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THE ADMINISTRATION OF LAW
IN
YELLOWSTONE NATIONAL PARK

JAMES W. BROWN*

The Yellowstone National Park was created and established by the Congress of the United States by the Act of March 1, 1872,¹ approved by President Ulysses S. Grant, and placed under the administration of the Secretary of the Interior. For a period of fourteen years until August 20, 1886, it was under the supervision of civilian superintendents, at which time the Secretary of War was given supervision² and a detachment of the First Cavalry, U. S. Army, moved in under command of a Captain Moses Harris who became acting superintendent.³ From that date forward various officers of the army served as acting superintendents until the formation of the National Park Service of the Department of the Interior on August 25, 1916, by Act of Congress signed by President Woodrow Wilson.⁴

The boundaries of the park described in the Act of 1872 and the power, right and ownership of the United States over the park area were subsequently recognized and confirmed by, "An Act to provide for the admission of the State of Wyoming into the Union," approved July 10, 1890.⁵

By 1894 visitation to the park had begun to increase—the summer season of 1895 saw 5,438 visitors within the area—and it was thought that the protection of wild life and natural wonders in the park required further legislation to implement law enforcement and on May 7th of that year the Congress approved, "An Act to protect the birds and animals in Yellowstone National Park and to punish crimes in said park, and for other purposes."⁶ That law provided for exclusive jurisdiction of the United States over the park:

As its boundaries now are defined, or as they may be hereafter defined or extended, shall be under the sole and exclusive jurisdiction of the United States; . . . (and) . . . That said park, for all purposes of this act, shall constitute a part of the United States judicial district of Wyoming, and the district and circuit courts of the United States in and for said district shall have jurisdiction of all offenses committed within said park.

The Act then went on in Section 5 to provide for and establish the first office of national park commissioner in the country. The part of

*United States Commissioner, Yellowstone National Park.

1. Act of Mar. 1, 1872, c. 24, § 1, 2, 17 Stat. 32, 33, 16 U.S.C. § 21, 22 (1952 ed.).
2. Act of Mar. 3, 1883, c. 143, 22 Stat. 627, 16 U.S.C. § 23 (1952 ed.).
3. Haynes, Guide to Yellowstone Park, 33 (59th ed.).
4. Act of Aug. 25, 1916, c. 408, § 1, 39 Stat. 535, 16 U.S.C. § 1 (1952 ed.).
5. Act of July 10, 1890, c. 664, 26 Stat. 222.
6. Act of May 7, 1894, c. 72, § 1, 28 Stat. 73, 16 U.S.C. § 24 (1952 ed.).

that section pertinent here dealing with the new commissioner's jurisdiction and authority is quoted as follows:

That the United States circuit court in said district shall appoint a commissioner, who shall reside in the park, who shall have jurisdiction to hear and act upon all complaints made, of any and all violations of the law, or of the rules and regulations⁷ made by the Secretary of the Interior for the government of the park, and for the protection of the animals, birds, and fish and objects of interest therein, and for other purposes authorized by this act. Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with the commission of any misdemeanor or charged with the violation of the rules and regulations, or with the violation of any provision of this act prescribed for the government of said park, and for the protection of the animals, birds, and fish in said park, and to try the person so charged, and, if found guilty, to impose the punishment and adjudge the forfeiture prescribed. In all cases of conviction an appeal shall lie from the judgment of said commissioner to the United States district court for the district of Wyoming, said appeal to be governed by the laws of the State of Wyoming providing for appeals in cases of misdemeanor from justices of the peace to the district court of said State; but the United States district court in said district may prescribe rules of procedure and practice for said commissioner in the trial of cases and for appeal to said United States district court.⁸

The balance of the section provides power to issue process for the arrest of persons charged with felonies and for the binding over of such persons, if probable cause be found, for trial in the district court. Except for minor changes this is still the basic law affecting the power and authority of the commissioner in Yellowstone Park.

In 1948, however, the United States Code was materially changed and revised so that many provisions appearing in earlier editions, and previous Statutes At Large, were re-phrased, transferred to other titles of the Code, and in some instances repealed in whole or in part. This has led to some confusion, and also by this time, of course, the National Park Service was well established and other areas throughout the country had been likewise set aside by Congress as national parks to immortalize outstanding natural phenomena. As a result the provisions of law relating to jurisdiction and powers of commissioners as a whole were incorporated in and covered by Sections 131, 631 and 632 of the Code—Judiciary and Judicial Procedure. Said Section 632 providing for jurisdiction and powers as follows:

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7. Violations of park regulations by virtue of their prescribed penalty, viz: \$500 fine or six months in jail or both, are now classed as petty offenses. Act of June 25, 1948, c. 645, § 1, 62 Stat. 684, 18 U.S.C. § 1 (1952 ed.).
 8. Act of May 7, 1894, c. 72, § 5, 28 Stat. 74, 16 U.S.C. § 27 (1946 ed.); Duties of the circuit courts were conferred upon district courts by Act of June 25, 1948, c. 646, § 1, 62 Stat. 915, 28 U.S.C. § 631 (1952 ed.).

Each national park commissioner shall have all the jurisdiction and powers of a United States commissioner and of a commissioner specially designated to try petty offenses within such national park pursuant to Section 3401 of Title 18. He is also authorized to try and determine complaints in proceedings for penalties and forfeitures prescribed by law for violations of statutes and regulations respecting such park.

It is also provided that, "Each district court shall appoint United States commissioners in such number as it deems advisable." And that one national park commissioner may be appointed for certain named parks, sixteen in number, and two commissioners each for the Great Smoky Mountains National Park and the recently created Cumberland Gap National Historical Park, these last because the park areas lie in contiguous judicial districts.⁹

Other sections of the Code provide that commissioners shall hold office for four years, unless sooner removed by the district court;¹⁰ for annual salaries, fixed by the district court with the approval of the Judicial Conference of the United States;¹¹ and that they shall reside within the exterior boundaries of the park for which appointed, or at some place reasonably adjacent thereto.¹² Additionally, each commissioner has an official seal and may administer oaths and take bail, acknowledgments, affidavits and depositions.¹³

While it appears that United States commissioners have had a long history in the federal law, the office first being created by the Act of February 20, 1812,¹⁴ there have not been many cases in which appeals have been taken from the decisions of park commissioners. It seems clear, however, that, "They (commissioners) are an adjunct of the court, possessing independent, though subordinate, judicial powers of their own."¹⁵ And in an early case concerning the powers of United States commissioners it was said:

A commissioner is a part of the court appointing him, and in all proper ways will be protected in exercising his powers as an officer to aid the court in administering justice. He is an arm of the court, a ministerial officer, but exercising some judicial functions. He is required to keep a record of proceedings before him, but this does not create him a court of record.¹⁶

A commissioner may not hold any civil or military office or employment under the United States or be employed by any justice or judge of the United States,¹⁷ but he may practice law on the civil side of the court.

9. Act of June 25, 1948, c. 646, § 1, 62 Stat. 915, 28 U.S.C. § 631 (1952 ed.).

10. *Ibid.*

11. *Id.* at 28 U.S.C. § 634 (1952 ed.).

12. *Id.* at 28 U.S.C. § 635 (1952 ed.).

13. *Id.* at 28 U.S.C. § 637 (1952 ed.).

14. Act of Feb. 20, 1812, c. 30, 2 Stat. 679.

15. *Grim v. Shine*, 187 U.S. 181, 23 S.Ct. 98, 47 L.Ed. 130.

16. *Ex Parte Perkins*, 29 Fed. 900.

17. *Supra* note 9.

National park commissioners do not have any civil jurisdiction. Civil suits generally may be brought in the federal courts, although cases arising from domestic relations or concerned with questions based on domicile raise debatable points of law. However, in the case of death through negligence or wrongful act of another committed within a national park a right of action exists as though the park area were under the jurisdiction of the state within whose exterior boundaries it may lie; and in an action to recover damages on account of injuries the rights of the parties are governed by the state law.¹⁸

From these principles it will be seen that a United States commissioner is a judicial officer appointed by the district judge of the court in which he serves. He is an officer of that court and his duties are prescribed by law. A commissioner appointed to act in a national park is also known as a national park commissioner and is specially designated to hear and determine misdemeanor and petty offense cases. In addition, he has magisterial powers in felony cases which means that when a person is accused of committing a felony within the park, he is, after arrest, presented before the commissioner who informs him of his constitutional rights and, depending on the facts found, either discharges the prisoner or holds him for trial in the district court, fixing and receiving bail, in accordance with law and procedure in federal criminal cases.

Since the park is under the exclusive control of the federal government all law enforcement is conducted by federal officers. Under the organic act the Secretary of the Interior has authority to promulgate appropriate regulations¹⁹ for the government and administration of the park. Such regulations when duly made and published in the Federal Register have the full force and effect of federal laws.²⁰ Over the years a large number of these, including general regulations relating to all parks and special rules pertaining to Yellowstone in particular, have been put in effect covering such matters as traffic, animal and fish control, natural formations and features, and the use of the park area in general by the public. Enforcement of these laws is the special province of the Protective Division of the park ranger force in the National Park Service. A park ranger, or any park officer or employee for that matter, has power and authority to make arrests for violations of park regulations committed in his presence.²¹

In addition to the park regulations, all federal statutes apply under appropriate circumstances in the park, but where an offense constitutes a felony, investigation of the fact situation comes within the duties of Federal Bureau of Investigation agents, or such other federal officers as may be specially entrusted with the investigation of a particular class of

18. Act of Feb. 1, 1928, c. 15, 45 Stat. 54, 16 U.S.C. § 457 (1952 ed.).

19. Act of May 7, 1894, c. 72, § 4, 28 Stat. 73, 16 U.S.C. § 16 (1952 ed.).

20. *Petersen v. United States*, 191 F.2d 154 (9th Cir. 1951), cert. denied, 342 U.S. 885.

21. Act of Mar. 3, 1905, c. 1405, 33 Stat. 873, 16 U.S.C. § 10 (1952 ed.).

offense, such as postal inspectors, narcotic agents, secret service men and the like.

The provisions of the Assimilative Crimes Act,²² first enacted in 1825, also supplement the specific criminal laws enacted by Congress for places within the borders of a state but under the exclusive or concurrent jurisdiction of the United States by adopting as federal law criminal offenses of the state in which the enclave is located. Hence, whoever within any federal enclave is guilty of any act or omission which, although not made punishable by an enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the state in which such place is situated, by the laws thereof in force at the time of such act or omission, is guilty of a like offense and subject to a like punishment.

Until 1948 Congress periodically re-enacted the provisions of the Assimilative Crimes Act adopting the state laws in existence at the time of the re-enactments. The last re-enactment and the present law being adopted in 1948.²³ The Supreme Court has recently reviewed that expression of congressional intention and held in *United States v. Sharpnack*²⁴ that the prospective adoption of state legislation is a constitutional delegation of congressional power to the state legislatures, saying:

It (the policy of the act) is a deliberate continuing adoption by Congress for federal enclaves of such unpre-empted offenses and punishments as shall have been already put in effect by the respective states for their own government.²⁵

Unfortunately, this decision, as often happens, is not a complete answer to all problems raised by assimilation of state legislation. For instance, the question is apparently still open as to whether Congress intended to assimilate those state criminal statutes which are merely regulatory, such as game and liquor laws and the like, promulgated through state administrative bodies. The argument against assimilation of such laws rests on the ground that they are different in nature from those criminal offenses which Congress intended to assimilate and that assimilation of them would constitute double delegation of legislative power.²⁶

For the service of process and the handling of prisoners in the park the United States Marshal for the District of Wyoming has authority to appoint as many deputies as required,²⁷ and he has done so. The Chief Park Ranger, his assistant and four other rangers of lower rank, have been deputized as marshals without additional compensation.

Under the Federal Rules of Criminal Procedure and interpretations of the federal courts a person suspected of the commission of a felony

22. Act of Mar. 3, 1825, c. 65, 4 Stat. 115.

23. Act of June 25, 1948, c. 645, § 1, 62 Stat. 686, 18 U.S.C. § 13 (1952 ed.).

24. 355 U.S. 286, 78 S.Ct. 291, 2 L.Ed.2d 282.

25. *Ibid.*

26. 70 Harv. L. Rev. 693 (1957).

27. Act of May 7, 1894, c. 72, § 6, 28 Stat. 75, 16 U.S.C. § 28 (1946 ed.).

must be presented before the nearest United States commissioner within a reasonable time after arrest. What is a reasonable time has been recently held by the high court to mean, to use a phrase coined by the Court in a different context, "with all deliberate speed."²⁸ And in accordance with that decision this commissioner has entertained a presentation of a suspect on a felony charge at such an unusual hour as two o'clock in the morning.

In order to control and confine prisoners the Government maintains a federally approved jail at Mammoth Hot Springs and temporary detention cells at the new Visitor's Center in Canyon Village. However, no sentences are entirely served in the park jail because under federal procedure all commitments are made to the custody of the Attorney General of the United States who in connection with the federal prison system designates the place of imprisonment for all convicts.

The prosecution of all cases of whatever nature is, of course, under the jurisdiction of the United States Attorney for the District of Wyoming. Due to the isolated situation of the park, however, and its distance from the permanent seat of the court at Cheyenne, the practice has grown up through the years of permitting National Park Service officers to present misdemeanor cases before the commissioner in the absence of the United States Attorney or his assistant.

A typical case of violation of park regulations is handled in the following manner. Suppose the arrest is made at some distant point in the park, perhaps fifty miles away from Mammoth where the commissioner has his office and the headquarters office of the Park Service are located. If the offense is a traffic violation or a minor infringement of the regulations, the accused will probably be given an informal summons or ticket which apprises him of the nature of the violation and requests him to appear at the park headquarters at a definite time for inquiry and possible presentation before the commissioner. This form of summons is given for the convenience of the offender and to promote efficiency in the ranger force. It has no sanction in law and does not purport to have, but if the person so summoned disobeys the request to appear a warrant may be issued for his arrest and served even after his exit from the park.²⁹ As a matter of fact, such is the familiarity of the average person today with traffic tickets that almost without exception persons do appear as directed. At the ranger office he is interviewed as to the nature and circumstances of the offense and it is decided whether or not to present the case for trial. In rare instances where the circumstances appear trivial he may be let off with a warning.

At the time of arrest, if it appears reasonably certain that the offender will plead guilty as charged the ranger makes a statement of the facts on his copy of the ticket and forwards it to the headquarters office. If,

28. *Mallory v. United States*, 354 U.S. 449, 77 S.Ct. 1356, 1 L.Ed.2d 1479.

29. Federal Rules of Civil Procedure, Rule 4.

on the other hand, he has any doubt as to how the accused may plead he must make arrangements to appear in person at the time of trial, since if the accused pleads not guilty the Government must be prepared to prove its charge and confront the defendant with the witnesses against him.

The foundation of every prosecution is the complaint. It is the same form as used in felony cases and is merely a simple statement of the essential facts constituting the offense charged. At the beginning of each case the complaint, previously prepared in the Chief Ranger's Office is signed and sworn to before the commissioner by the arresting officer or the ranger in charge of the case.

Formerly under federal practice when preliminary proceedings were governed by state law, it was required that the complaint be made and sworn to by a person having personal knowledge of the facts, and this is still the better practice, particularly in felony cases.³⁰ This point, however, is not covered specifically by the rules. Some authorities feel that the questioning of a suspect by the complainant coupled with other evidence of the commission of the offense is all the personal knowledge necessary, or that it is a matter for regulation by individual courts as to whether the complainant must have actual first hand knowledge of the facts set forth in the complaint.³¹ Recent interpretations in the federal courts appear to hold that the complainant, in a felony charge at least, must be able to show, under oath, facts which constitute probable cause for the issuance of a warrant of arrest.³²

Since most persons brought before the commissioner are unfamiliar with any court procedure, and almost without exception have not had the benefit of the advice of counsel, every hearing is opened with a short statement informing the accused of the nature and jurisdiction of the court, the charge against him, and his pertinent rights under the Constitution and the law, viz: That he is entitled to secure counsel of his choice if he so desires; that he will not be required to testify against himself; that his plea must be voluntary without having been coerced by force, threat, or promise of reward; and his right of appeal to the district court if convicted. In practice, in most cases, the defendant waives counsel and pleads guilty. In every case it is our custom to give the defendant an opportunity, before sentence is imposed, to state any mitigating circumstances present in the situation.

For while it is our purpose to conduct trials with as much informality and as little regard for procedural technicalities as prudent, it is also the conviction of this Commissioner that persons charged with even petty offenses are entitled to a full and fair hearing and that all those connected

30. *Rice v. Ames*, 180 U.S. 371, 21 S.Ct. 406, 45 L.Ed. 577.

31. *Whitman*, Federal Criminal Procedure, 13.

32. *Giorderello v. United States*, 241 F.2d 575, reversed 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed.2d 1503; *United States v. Walker*, 197 F.2d 287.

with such prosecutions are obliged under our democratic system to see that the rules of law governing the trial of criminal cases are adhered to. Indeed, this is no more than observance of the requirements prescribed by the Supreme Court and set forth in six rules of procedure for trials before commissioners.³³

Since World War II visitation by the public to Yellowstone has increased from 178,296 in 1945 to a peak of 1,595,875 persons in 1957. During this period, the number of cases coming before the commissioner have increased from 27 in the fiscal year 1945-1946 to 175 in the heaviest year of 1952-1953, and 167 in fiscal 1957. Experience indicates that the number of cases heard depends from year to year not only on tourist travel but also on enforcement patterns and available park ranger personnel. The majority of these cases arise from infractions of park regulations and such misdemeanors commonly include: defacing natural features; feeding and molesting animals; driving vehicles and camping beyond the limits of designated roads and campsites; building fires without permission in prohibited areas; taking too many fish from park waters; improper use of boats; and disobeying traffic rules. In addition, in latter years, the seasonal employee population of about four thousand persons accounts for numerous cases of disorderly conduct, petty larceny and violations connected with the possession and use of liquor by minors.

The first commissioner to serve in Yellowstone was the late John W. Meldrum of Laramie, Wyoming, acting Governor of the Territory at the time of its admission as a state to the Union. He was appointed by John A. Riner, United States Circuit Judge, on June 20, 1894, and served continuously thereafter for forty-one years until his retirement July 1, 1935, at the age of 92 years. In his later years he was affectionately known to his many friends and admirers as "The grand old man of Yellowstone National Park."³⁴ The next incumbent was the late T. Paul Wilcox of Cheyenne, appointed by Judge T. Blake Kennedy. He served for seventeen years until forced to retire in 1951 on account of ill health.

33. Haynes, *Guide to Yellowstone Park*, 34 (59th ed.).

34. 13 *Annals of Wyoming*, 1 (Jan. 1931).