ropes, park officials now had to deal with the increasing number of wildlife encounters with visitors.

From its earliest days, bear incidents were common in Yellowstone. Bears often targeted food stores at guard stations, lunch stations, and campsites.253 When Captain Pitcher assumed command over the park in 1901, he believed it was only a matter of time until someone would be seriously injured.254 Tourists compounded this problem by gathering at garbage dumps to watch the bears feed.255 In 1902, Pitcher’s worries became reality. A sow mauled R.E. Southwick of Hart, Michigan after he petted her bear cub.256 The incident prompted park officials to fence off dump sites and post warnings.257

On August 8, 1902, Captain Pitcher also posted instructions at all hotels and permanent campsites prohibiting the molestation of any wildlife and banning visitors from feeding bears “except at regular garbage piles.”258 Pitcher further recommended that the Secretary adopt his instructions in regulation so “any cases of violation . . . may be promptly brought before a United States Commissioner.”259 The military instructions were in effect, but without adoption by the Secretary, Pitcher and his soldiers could only eject individuals for interfering with wildlife.260 Meanwhile, the wildlife in Yellowstone lost most of their fear for humans.261 The Secretary finally adopted Captain Pitcher’s instructions on April 15, 1914.262

The advent of the automobile also prompted changes in park regulations. On June 2, 1902, Harry G. Merry drove the first automobile into Yellowstone.263 The
arrival of the Model 1897 Winton in Gardiner caused a commotion and word about the contraption soon reached Captain Pitcher at Fort Yellowstone.264 Fearing the automobile would spook the horses on the road, Pitcher issued an order prohibiting the Winton from entering the park.265 Aware of the military instruction, Merry opted to press his case in person and sped past two mounted troopers attempting to block his path at the park entrance.266 The effort was successful until Merry’s Winton stalled on the steep grade leading up to Mammoth.267 The two troopers caught up on their horses and used a lariat to tow the automobile to Pitcher’s office.268 Merry was reprimanded and ordered to give the officers a ride in the Winton as punishment.269 A military detail then escorted Merry and the automobile out of the park.270

Mr. Merry’s joyride launched a new era of law enforcement for park officials. Since 1883, the Army Corps of Engineers constructed and maintained Yellowstone’s roads and bridges for horse-drawn carriages.271 By 1910, automobiles were reliable enough for cross-country touring and in most instances, wagon roads were suitable for the vehicles.272 In 1912, Congress directed park officials to estimate the cost of road improvements necessary for automobile traffic.273 Automobiles were initially prohibited in Yellowstone but for an isolated section of road bisecting the northwest corner of the park used to transit from Bozeman to southern Gallatin County, Montana.274 Incursions by unaware motorists into the park occasionally occurred and troops removed offending vehicles by wagon.275 On August 1, 1915, Secretary of Interior Franklin Lane admitted private automobiles into Yellowstone under the condition that motorists adhere to strict schedules to avoid interfering with horse-drawn stagecoaches.276

In its inaugural 1916 season allowing automobiles, 3,445 vehicles entered the park.277 Yellowstone documented its first serious motor vehicle accidents in

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264 Id. at 264.
265 Id.
266 Id.
267 Id.
268 Id.
269 Id.
270 Id.
271 See id. at 210–11.
272 Id. at 264.
273 Colonel Lloyd M. Brett, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 7 (1912).
275 Haines, supra note 90, at 264.
276 R. B. Marshall, U.S. Dep’t of the Interior, Report of the Superintendent of National Parks to the Secretary of the Interior 16 (1916); see also Haines, supra note 90, at 267 (“By [1914], automobiles were exerting such pressure to get their machines admitted to the Park that [Superintendent] Colonel Brett could not allow a vehicle to come in for any purpose[,]”).
1918. During the 1919 season, automobile traffic ballooned to 10,737 vehicles. Traffic violations followed. In 1919 Commissioner Meldrum fined 11 motorists for speeding. In one case, he fined a park transportation company employee $100 for a speeding incident that resulted in tipping a ten-passenger car on a double curve near Madison Junction. In fact, it didn’t take long for motor vehicle violations to dominate Commissioner Meldrum’s docket. In 1925, Meldrum adjudicated a total of 34 cases. Of those, 21 cases involved traffic regulation violations, and one was charged under the National Motor Vehicles Act. Commissioner Meldrum credited the introduction of the automobile as the single greatest change in the park during his tenure, believing that people were going through the park too fast to enjoy its natural wonderment.

C. Yellowstone Game Protection Act Amendments

While the appointment of a United States Commissioner helped solve a number of issues in the park, serious criminal activity continued. Commissioner Meldrum commonly held felony offenses over for trial in Cheyenne. Even the occasional murder suspect appeared before Meldrum. As a United States Commissioner however, Meldrum’s jurisdiction was limited to adjudicating misdemeanors. With felony arrests, the commissioner typically informed the accused of their rights and made a determination on bond before referring the matter to an Article III judge with the United States District Court for Wyoming.

The Yellowstone Game Protection Act provided that any person found unlawfully taking animals in the park “shall be deemed guilty of a misdemeanor”

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277 Marshall, supra note 276, at 29.
280 Id. at 76.
281 Id. at 93–94.
283 Joffe, Meldrum Continued, supra note 199, at 137.
286 See Grin v. Shine, 187 U.S. 181, 187 (1902) (“The commissioner is in fact an adjunct of the court, possessing independent, though subordinate, judicial powers of his own.”); United States v. Berry, 4 F. 779, 779–80 (D. Colo. 1880) (“[V]iolations of the laws of the United States a commissioner may be regarded as holding an inferior court, over which this court, having cognizance of the crimes themselves, may have supervisory jurisdiction.”).
287 See Brown, supra note 7, at 12.
and “shall be subjected to a fine of not more than one thousand dollars or imprisonment not exceeding two years.”288 Crimes with punishments exceeding one-year imprisonment, however, are “infamous” crimes subject to constitutional protections under the Fifth and Sixth Amendment.289 Commissioner Meldrum had adjudicated a number of cases under the 1894 law but lacked jurisdiction because the crime carried felony punishments.

The United States Attorney General challenged the commissioner’s jurisdiction over these offenses in 1913.290 Specifically, the United States Attorney General directed the United States Attorney for Wyoming that these offenses could not be adjudicated by the commissioner:

It is true that the Yellowstone Park act evidently intends this offense to be dealt with as a misdemeanor, to be tried and punished as such by the commissioner of Yellowstone Park, but Congress can not deprive an accused of his rights secured to him under the Constitution, and if the offense is one, as it is in this case, which may be punished by a term in the penitentiary, it ceases to be such a petty offense as may be proceeded with by information or by way of punishment by a commissioner. The authorities cited above are conclusive upon this point.291

Enforcement of the Game Protection Act was suspended because the expense of transferring offenders and witnesses for trial in Cheyenne before an Article III judge was prohibitive.292 Several poachers were arrested in 1914, and despite entering guilty pleas before Commissioner Meldrum, the suspects were discharged after grand juries failed to return indictments.293 Congress responded in 1916 and amended the Yellowstone Game Protection Act by reducing the monetary penalties and term of imprisonment to misdemeanor levels.294 The maximum punishment under the amended law was a $500 fine with a term of imprisonment not to exceed six months.295

Prior to the amendment, Commissioner Meldrum’s convictions under the Act generally carried fines ranging from $25–$50 and did not impose jail sentences.296

289 Mackin v. United States, 117 U.S. 348 (1886) (offenses against the United States punishable by imprisonment “not more than two years” is an infamous crime).
291 Id.
292 Id.
293 Brett, 1914 Superintendent’s Report, supra note 262, at 17.
295 Id.
296 See Erwin, 1898 Superintendent’s Report, supra note 229, at 20–21.
Thus, it does not appear any previous convictions were overturned. Park officials applauded the change, which “greatly simpl[ie]d the matter of trials for offenses in the park” and Commissioner Meldrum continued adjudicating poaching violations under the Act.297

D. The End of Military Supervision

In 1907, Park Superintendent, General S. B. M. Young, sparked debate over the future of military control in Yellowstone.298 Young concluded that the interests of the military were not served by patrolling the park and recommended returning it to civilian management.299 Military detachments were often divided into small parties and separated for extended periods without supervision by officers.300 The arrangement undermined discipline and occasionally resulted in cases before Commissioner Meldrum.301

Soldiers violating their orders were subject to court-martial and a vast majority of courts-martial, nearly 80%, prosecuted drunkenness.302 But Yellowstone’s troops were occasionally prosecuted under the Yellowstone Game Protection Act. At some isolated outposts, troops engaged in unauthorized gunplay and supplemented their rations with poached game.303 In 1908, soldiers were charged and convicted before Meldrum for poaching birds and carving their names into trees.304 Isolation and meager pay factored into these disciplinary issues. General Young explained that enlisted salaries did not attract “capable men” for serving the unique needs of the park and resulted in high attrition rates.305 Unfortunately, the skills employed by soldiers in Yellowstone did not match those needed by the United States Cavalry for other military assignments. Aside from earning field experience by tracking poachers, enlisted men gained little advantage for advancement to other units by performing winter patrols on skis and monitoring tourists.306

297 See Colonel Lloyd M. Brett, Annual Report: 1916, at 40; Lindsley, 1918 Superintendent’s Report, supra note 278, at 44.


299 Young, 1907 Superintendent’s Report, supra note 298, at 25.

300 Id.

301 See id.

302 Rust, supra note 98, at 149.

303 Id. at 111–12.

304 Young, 1908 Superintendent’s Report, supra note 252, at 12.

305 Young, 1907 Superintendent’s Report, supra note 298, at 25.

306 See Rust, supra note 98, at 198.
A noticeable social tension also existed between tourists and the park’s enlisted soldiers.\textsuperscript{307} In its early years, Yellowstone attracted mostly wealthy visitors with the means to afford travel and costly accommodations.\textsuperscript{308} Such tourists disrespected the soldiers, and in response, the troops ruthlessly enforced the park’s regulations.\textsuperscript{309} Despite these criticisms, the military’s tenure in Yellowstone undoubtedly brought a semblance of order when it was needed most.\textsuperscript{310}

The creation of the NPS paved the way for a complete transition to civilian management.\textsuperscript{311} In September 1911, a conference of National Park Superintendents held in Yellowstone endorsed a plan to create a unified organization to manage all of the national parks in the United States.\textsuperscript{312} President Taft endorsed the idea and offered the proposal to Congress.\textsuperscript{313} As a result, Congress enacted the National Park Organic Act on August 15, 1916.\textsuperscript{314} Yellowstone’s civilian management praised the unification of its executive authorities under the Department of Interior. For over three decades, the Department of Interior exercised “control that does not control” because park responsibilities were divided across the War Department, Army Corps of Engineers, and the Department of Interior.\textsuperscript{315}

To the relief of the War Department, the creation of the NPS allowed the military to shift resources from Yellowstone just as the United States was on the eve of entering World War I.\textsuperscript{316} But the change in command was not swift. Yellowstone hired its first force of four civilian “rangers” in 1915 to compliment the cavalry presence.\textsuperscript{317} The following season, the park employed 22 rangers from the ranks of recently discharged Yellowstone soldiers.\textsuperscript{318} The rangers, however, were disbanded in 1917 after Congress failed to appropriate funding for the civilian force so all enforcement temporarily fell back on the 450 soldiers with the United States Seventh Cavalry still stationed in the park.\textsuperscript{319} Funding from Congress returned the next year, and on November 1, 1918, the acting park superintendent telegraphed Washington with news that the military had “formally abandoned” Fort Yellowstone.\textsuperscript{320}

\begin{itemize}
\item \textsuperscript{307} \textit{Id.}
\item \textsuperscript{308} \textit{Id.} at 199.
\item \textsuperscript{309} \textit{Id.} at 199–200.
\item \textsuperscript{310} \textit{Id.} at 201.
\item \textsuperscript{311} \textit{Id.} at 194.
\item \textsuperscript{312} Haines, supra note 90, at 284.
\item \textsuperscript{313} \textit{Id.}
\item \textsuperscript{315} Chester A. Lindsley, Annual Report: 1917, at 9–10.
\item \textsuperscript{316} Rust, supra note 98, at 195.
\item \textsuperscript{317} Haines, supra note 90, at 286.
\item \textsuperscript{318} \textit{Id.}
\item \textsuperscript{319} \textit{Id.} at 290.
\item \textsuperscript{320} \textit{Id.}
\end{itemize}
V. Civilian Administration

The NPS now had to fill the void left by the military. When the first civilian supervisor of Yellowstone assumed his responsibilities in late 1918, the park employed 21 permanent rangers and a handful of seasonal rangers who supervised the entrances during the summer. The permanent ranger force was tasked with managing crowds during the summer months and patrolling for poachers in the long off-season. Rangers also served as patrolmen and policed the endless number of speeders on motorcycles.

Despite its remoteness, Yellowstone was not immune from the influence of international and domestic affairs. On July 25, 1918, park officials arrested a tourist, James E. Scheibler, at Upper Geyser Basin for “treasonable utterances” under the recently enacted Sedition Act of 1918. Scheibler reportedly said, “I know this war is going to end, they will never whip the Germans. They are clever; you can’t get around it. My heart is with the German people, but I have to be careful what I say.” He was also charged for laying hands on a woman and “suggested kissing.” Meldrum fined the man $25 for the lewd conduct and turned the Sedition Act charge over to the United States Attorney near Scheibler’s residence in Memphis, Tennessee.

Prohibition came to Yellowstone with the adoption of the Eighteenth Amendment in 1920. Department of Interior regulations had long prohibited drinking saloons and barrooms within the park’s boundaries. But in reality, intoxicating beverages were previously poured largely unencumbered in the park. Hotel companies were permitted to serve wine and other beverages to hotel guests “at their meals.” Additionally, soldiers were prohibited from entering hotels to enforce park regulations, creating an atmosphere of plausible deniability. Commissioner Meldrum was even known to sojourn the hotel barroom across the street from his office with army officers. Prohibition-era laws, however, slowed the flow of liquor into the park. Meldrum adjudicated many prohibition violations.

321 Id.
322 Id. at 299.
323 Id. at 300.
324 LINDSLEY, 1918 SUPERINTENDENT’S REPORT, supra note 278, at 45; see also Sedition Act of 1918, ch. 75, 40 Stat. 553 (repealed 1921).
326 Id.; LINDSLEY, 1918 SUPERINTENDENT’S REPORT, supra note 278, at 45.
327 See PITCHER, 1901 SUPERINTENDENT’S REPORT, supra note 251, at 13.
328 Rust, supra note 98, at 73.
329 Id.
330 Id. at 72.
331 See LINDSLEY, 1918 SUPERINTENDENT’S REPORT, supra note 278, at 44.
By 1928, prohibition crimes constituted a third of his docket and surpassed the number of traffic violations.\textsuperscript{332} When prohibition ended, the NPS allowed alcohol back into the park.\textsuperscript{333}

\textit{A. Grand Old Man of Yellowstone}

In his final decade as commissioner, Meldrum maintained a docket ranging from 20 to 40 cases each season.\textsuperscript{334} Many of the cases involved violations of park regulations and resulted in convictions for traffic offenses, trespassing, fishing violations, possessing firearms, and leaving campfires unattended.\textsuperscript{335} Meldrum also considered cases involving disorderly conduct, assault, breaking and entering, rape, and fraud.\textsuperscript{336} The park’s bolstered Protection Department ensured Meldrum remained active. By 1930, Yellowstone’s enforcement personnel included a chief ranger, 4 assistants, 26 permanent rangers, and 45 temporary “summer” rangers.\textsuperscript{337} The Great Depression, however, took its toll on park visitation resulting in significant enforcement cutbacks by 1932.\textsuperscript{338}

When Meldrum assumed his duties as United States Commissioner in 1894, the park welcomed 3,105 visitors a year.\textsuperscript{339} Even with the Great Depression in full force, 317,998 tourists entered Yellowstone during his final season as commissioner in 1935.\textsuperscript{340} Commissioner Meldrum stepped down from his duties on June 30, 1935, and passed away in Denver, Colorado on February 27, 1936, at the age of 92.\textsuperscript{341}

\begin{footnotes}

\textsuperscript{332} Horace M. Albright, Annual Report for Yellowstone National Park 19 (1928); see also Horace M. Albright, Yellowstone National Park: 1926 Annual Report 35.


\textsuperscript{334} See Albright, 1925 Superintendent’s Report, supra note 282, at 36–37; Albright, 1926 Superintendent’s Report, supra note 332, at 35; Horace M. Albright, 1927 Superintendent’s Report, supra note 337, at 26; Albright, 1928 Superintendent’s Report, supra note 332, at 19.

\textsuperscript{335} See Albright, 1925 Superintendent’s Report, supra note 282, at 36–37; Albright, 1926 Superintendent’s Report, supra note 332, at 35; Horace M. Albright, 1927 Superintendent’s Report, supra note 337, at 26; Albright, 1928 Superintendent’s Report, supra note 332, at 19.


\textsuperscript{337} Roger W. Toll, Annual Report for 1930, at 16.

\textsuperscript{338} Roger W. Toll, Annual Report for Yellowstone National Park 1 (1932); see also Toll, 1933 Superintendent’s Report, supra note 333, at 12.

\textsuperscript{339} Haines, supra note 90, at 478.

\textsuperscript{340} Id. at 479.

\textsuperscript{341} Joffe, Meldrum Continued, supra note 199, at 134, 139–40.
\end{footnotes}
John Meldrum’s 41 year tenure as United States Commissioner for Yellowstone earned him the affectionate nickname, “Grand Old Man of Yellowstone.” Meldrum estimates that he “sat in” on thousands of infractions, but only 519 cases called for punishment either directly or by referral to the United States District Court for Wyoming. He preferred to address minor infractions with “a severe lecture,” believing that more good could be done by reprimanding individuals not naturally known as lawbreakers. Meldrum also left a permanent mark on the Yellowstone community. In addition to his judicial service, Meldrum was instrumental in the prolonged, yet successful, effort to construct a chapel in Yellowstone. The chapel was completed in 1913 as the last building constructed at Fort Yellowstone during the era of military supervision.

Generally, the park’s military supervisors and civilian administrators held Meldrum in high regard, which explains his lengthy tenure. A single letter in 1907 from Meldrum’s archive reveals the only documented instance of an apparent effort to remove him from the appointment. Meldrum wrote Judge Riner with the United States District Court of Wyoming stating:

I would like to see you and have a talk about matters here; they have not been altogether agreeable between myself and the present Superintendent of the Park. I have refused to permit him to think for me in the administration of this office, and I understand he counseled with Mr. Loeb, [President Theodore Roosevelt’s] Secretary, who was here last week, about having me removed from office. I am ready to go whenever you say so; but will strenuously object to so doing under the fire of a petty tyrant.

The Superintendent referenced by Commissioner Meldrum in the letter moved on the following year, Meldrum continued to serve on the bench for several more decades.
B. Commissioner T. Paul Wilcox

In 1935, United States District Court Judge Thomas B. Kennedy, appointed former Assistant United States Attorney, T. Paul Wilcox to fill the vacancy in Yellowstone left by Commissioner Meldrum’s retirement. Wilcox was born December 31, 1883, and like his predecessor, was raised in Western New York State. He first moved to Wyoming in 1903 and worked for the Union Pacific Railroad. In 1906, Wilcox was appointed as a court reporter for the state court in Cheyenne. After completing his studies in the law, Wilcox was admitted to the Wyoming state bar on April 22, 1918.

Prior to his appointment as commissioner, Wilcox litigated cases as the Cheyenne City Attorney, a Deputy Wyoming Attorney General, and Assistant United States Attorney. He was well known in Cheyenne social organizations and considered “genial” in nature. An avid reader, Wilcox had a number of bookcases built into the living room of the commissioner’s residence in Mammoth.

Much like his predecessor, Wilcox spent a significant portion of time handling traffic citations. Yellowstone’s highway rangers ended motorcycle patrols in 1936 and relied on new V-8 Ford convertibles to apprehend unruly motorists. Commissioner Wilcox’s caseload between 1937 and 1939 averaged 100 cases a season and was dominated by citations for speeding, reckless driving, and driving under the influence. During that three-year period, two-thirds of his cases involved traffic violations. Traffic fatalities followed. The park experienced approximately three vehicle fatalities a year between 1937 and 1939.

\[\text{Associated Press, Former Assistant U.S. Attorney Dies on Coast, Casper Tribune-Herald, May 6, 1953, at 9.}\]

\[\text{3 History of Wyoming 194 (Ichabod S. Bartlett ed., 1918).}\]

\[\text{Id.}\]

\[\text{Id.}\]

\[\text{Id.}\]

\[\text{Id.}\]

\[\text{See Burnham Hotel Co. v. City of Cheyenne, 222 P. 1 (Wyo. 1924); Morgan v. State, 181 P. 598 (Wyo. 1919); United States v. Bosoni, 57 F.2d 328 (D. Wyo. 1930).}\]

\[\text{3 History of Wyoming, supra note 349, at 194.}\]


\[\text{Haines, supra note 90, at 300.}\]


\[\text{See Rogers, 1937 Superintendent’s Report, supra note 357, at 31; Rogers, 1938 Superintendent’s Report, supra note 357, at 25; Rogers, 1939 Superintendent’s Report, supra note 357, at 20.}\]

\[\text{See Rogers, 1937 Superintendent’s Report, supra note 357, at 31–32; Rogers, 1938} \]
During World War II, the federal government discouraged travel to national parks to promote gasoline rationing. As a result, park visitation declined significantly.360 During the conflict, Yellowstone held selective service registration events, practiced blackouts, conducted bond drives, disposed of its heavy equipment for the war effort, and paid tribute to the park employees who enlisted in the armed forces and honored those subsequently lost in action.361 As a result, Commissioner Wilcox adjudicated only a handful of minor infractions during World War II.362

Activity returned to the park after World War II. On July 19, 1946, Commissioner Wilcox’s daughter was married in the Mammoth Chapel, the same chapel that John Meldrum worked to secure during Yellowstone’s military administration.363 By 1947, visitors started to return to the park in greater numbers. In that year, Wilcox adjudicated 82 cases.364 A majority of the cases involved traffic violations, and several arrests were for poaching, illegal fishing, and theft.365 Park personnel had long stressed the need to remind visitors to avoid trespassing on thermal features, which regularly resulted in serious injury or death. In 1950, two children perished after falling into a small thermal pool near the West Thumb cafeteria.366

On July 21, 1951, the District Court of Wyoming reappointed Wilcox to a four-year term as United States Commissioner.367 During his final season, he considered 81 cases, including arraigning suspects charged with serious crimes.368 The most serious was when the Federal Bureau of Investigation (FBI) apprehended two park employees responsible for robbing Hamilton’s Lake Store on July 14, 1951.369 Commissioner Wilcox bound over both suspects for trial in Cheyenne, and both were subsequently found guilty.370 Wilcox was hospitalized in Livingston Superintendents’ Report, supra note 357, at 25; Rogers, 1939 Superintendent’s Report, supra note 357, at 21.

360 Edmund M. Rogers, 1944 Superintendent’s Report 4; see also Haines, supra note 90, at 479.


362 See Rogers, 1944 Superintendent’s Report, supra note 360, at 18; Rogers, 1945 Superintendent’s Report, supra note 361, at 13.


364 Id. at 16.

365 Id.


369 Id.
during the winter of 1951, and his health did not permit him to return to the park.\textsuperscript{371} He passed away in Seattle, Washington in 1953.\textsuperscript{372}

\textbf{C. Commissioner James W. Brown}

The United States District Court for Wyoming appointed James W. Brown as commissioner on June 10, 1952.\textsuperscript{373} Born February 8, 1903, in Pittsburg, Pennsylvania, Brown attended Yale and graduated from the University of Pittsburg Law School in 1929.\textsuperscript{374} During the Great Depression, Brown worked as a trust officer in Pittsburgh before securing work as an attorney in private practice and later with several government agencies, including the Reconstruction Finance Corporation and United States Bureau of Reclamation in Billings, Montana.\textsuperscript{375} In 1943, Brown moved to Cheyenne and served as an enforcement attorney for the Office of Price Administration, the federal agency tasked with establishing price controls and rationing during World War II.\textsuperscript{376} After the Office of Price Administration was disbanded in 1946, Brown reentered private practice with Guy & Edelman Attorneys at Law in Cheyenne.\textsuperscript{377}

Commissioner Brown held court for the first time in Yellowstone on June 15, 1952, and adjudicated 35 fishing violations charged against members of the Cody Elk's Club.\textsuperscript{378} In his first season as commissioner, Brown heard 213 cases, 75 of which were speeding violations.\textsuperscript{379}

In 1958, the park recorded 10 straight seasons with visitation exceeding the million mark.\textsuperscript{380} “Throughout the 1950s, park officials focused on addressing the growing number of bear incidents, littering, and the practice of tossing coins into

\begin{footnotesize}
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\item \textsuperscript{370} Id.
\item \textsuperscript{371} Id. at 30; Hamilton, 1952 Superintendent’s Report, supra note 367, at 13.
\item \textsuperscript{372} Associated Press, Former Assistant U.S. Attorney Dies on Coast, Casper Tribune-Herald, May 6, 1953, at 9.
\item \textsuperscript{373} Hamilton, 1952 Superintendent’s Report, supra note 367, at 13.
\item \textsuperscript{374} Memorandum regarding Judge James W. Brown from Edmund B. Rogers, Superintendent, Yellowstone Nat’l Park, to Conrad Wirth, Dir., Nat’l Park Serv. (Oct. 3, 1952) (on file with author) [hereinafter Rogers Memorandum].
\item \textsuperscript{375} Id.; see also James Wayne Brown, Application for Federal Employment, Standard Form 57—Dec. 1945, U.S. Civ. Serv. Comm’n § 16 (Mar. 15, 1947) (on file with author) [hereinafter Brown Application].
\item \textsuperscript{376} Rogers Memorandum, supra note 374; see also Bowles v. Beatrice Creamery Co., 146 F.2d 774, 775 (10th Cir. 1944).
\item \textsuperscript{377} Rogers Memorandum, supra note 374; see also Brown Application, supra note 375, § 16.
\item \textsuperscript{378} Letter from James W. Brown, U.S. Comm’r, Yellowstone Nat’l Park, to The Honorable T. Blake Kennedy, D. Wyo. (June 25, 1952) (on file with author).
\item \textsuperscript{379} U.S. Comm’rs Off., Yellowstone Nat’l Park, Wyo., Case Analysis—Season 1952 (Dec. 1, 1952) (on file with author).
\item \textsuperscript{380} Lemuel A. Garrison, Annual Report of Superintendents 9 (1958).
\end{itemize}
\end{footnotesize}
thermal features. The park also purchased its first over-snow equipment and opened up winter use in 1955. Previously, Yellowstone was largely a summer destination. Expanded winter use, however, brought more visitors to the park year-round. To accommodate the demand for processing violations, Commissioner Brown announced in 1961 that he would hear cases on Saturdays and Sundays under “special circumstances” involving non-local park visitors where delay of proceedings imposed “a bona fide hardship.”

D. Institutional Independence and Interagency Cooperation

Yellowstone is known for its distinct natural ecosystem. Since its creation, the park has also maintained a unique human ecosystem. Park employees and concessioners, living together in the isolation of Yellowstone, form strong social bonds. Serving under the umbrella of the NPS, park employees and partners develop an esprit de corps that can blur institutional responsibilities. The commissioner, residing in Mammoth, plays an important role in the Yellowstone community but operates independently from the NPS. Sometimes, institutional differences arise between judicial officers and park officials.

Commissioner Brown, addressing a conference of rangers in 1956, took the opportunity to remind park employees that, “the Secretary [of Interior] does not have an unlimited power to regulate” Yellowstone, and as commissioner, Brown served a separate branch of government. Commissioner Brown did not reserve his views just for rank-and-file park employees. In congratulating a newly appointed NPS Director in 1964, Brown embraced the need for cooperation between commissioners and park officials, but challenged the hierarchical culture that existed within the NPS:

For a considerable time, and especially during the past several years, I have been concerned over the apparent attitude of the executive officers of the Park Service toward the duties and responsibilities of national park commissioners. It has seemed to me that there has been a condescending and officious tone in the manner of, “These are our parks and you remain here on sufferance only,” toward outside supporting federal agencies with particular emphasis on resident commissioners.

383 Memorandum from Chief Park Ranger (with concurrence of Chief Park Naturalist), Yellowstone Nat’l Park, on Presentation of Violations Before U.S. Comm’r to All Uniformed Personnel (June 16, 1961) (on file with author).
385 Letter from James W. Brown, U.S. Comm’r, Yellowstone Nat’l Park, to George B. Hartzog
Brown’s correspondence revealed the sometimes complicated institutional relationship between Yellowstone’s judicial officers and park officials.

Most institutional differences involved the administration of justice in the park. For example, Commissioner Brown worked with the United States Attorney’s Office to address concerns over the execution of arrest warrants by park rangers.386 However, in rare instances, the differences were personal.

The NPS manages the commissioner’s residence in Mammoth.387 Early in his appointment, Commissioner Brown waged a prolonged battle over the rent the NPS charged for his housing.388 Although rent for the residence was equivalent to the rate senior park officials were charged for similar-sized housing units, commissioners received less compensation because the salary schedule for the federal courts did not align with the NPS’s pay scale.389 Brown also questioned the NPS’s housing rate because the residence went without any significant improvements since its construction in 1894.390

Unable to resolve the issue with local park officials, Brown took the matter to the Administrator of the United States Courts.391 The Administrator’s staff raised the issue with the NPS but with no effect, and in bureaucratic form, Brown was encouraged to continue his effort to resolve the matter locally.392 Adding insult to injury, Brown received delinquency notices while attempting to resolve the dispute.393 Commissioner Brown ended his campaign, concluding that further pursuit “would generate more heat than light.”394 Several years later, the residence

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391 Brown letter to Warren Olney III, supra note 388.
394 Brown letter to George Lee, supra note 389.
was the scene of a crime. While Brown was away from the park, a break-in occurred on December 14, 1968, through a window leading into the residence’s basement. Nothing was stolen, but the matter was investigated by park officials and the FBI. It remains unknown if any suspects were apprehended.

Commissioner Brown’s housing dispute provides an isolated illustration of how competing interests can produce institutional friction. In addition to the federal courts, a number of federal law enforcement agencies cooperate with the NPS in Yellowstone. The park’s law enforcement partners include, but are not limited to, the United States Marshal Service, the FBI, and the United States Attorney’s Office. The administration of justice in Yellowstone relies on a concerted effort between the NPS, other federal agencies, and the federal courts.

For example, in 1963 Commissioner Brown and the United States Attorney’s Office for the District of Wyoming collectively developed a new bond procedure to benefit park visitors cited for minor violations. The park implemented an appearance bond process that allowed visitors to post a cash bond and continue their travels to avoid waiting for a scheduled court appearance. At the time, payment was required when the citation was issued, but the new bond procedure produced immediate results for the court’s growing docket of petty offenses. The new bond procedure was a success. During the 1964 season, law enforcement issued 90 fishing and boating citations, and 75 defendants opted for a cash bond. To this day, Yellowstone’s justice system relies on extensive cooperation between Yellowstone’s court, the NPS, and cooperating federal law enforcement agencies.

E. Federal Magistrates Act of 1968

In 1968, Congress reformed the commissioner system again with the enactment of the Federal Magistrates Act. Although Congress recognized that the commissioner system was antiquated, it did not wish to discard the entire system.

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396 Id.
399 John S. McLaughlin, Annual Report for Fiscal Year 1964, at 3.
400 Anderson letter to Ardella Schafer, supra note 398.
Instead, the Magistrates Act replaced the commissioner system by authorizing newly minted magistrate judges to exercise all powers and duties previously committed to United States Commissioners “by law.” To the fortune of Yellowstone, the Magistrates Act did not significantly alter Commissioner Brown’s jurisdiction over petty offenses because it did not alter existing statutory authorities relating to the park.

The Magistrates Act, however, created a new class of professional judicial officers with administrative benefits for Yellowstone’s judge. Congress authorized “secretarial and clerical assistance” for full-time magistrates. The Magistrates Act also established new compensation levels and allowed judges to participate in the federal government’s civil service retirement program. Finally, federal district courts retained the authority to appoint magistrate judges subject to specific statutory qualifications, and the term of office for full-time magistrates increased to eight years.

The modernization of the commissioner system under the Magistrates Act provided additional resources to judicial officers serving in Yellowstone. Importantly, secretarial and clerical assistance provided the magistrates with support in meeting the demands of growing dockets. Congress subsequently instituted a merit selection process for magistrate judges and in 1990, officially adopted the title “United States Magistrate Judge” for the position.

is in many ways defective, your committee believes it is neither practical nor desirable simply to abolish the commissioner system and transfer the functions now performed by that office to the U.S. district court judges, who are already overburdened by their present duties and not geographically situated to service the needs of remote areas of the country.”).

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405 See Yellowstone Game Protection Act, ch. 72, § 5, 28 Stat. 73, 74–75 (codified as amended at 16 U.S.C. §§ 24–30a); Act of Oct. 9, 1940, ch. 785, 54 Stat. 1058; Memorandum from Edward Hummel, Assoc. Dir., Nat’l Park Serv., to Reg’l Dirs. regarding Status of Implementation of Federal Magistrates Act 4 (May 19, 1969) (on file with author) (“We have been advised informally by the Administrative Office of the U.S. Courts that offenders may be brought before a Magistrate regardless of the type of legislative jurisdiction the National Park Service may exercise in the area where the offense was committed—exclusive, concurrent or proprietary.”).

406 See H.R. Rep. No. 90-1629, at 11 (1968) (“[T]he purpose of S. 945 is to abolish the office of U.S. commissioner and reform the first, echelon of the Federal judiciary into an effective component of a modern scheme of justice by establishing a system of U.S. magistrates.”).


408 Id. § 635(a), (c).

409 Id. § 631(b), (e).

VI. The Modern Magistrate Judge

James W. Brown continued his judicial service in Yellowstone as a part-time magistrate judge under the reformed magistrate system. The Magistrates Act provided that "no individual may serve under this chapter after having attained the age of seventy years" unless waived by a majority of all judges in the appointing court.412 As Magistrate Judge Brown approached the age of seventy in 1973, the United States District Court for Wyoming approved his retention.413

Traffic violations remained the most common crime in Yellowstone through the 1970s.414 However, park law enforcement shifted their attention to other emerging forms of criminal activity. Narcotics, often trafficked through the Yellowstone’s gateway communities, were of particular concern for park officials.415 Rumors spread of large-scale drug trafficking in the park.416 The FBI assigned a resident agent to the park for the summer months and conducted several undercover operations.417 The operation only resulted in the arrest of “one small opportunist-type drug pusher,” and agents concluded that any dealing was the result of individuals selling drugs from their “personal supplies.”418 Although not overwhelming, drug use and trafficking are persistent issues in the park, particularly amongst younger seasonal workers and visitors seeking to unlawfully supplement their recreational park experience.419

Crimes of opportunity also became a problem. In 1972, Superintendent Jack Anderson explained that the increase in parked car and campsite thefts signified that “[t]he days when you could leave your camp unattended for hours or even days without problems are gone forever, it would seem.”420 The recovery and

417 Id.
418 Id.
investigation of stolen cars also required more law enforcement attention. In response, park officials and the FBI conducted an educational program in 1977 to inform visitors about crime prevention through the use of brochures, radio broadcasts, and reminders from rangers at evening campfire programs. Similar crime prevention programs continue to this day.

In 1979, Magistrate Judge Brown heard 89 cases and park officials issued 1,050 violations. The park continued to improve on its 1963 bond reforms and citation system that allowed officers to issue citations at night and in the backcountry. With the improvements, only a small percentage of violators failed to pay their fines, alleviating Magistrate Judge Brown’s docket of most petty offenses. After 16 years of service as Commissioner and 12 years as a magistrate judge, Brown stepped down in July 1980 and retired December 31. Temporary magistrates rotated through Yellowstone on a weekly basis, as necessary, until the appointment of Brown’s successor.

A. Magistrate Stephen E. Cole

The United States District Court for Wyoming appointed Stephen E. Cole as a full-time magistrate judge for Yellowstone on January 1, 1982. Cole was born in Powell, Wyoming on April 18, 1947. He graduated from the University of Wyoming with a degree in English and went on to complete law school. Cole practiced law with Jack Langdon and in 1975 was appointed to serve as a part-time United States Magistrate Judge in Worland, Wyoming.

Yellowstone welcomed 2.4 million visitors in 1982. That season, Judge Cole heard 160 cases and referred 9 to the United States District Court for Wyoming. Park law enforcement also issued 1,360 violations and investigated 464 traffic

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421 Id. at 12.
423 Towsley, 1979 Superintendent’s Report, supra note 416, at 19.
427 Id.
428 Establishment of Mammoth Hot Springs in Yellowstone Nat’l Park as Duty Station for Off. of Clerk of Ct., General Order (June 14, 2006) [hereinafter 2006 General Order].
430 Id.
431 Id.; 2006 General Order, supra note 428.
433 Id. at 33.
accidents. The 1982 season was also notable because it was the first time in park history that its law enforcement ranks exceeded 100 officers.

B. Modernization of Park Law Enforcement

The 1980s marked an important milestone for Yellowstone's law enforcement capabilities. In response to an informal audit, park law enforcement had already addressed training deficiencies with its seasonal officers and improved its record-keeping practices. The park then required rangers to complete regular refresher courses and offered firearms training with the FBI. Yellowstone’s law enforcement officers also received duty specific training. In 1982, the United States Fish and Wildlife Service appointed a number of park rangers as deputy game wardens to help enforce federal fish and wildlife laws. Next, Yellowstone bolstered its multi-agency enforcement operations. In 1984, park rangers worked with Montana game wardens, the United States Marshals Service, and United States Fish and Wildlife Service Special Agents to execute Operation Trophy Kill, which resulted in more than a dozen arrests for wildlife violations.

The effort to improve the professionalism of Yellowstone’s law enforcement ranks culminated after a gunman took eight people hostage at the Old Faithful Visitor’s Center in 1989. After a five-hour standoff, the gunman surrendered and released the hostages unharmed. The incident, however, forced park officials to face the reality that at the time, the nearest hostage rescue team was located 90 miles away in Bozeman. Shortly after this event, Yellowstone created its own tactical team. Today, the park’s Special Response Team manages hostage incidents, active shooters, high-risk arrests, dignitary protection, and tactical tracking.

Most of the recorded crimes in Yellowstone are misdemeanors—including traffic violations, minor assaults, petty thefts, disorderly conduct, and illegal use of

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434 Id.
435 Id.
439 See id.
441 Id.
442 Id.
drugs or alcohol.\(^{445}\) Law enforcement officers are also prepared to respond to and investigate felonies and fatalities that occur in the park each season, including crimes committed against law enforcement officers.\(^{446}\) In 2007, 13 park law enforcement officers were the victims of assault or attempted assault.\(^ {447}\)

C. Natural Resource Violations

The steady increase in park visitation combined with expanded winter and backcountry use also resulted in a growing number of natural resource violations.\(^ {448}\) By 1995, nearly a third of the 3,216 citations issued by park law enforcement were natural resource violations.\(^ {449}\) Through the 1980s and 1990s, park officials issued several hundred citations each season for camping, preservation, and fishing violations.\(^ {450}\) Snowmobile violations during the same period ranged from 100–200 citations each winter season.\(^ {451}\) Yellowstone also offers very few opportunities for swimming or soaking.\(^ {452}\) The regulations are strictly enforced, in part, because drownings and severe burn injuries regularly occur.\(^ {453}\) Yet, several dozen visitors are cited each season for soaking in thermals or swimming in closed waters.\(^ {454}\)

Park officials also continued their efforts to combat wildlife violations.\(^ {455}\) Between 1986 and 1994, law enforcement issued 14 poaching citations on average each season.\(^ {456}\) Antler hunting was also prosecuted and carried stiff sentences,

\(^{445}\) Finley, 1999 State of the Park, supra note 382, at 6-50.

\(^{446}\) Lewis, 2008 Superintendent’s Report, supra note 442, at 29–30.

\(^{447}\) Id. at 29.

\(^{448}\) See Finley, 1999 State of the Park, supra note 382, at 6-37 to -38.


\(^{451}\) See Barbee, 1988 Superintendent’s Report, supra note 450, at 8; Finley, 1994 Superintendent’s Report, supra note 450, at 43.

\(^{452}\) See Cameron Sholly, Nat’l Park Serv., Yellowstone National Park: Superintendent’s Compendium of Designations, Closures, Permit Requirements and Other Restrictions Imposed Under Discretionary Authority 45–47.


\(^{454}\) See Barbee, 1988 Superintendent’s Report, supra note 450, at 8; Finley, 1994 Superintendent’s Report, supra note 450, at 43.

\(^{455}\) See Barbee, 1988 Superintendent’s Report, supra note 450, at 8; Finley, 1994 Superintendent’s Report, supra note 450, at 43.

including fines, probation, and temporary expulsion. In recent years, however, poaching has remained under control and has resulted in only a handful of arrests each season. Backcountry ranger teams patrolled approximately 28,000 miles of the park during the 2020 season. These backcountry rangers can claim the success for curbing most of the illegal hunting in recent years.

D. The Yellowstone Justice Center

By the early 2000s, the magistrate judge’s growing docket warranted a new courthouse. For nearly 90 years, court proceedings in the park were usually held at the commissioner’s residence. This changed in the early 1980s when Judge Cole moved into the residence with his family and holding court there became untenable. Cole relocated the courtroom to the United States Engineer’s Office in Mammoth, known as the “Pagoda” because of its unique roof configuration. The courtroom in the Pagoda was only 262 square feet, however, and lacked witness rooms, holding facilities, and a meeting space. As a result, park officials made plans to construct a new courthouse in Yellowstone.

The park selected the northeastern corner of the Esplanade in Mammoth for the new Justice Center. Completed in 2008, the Justice Center includes a courtroom, judicial chambers, offices for court staff, and office space for the United States Marshals Service, NPS special agents, and cooperating law enforcement agencies. In 2005, the United States Attorney employed a full-time Assistant United States Attorney to serve in Yellowstone. The Justice Center similarly provided space for the United States Attorney’s Office. The Yellowstone Justice Center remains in use as Yellowstone’s courthouse to this date.

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461 Id.
462 Id. at 9.
463 Id. at 10.
464 Id. at 9.
466 2006 General Order, supra note 431; see also Suzanne Lewis, Yellowstone National Park: Superintendent’s Annual Report 31 (2005).
E. Magistrate Judge Mark Carman

In his final years as Yellowstone’s magistrate, Judge Cole considered over 500 cases annually. Judge Cole retired in 2012 after 31 years of service and passed away shortly after in Powell, Wyoming. The United States District Court for Wyoming selected Mark Carman as Yellowstone’s next magistrate, and Carman assumed the bench in 2013. Carman received his undergraduate degree in Wildland Hydrology from Colorado State University in 1978 and earned a law degree from the University of Wyoming in 1981. He served as a prosecuting attorney in Casper, Wyoming and California before a lengthy career in private practice as a civil litigator. Judge Carman holds a private pilot certificate with instrument and multiengine ratings, and he taught Aviation Law as an adjunct professor at Rocky Mountain College in Billings, Montana.

Judge Carman oversaw significant changes in the justice system in Yellowstone. Annual park visitation exceeded four million visitors for the first time in 2015. Park officials also tackled new threats to natural resources, including implementing policies prohibiting the use of unmanned aircraft in national parks. Almost immediately, a number of cases were brought against tourists for unlawfully piloting drones in Yellowstone, which can result in fines of up to $5,000 and 6 months imprisonment. Park officials believe drones pose a threat to wildlife and may impair thermal features if crashed into pools and geysers.

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467 See Lewis, 2005 SUPERINTENDENT’S REPORT, supra note 469, at 30; Lewis, 2008 SUPERINTENDENT’S REPORT, supra note 445, at 34.

468 Memorials: Stephen E. Cole, supra note 432, at 60.


471 Id.

472 Id.


476 See id.
Interactions between humans and wildlife in Yellowstone have also gained more public attention in recent years. In 2021, a 25-year-old woman was sentenced to four days in custody and over $2,000 in fines for “willfully remaining, approaching, and photographing wildlife within [one hundred] yards” after failing to yield to a sow and her three bear cubs. The incident was captured on a viral video which assisted law enforcement with her arrest. In another case, a Canadian man was charged with disturbing wildlife after placing a baby bison in the back of his SUV because the man was concerned about the calf’s wellbeing. Although well-intentioned, the bison calf had to be euthanized and Judge Carman fined the man $200 and ordered him to make a $500 community service payment.

Another issue facing Yellowstone involves a policy that requires permits for commercial filming in national parks. In 2000, Congress directed federal land management agencies, including the NPS, to develop a uniform fee structure for permitting commercial filming on federal land. Filmmakers and YouTube contributors have faced fines for failing to obtain commercial filming permits in national parks, but the policy is currently subject to litigation.

During Judge Carman’s tenure, the magistrate’s docket grew significantly. Traffic violations and accidents continued to play a significant role in park law enforcement efforts. During the 2020 season, park officials handled 1,500 motor vehicle accidents. Moreover, the COVID-19 pandemic forced Yellowstone to open late for the 2020 season. Despite the short season, park rangers issued nearly 5,000 violation notices and filed nearly 1,000 criminal cases. Law enforcement


482 Sholly, 2021 STATE OF THE PARK, supra note 459, at 38.

483 Id. at 6.

484 Id. at 38.
investigated a range of criminal activities, including driving under the influence, drug possession, sexual assault, and serious natural resource violations.\textsuperscript{485} In the same season, the park also experienced a 100% increase in thermal trespasses.\textsuperscript{486}

Not all violations, however, require fines or imprisonment. Judge Carman once sentenced an eleven-year-old boy to write an essay explaining why it was wrong to remove petrified wood from the park.\textsuperscript{487} Some sentences can also inform future visitors about the pitfalls of disregarding the law. In 2020, a guide was charged with multiple counts of violating park regulations, and the terms of his commercial permit after social media posts revealed various closure order violations, thermal trespasses, and permit violations.\textsuperscript{488} Judge Carman sentenced the guide to write an introduction to his guidebook communicating “a respect of the park,” in addition to fines, a temporary ban from the park, a brief jail sentence, and probation.\textsuperscript{489} In the vein of Commissioner Meldrum’s judicial philosophy, much is gained from “detailed instructions on law observance.”\textsuperscript{490} Judge Carman announced his retirement in 2021.\textsuperscript{491}

\section*{F. Magistrate Judge Stephanie Hambrick}

On April 7, 2022, the United States District Court for Wyoming announced that Stephanie Hambrick was appointed as the next full-time U.S. Magistrate Judge for Yellowstone.\textsuperscript{492} Hambrick graduated in 1991 with a degree in Business Administration from the University of Wyoming and earned her law degree from the University of Wyoming College of Law in 1994.\textsuperscript{493} Following graduation, she entered private practice in Casper, Wyoming, and focused on personal injury, criminal, and family law matters.\textsuperscript{494} Hambrick later served as an Assistant Wyoming State Public Defender and an Assistant District Attorney for Natrona County.
Wyoming. Prior to her appointment as a Magistrate Judge, she served as an Assistant United States Attorney for the District of Wyoming in the Criminal Division and prosecuted numerous criminal violations in the park. Hambrick is the first female magistrate judge to preside full-time over Yellowstone.

VII. Conclusion

Law without justice is of limited value. There is no better example of this sentiment than the creation of Yellowstone National Park, which operated for 22 years without a functioning justice system to enforce the law. In its early years, park officials and the United States military struggled to protect Yellowstone’s natural wonders. The enactment of the Yellowstone Game Protection Act in 1894 and the appointment of United States Commissioner John Meldrum was the turning point in the federal government’s ability to prosecute crime in the park.

Meldrum and his successors ensured that the park’s rules and regulations were enforced. Interagency cooperation and Yellowstone’s professional police force now ensure that crimes are properly prosecuted. If what’s past is prologue, the next generation of magistrate judges in Yellowstone can expect more visitors, new threats to park resources and public safety, and a larger docket. Despite these challenges, Yellowstone’s 150 year history reveals that justice can prevail in the wild.

495 Id.
496 Id.