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GALEN CLARK: Yosemite Guardian and California's First State Park Ranger

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Galen Clark was born to Mary and Jonas Clark on March 28, 1814 in Quebec, Canada, while England and the United States were bitterly engaged in the War of 1812. After the war, five-year-old Galen relocated with his family of to New Hampshire. There he was raised by family friends, because the family of 13 children was simply too large for his father to support. At age 17 Galen was apprenticed to a cousin in New York to learn housepainting and furniture making. Over the years, his skills with his hands served him well, as he plied his trades from the East Coast, through the Midwest and South, and eventually on to California.

Clark was 25 when he married Rebecca McCoy in 1839. She died of tuberculosis (known then as "consumption") shortly after the birth of their fifth child, in 1848. Rebecca's death was only the first of many tragedies and misfortunes that would plague Clark's life. His wife's death, coupled with his own frail health and meager income, forced him to relinquish control of his children to his parents and an unmarried sister. Clark would not be reunited with his offspring until after they achieved adulthood.

By 1853 Clark, like tens of thousands of men before him, had caught gold fever. He was entranced with the idea of traveling to exotic California, where a healthy climate and untold wealth awaited him. What he found, at first, did not live up to his expectations. The chilling fog and brisk winds of San Francisco exacerbated his respiratory problems. He made great haste to reach the Sierra Nevada foothills, where he expected to amass his fortune. Settling in Mariposa County, he took up shovel, gold pan, and rocker, and tried his best to extract his riches from the gravel bars of the icy Sierran stream. He quickly found out, like so many others, that panning for gold was not what the Eastern newspapers and guidebooks made it out to be. He later went to work as a mining assistant for the Mariposa Ditch Company, a job that paid steady, albeit marginal, wages.

It was with a group of fellow miners that Clark made his first trek into Yosemite Valley in 1855. Approximately eight miles long and one mile wide, running from east to west, Yosemite Valley was one of the latest scenic features to come to the attention of the Euroamericans who had descended on the state during the past decade. Of course, the valley's existence was known to the native Miwoks for thousands of years. The occupants of the oak-studded valley knew it as "Ahwahnee," meaning "place of a gaping mouth," a colorful description of the valley's shape and its resemblance to the human body. It is believed that mountain man Joseph Walker and his party were the first whites to see Yosemite Valley during their epic east-west crossing of the Sierra Nevada in 1833. A mere handful of other miners and explorers viewed the great valley in the intervening years, until in 1851 an armed expedition known as the Mariposa Battalion became the first party of non-Indians to traverse the valley's floor. Lafayette Bunnell, the medical

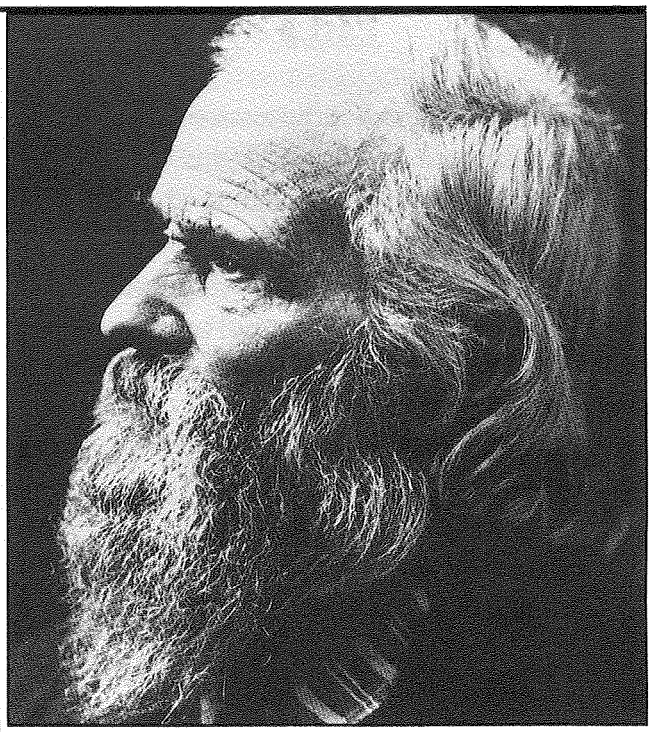
doctor accompanying the battalion, suggested naming the valley "Yosemite," a rough derivation of the Miwok word for grizzly bear and the name of a large band of Indians that inhabited the valley floor. The initial excursion, originally designed as a punitive mission against the Indians and followed by more military excursions into the region, later released a flood of tourists bound for the spectacular sites of the Yosemite.

The first tourist party to make the perilous journey into the valley was led by 31-year-old James Mason Hutchings. An Englishman by birth, a consummate promoter, gifted writer, and irritating personality, Hutchings set out to bring news of the Yosemite to the world. Accompanying him was the artist Thomas Ayres, who supplied the first sketches of the valley for Hutchings' California Magazine.

Clark accompanied the second tourist party into the region. The week-long visit to the great granite gorge changed his life forever, and his presence would have a significant impact on the region as well, as we soon shall see.

Clark returned to his camp on the South Fork of the Merced River and resumed his monotonous duties for the mining company. The following March, 1856, he filed a land claim on 160 acres along the South Fork. At about the same time, his health broke, and he gave himself up to die. Although he did recover, the specter of death continued to haunt him throughout his long life.

Clark attributed his recovery, in part, to leading a vigorous outdoor life. He reveled in the fresh, clean air, and eschewed wearing hats and even shoes, for he considered them "cruel and silly instruments of torture, at once uncivilized, inhuman and unnecessary." He learned many



Galen Clark
(Photo from the Shirley Sargent Collection)

new skills from his closest neighbors, the Miwoks, and came to respect their history and culture as only a very few whites had done up to that time.

His homestead was located in a lovely meadow that was also midway between Mariposa and Yosemite Valley on a newly developed horse trail. The owners of this toll trail, Milton, Houston, and Andrew Mann, befriended Clark, who later engaged in a number of business endeavors with the brothers. Clark's extremely modest cabin became a welcome waystation for travelers making the arduous pilgrimage to Yosemite Valley. His eager willingness to entertain his guests, introduce them to the area's natural wonders, and assess meager and sporadic charges for board and lodging made him very popular. At least half of all visitors to Yosemite Valley during the period 1855- 1864 traveled the Mann trail and stayed at what came to be known as "Clark's Station."

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As visitation increased, so did his accommodations. His home became the favored hostel of numerous artists and photographers, including Charles Weed, Carleton Watkins, and Albert Bierstadt. He knew that writers, photographers, and landscape painters could do more to promote the wonders of the Yosemite Valley to a wider audience than he ever could.

One of the great places that Clark took his visitors to was the Mariposa Grove of Giant Sequoias, a grove that Clark himself had discovered and named for their resident county. In that same year, 1857, one of Clark's Indian companions led him to yet another grove of big trees. These Clark named the Fresno Grove, known today as the Nelder Grove of Giant Sequoias. Clark took pleasure in exploring the verdant country surrounding his claim, and he spent a great deal of time studying the natural history of the region. While on his excursions, he hunted for deer, fowl, and squirrels, and fished for rainbow trout to serve his guests. He also raised domestic fowl, hogs, beef, and dairy cattle, and vegetables to serve his elite clientele.

As visitation to the Yosemite Valley increased, so did the number of private settlers who were establishing homesteads and businesses in the valley. The valley floor was crisscrossed with toll roads and trails. The once-luxuriant meadows were plowed and fenced for raising of grain and livestock. Rustic hostels for the intrepid ramblers catered to the tastes (and pocketbooks) of the middle and upper classes. There existed no plan for development, no authority that exercised control over the unique eight-square-mile tract. Among the visitors to the Yosemite were many intellectual and influential individuals who, while they enjoyed the grand natural scenery, expressed formal concern regarding the human activities there, and began to lobby for its preservation. They included state geologist Josiah D. Whitney, the Reverend Thomas Starr King, Mariposa County resident Jessie Benton Fremont, landscape architect Frederick Law Olmsted, and shipping tycoon I. W. Raymond. Clark, too, was an important force behind the movement to protect Yosemite Valley and his beloved Mariposa Grove from depredation. As a guide to the Yosemite region, he was able to instill in his charges a deepened appreciation for the great beauty and natural wonders that were revealed to them. His gentle personality and quiet demeanor made him a personal friend of many of his visitors.

During the height of the Civil War, California's junior senator, John Conness, introduced a bill setting aside Yosemite Valley and the Mariposa Grove as a state grant. The bill stipulated that "the said State shall accept this grant upon the express conditions that the premises shall be held for public use, resort recreation; shall be inalienable for all time...." The land was to be surveyed and a state board of commissioners appointed to oversee the management of the grant.

President Abraham Lincoln signed the bill into law on June 30, 1864, effectively creating California's first state park. Although an Arkansas hot springs was reserved by Congress as early as 1832, the Yosemite grant is a highly significant act in American history, as its express purpose was the preservation of a portion of the public domain for scenic, esthetic, and recreational values, a first in American {and world} history.

Governor Frederick Low appointed Olmsted chairman of the Board of Commissioners. As chairman, he was charged with executing the survey, as well as devising a plan for the state's management of the grant. Olmsted had to balance public use and enjoyment with long-term preservation, a delicate

balance that continues to challenge park managers to this day. According to his biographer, Olmsted "formulated the philosophic base for the establishment of state and natural parks," and although his report was not enthusiastically embraced by his fellow commissioners, it has had a lasting impact not only on Yosemite but on parks throughout the nation.

Following the state legislature's formal acceptance of the Yosemite grant in April, 1866, the full commission met in San Francisco and appointed Galen Clark as guardian of the valley and Big Tree grove. Clark, in turn appointed a sub-guardian, Peter Longhurst. The two were quickly overwhelmed with the magnitude of the task facing them. The commission presented them with a long list of duties, not the least of which was weaning former claimants from their holdings in the valley, and issuing instead long-term leases. One claimant, the aforementioned James M. Hutchings, proved to be one of the most difficult individuals to appease. Along with another Yosemite valley pioneer, James Lamon, Hutchings wrangled with the commission all the way to the United States Supreme Court. The high court agreed with the California Supreme Court's ruling that Hutchings' and Lamon's claim were invalid. Hutchings continued to cause problems for the guardian, as Hutchings and a group of lobbyists successfully blocked appropriation bills for the Yosemite grant for four years. Clark went without his meager pay for that entire period of time, no doubt a hardship for one who lived a slim existence, at best.

Clark carried out his duties with typical good will and hard work. He was responsible for trail and bridge repair and maintenance; mending fences across meadows and among lessees; draining marshy areas of the valley floor to be used for camping, stock raising, and as a precaution against disease-bearing mosquitos; and tending to a myriad of details associated with the daily operation of a state park. Early in his tenure as guardian, Clark was visited by philanthropist Charles Loring Brace, who described Clark as "handsome, thoughtful, interesting, and slovenly...he knew more than any of his guests of the fauna, flora, and geology of the State; he conversed well on any subject, and was at once philosopher, savant, chambermaid, cook, and landlord." Except for the comment regarding the guardian's personal appearance, Brace's description could well fit the popular image of the modern state park ranger.

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While Clark was overseeing the grant, he continued to run his hostelry on the South Fork. Apparently, the question of conflict of interest never arose, in part, perhaps, because of the state's inability to pay the guardian a regular wage. His increased responsibilities as guardian, combined with mounting debts, necessitated his taking on a business partner, Edwin Moore. The waystation, now located in a region known as Wawona, came to be known as "Clark and Moore's." In 1870, Clark, Moore, and a dozen other Mariposans combined their assets and labor, and proceeded to build a toll road from Mariposa to Wawona. Stagecoach passengers still had to disembark and spend the night at Clark and Moore's before proceeding on to Yosemite Valley via horseback. Other similar companies were being formed that would pioneer stage roads into the valley north of the Merced River by 1874. Clark was simply among those who were making sure that their interests were being protected. The wagon road from Wawona to the valley was built by the partnership of Henry Washburn, William Coffman, and Emery Chapman, who had acquired all of Clark and Moore's property on the South

Fork in 1874 when the pair proved to be insolvent.

Clark relocated to Yosemite Valley where he took up residence with his new bride, a Spanish fortune teller whom Clark had met and married while on official state business in Sacramento. It appears that the marriage did not last much longer than six or seven years, as Clark never made mention of her, nor does she ever appear in any accounts after 1882. However odd the union might seem, it is indicative of Clark's fascination with fortune tellers and his belief in spiritualism. Even Mrs. Clark's final disposition remains a mystery.

When voters approved the new state constitution in 1879, they endorsed a limit on the length of time state officials could hold office, including the Yosemite Board of Commissioners and the guardian. A legal fight ensued between members of the old board and the state, during which time, Clark continued to function as guardian, along with the newly appointed guardian and Clark's old nemesis, James Hutchings. When the United States Supreme Court upheld the new constitution, Clark was required to step down. The new board granted the 67 year old a five-year lease on his house and made conciliatory gestures toward the now unemployed civil servant.

The former guardian made a modest living leading tours through the valley, and collecting and selling pine seeds to the tourists. At about the same time, he began a new project that would occupy him the rest of his days: digging his own grave. His obsession with death, begun when he was in his forties, was revived with the death of his brother William in 1878. Starting in the summer of 1885, Clark selected a burial plot adjacent to that of his friend and Yosemite Valley pioneer, James Lamon, and began to prepare for eternity. Clark transplanted sequoia seedlings from the Mariposa Grove, and dug a well so that he could water the young trees. (Five of the six sequoias that he planted are still thriving.) Over the years, Clark labored to provide some protection for his future corpse by planting broken glass around the grave, to keep the rodents at bay. He carefully carved his own name into a solid chunk of granite, leaving others to fill in the dates.

Preparing his burial site only occupied part of his time. Clark also served as postmaster, and kept busy with his nature guiding. Following a tumultuous decade, during which three different guardians managed the grant, Galen Clark was once again appointed guardian. By now he was 75 years old, but his vigorous life in the mountains kept him healthy and strong. He was guardian on October 1, 1890, the day President Benjamin Harrison signed the bill to withdraw almost one million acres of land from the public domain surrounding the Yosemite grant, thereby creating Yosemite Park.

In the early 1890s Clark could no longer stand the cold Yosemite winters. From friends, he learned of a new community in Santa Barbara County that offered mild winters and a religious orientation that paralleled his own interests in spiritualism. Clark purchased a homesite in Summerland in 1890, and had a large Victorian house built that overlooks the Santa Barbara Channel and the islands. The house became his retreat, serving as his primary residence following his resignation as guardian in the fall of 1896. He continued to summer in the Sierra, serving as camp host at Camp Yosemite, puttering around his grave, and leading visitors on walks through the valley.

Two of Clark's many admirers, Commissioner William W. Foote and businessman Charles Burnett, conspired to assist the patriarch of Yosemite by publishing Clark's writings and presenting the

proceeds to him. Clark's first work was a modest volume entitled Indians of the Yosemite. The book sold quite well, a testimony to the 90-year-old author's popularity. He followed it up with a work on the big trees. Clark had completed a third volume describing the human and natural history of Yosemite Valley, when he died at his daughter's house in Oakland on March 24, 1910, just four days before his 96th birthday.

Following the issuance of a burial permit from the Department of the Interior, the federal agency in control of Yosemite Valley and the Mariposa Grove since their reversion to the federal government in 1905, Clark's body was transported to the valley for burial. He was laid to rest in his grave on April 2, 1910, with family and friends in attendance. The famous naturalist and mountaineer, John Muir, wrote a touching memoir regarding his friend that appeared in the June, 1910 issue of the Sierra Club Bulletin, reprinted in 1912 in Muir's book, The Yosemite. Muir called Clark "the best mountaineer I ever met, and one of the kindest and most amiable of all my mountain friends." A granite bench {for Clark} placed near a bronze plaque {for Muir} and in view of the lower Yosemite Falls commemorate the memory of these two remarkable men.

Clark's gravesite can still be visited in Yosemite Valley, where his planted sequoia trees flourish. One can also walk up the trail toward Nevada Falls and enjoy the view of both Vernal and Nevada Falls, as well as Mt. Broderick and Liberty Cap, from Clark's Point. And from prominent points in the park one can gaze on the shovel-bladed summit of Mt. Clark, the dominant peak of the Clark Range that traverses the south-central portion of the park. In the final analysis, Galen Clark was more than a guardian: he has become a landmark, and one that all California State Park Rangers can be proud of.

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Park Law Enforcement, Deadly Force and Civil Rights

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ABSTRACT: As park and resource management agencies have adapted to the changing dynamics of society, they have been forced to focus their efforts on visitor services and protection. In meeting this need to manage parks and natural resources at an efficient and effective level, many agencies now perform some degree of law enforcement duties. Eventually these agencies must face the question of whether or not to empower park rangers and other park law enforcement personnel with the authority to use deadly force. With this decision comes a host of questions that arise concerning liability and potential use of excessive force. This paper presents background information on violations of constitutional rights, case law analysis, and other issues that park agencies and personnel should be aware of in managing park law enforcement functions.

Trends in Park Law Enforcement

In recent years, the role of the park ranger has changed significantly in local, state, and federal parks and resource management agencies. Nationwide, park managers are facing increased visitation in parks while at the same time there has been a decrease by the general public in overall awareness and concern for parks and natural resources. Crowding and overuse also now exist in many parks, and these factors have resulted in agencies focusing their efforts on park law enforcement and visitor protection (Morris, Dwyer and Murrell, Peach studies, cited in Hendricks, Cruse, 1990).

As various agencies come to terms with these realities and determine the appropriate level of law enforcement to meet their goals and objectives, they must ascertain who will provide the law enforcement functions in their parks. Perry (1983) notes three basic options in providing park law enforcement services: the use of an agency's own park ranger or police personnel; reliance on conventional police departments; or a combination of conventional police and security personnel. Other alternatives available to a department include a contractual agreement with another parks and recreation agency; the sharing of duties by conventional law enforcement personnel and park rangers; and a contractual agreement with either a private security firm or a conventional police department. Opinions vary greatly on the most effective and efficient of these methods, and a thorough analysis should be executed by any agency considering implementation or restructuring of park law enforcement services.

If a parks and recreation agency chooses to employ one of the above methods, utilizing their own personnel, they must also determine the degree of law enforcement in which these park rangers or other employees shall be given the authority to use deadly force and whether of not they will

carry a firearm. With this decision, park managers must realize that the use of deadly or excessive force may someday become an actuality, and that often the incident will result in a liability suit against the individual involved, the agency, or both.

Civil Rights and the Constitution

The potential of a liability suit resulting from the action or inaction of personnel should be an element of concern for all agencies involved in park law enforcement. While this paper primarily focuses on the use of deadly or excessive force relating to armed park personnel, park administrators and park personnel should be aware that civil rights violations are also well documented in cases involving law enforcement conduct such as excessive force, false arrest and imprisonment, assaults, warrants, and search and seizure of evidence (Berringer, 1982). Park agencies are not exempt from this potential occurrence and need to recognize that liability suits may lead to cases in either state or federal court. Furthermore, the suits may be either civil or criminal; however, this discussion will be limited to civil liability in federal court (Berringer).

Generally, when a plaintiff initiates action for a civil rights violation against an agency or its personnel due to the excessive use of deadly force, the action originates from Title 42, Section 1983, of the United States Code (Hardy, Weeks, 1983). This federal statute, Section 1 of the Civil Rights Act of 1871, was originally known as the "Klu Klux Klan Act" and was enacted following the Civil War to prevent racial abuse and violence by local officials occurring under the authority of law (Hardy, Weeks; Moss, 1986). In other words, these officials were misusing their official positions to act in and condone activities which violated constitutional rights.

> Section 1 of the Civil Rights Act of 1871, 42 U.S.C.
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> Section 1983 (1983) states that every person who under the color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

In looking closely at the statute, it can be easily determined that three requirements must be met in order for a claim to be initiated under 42 U.S.C., Section 1983. First, an individual must be deprived of constitutional rights. Second, the defendant must have been acting under the color of state law (Brown, 1984). Color of law refers to the authority awarded a public official while acting in an official capacity for a public entity (Dwyer, Murrell, 1988). Third, the plaintiff must have received injury from the action (Brown).

Until recently, claims based on 42 U.S.C., Section 1983 were substantiated by both the Fourth and the Fourteenth Amendments of the United States Constitution. There was a great deal of inconsistency by the courts in determining which amendment to apply when evaluating the deprivation of constitutional rights in deadly or excessive force cases (Loftus, Porter, Suffoletta, Tomse, 1989). The Fourteenth Amendment provides people the right "...to be secure...against

unreasonable search and seizure..." (U.S. Constitutional Amendment IV). Claims grounded on the Fourteenth Amendment ascertain whether a law enforcement officer's action were "objectively reasonable" at the time the incident took place. This provides an objective way of looking at an officer's actions that can be weighed on a case-by-case basis. Typically, the courts will look at the interests of the public entity against those of the plaintiff in determining the "reasonableness" of force (Loftus, et al.; Zarb, 1988; Graham v. Connor, 1989).

The concept of "reasonableness" was derived from Tennessee v. Garner (1985), a landmark case that held that it was unconstitutional according to the Fourth Amendment to thwart, by use of deadly force, a "non dangerous fleeing felon" attempting to escape. In this case, a youth was shot by a Memphis police officer while fleeing the scene of a burglary. The officer had determined that the youth was unarmed. It should be noted that while Tennessee allowed the use of deadly force under a common law principle {permitting the use of deadly force "when necessary" to prevent the fleeing of any felon}, many law enforcement agencies prohibited the use of deadly force on a nonviolent fleeing felon at the time of this ruling (Tennessee v. Garner).

The Fourteenth Amendment judged an officer's actions in a much more subjective manner, examining if the officer had some malicious intent or motivation to inflict "serious injury" upon the plaintiff. Rights violated under this Amendment have measured due process of an individual deprived of "...life, liberty, or property..." (U.S. Constitutional Amendment XIV; Loftus, et al., 1989; Zarb).

As of May, 1989, the U.S. Supreme Court determined in Graham v. Connor (1989) that only the Fourth Amendment should be used to determine if "excessive force, deadly or not, in course of arrest, investigatory stop or other 'seizure'..." should be used to assess if an individual's constitutional rights had been violated. This decision has removed the subjectivity of claims under the Fourteenth Amendment and has provided an "...'objectively reasonable' [determination] in light of the facts and circumstances confronting [a law enforcement officer] without regard to their underlying intent or motivation" (Graham v. Connor). Loftus, et al. (1989) also point out that this decision will allow law enforcement officers a "standard" which will guide them in the judgmental decisions that must be made under extreme duress when facing a situation in which deadly force may be used.

Liability of Agencies and Personnel

Traditionally, many parks and resource management agencies have been concerned with negligence or unintentional wrongs (Howard, Crompton, 1980), but few have dealt with intentional torts unless they have been involved with park law enforcement for many years. Intentional torts are those in which an individual is injured resulting from the intentional actions of another (Berringer, 1982). The use of deadly or excessive force would normally fall into this category; however, in reality there may be significant gray area in defining negligence and intentional torts. Agencies considering or already committed to park law enforcement services need to be familiar with potential intentional torts which are often the basis of violations of constitutional rights.

In determining who is liable under 42 U.S.C., Section 1983 (1983), the courts have defined a "person" as representing either municipal agencies or individuals. Thus, according to Monell v. Department of Social Services of New York (1977),

a municipal agency is not afforded the luxury of immunity from action brought about by constitutional violations under 42 U.S.C., Section 1983. Prior to this decision, a plaintiff could only pursue redress against a law enforcement officer involved in the incident (Elliot, 1986).

What significance does this case have for parks and resource management agencies? Whether in the initial stages of development or in a longstanding park law enforcement program, the ramifications from a failure to recognize the results of this case could be overwhelming. In regards to law enforcement, the court decision ruled that a plaintiff's constitutional rights were deprived due to an officer's conduct resulting from a "custom" or "policy" of the agency (Monell v. Department of Social Services, 1977; Elliot, 1988; Brown, 1984).

Interpretation of "customs" and "policy" have varied in the courts, but in essence, a "custom" may be a practice that has existed in an agency and has demonstrated some repetitiveness over time. A "policy" may be a written procedure or method used by an agency that is a "definitive course of action" (Brown, 1984). Law enforcement regulations and practices, and training and supervision are among the factors which have traditionally been considered by courts in light of Monell v. Department of Social Services (1977; Taylor, 1989).

States and their agencies are not considered "people" as defined under Monell v. Department of Social Services (1977) and are usually immune from liability suits as provided by the Eleventh Amendment of the Constitution (U.S. Constitutional Amendment XI). This is not to say that states and their agencies are always immune from action resulting from civil rights violations. Many states have enacted statutes which have relinquished the state's right to "sovereign immunity" {the tenet that the "government can do no wrong" and is not liable for the actions of its employees} (Berringer, 1982; Howard, Crompton, 1980). Once these rights have been relinquished in state court, they are also waived in federal court, introducing the state to the potential of a civil rights suit (Berringer).

Under circumstances when a state or one of its agencies is immune from liability as addressed in 42 U.S.C. Section 1983 (1983), this immunity does not carry over to the employee. In example, if a park ranger employed by a state park agency uses deadly force determined by courts to be excessive, which resulted in the deprivation of an individual's constitutional rights, the park ranger may still be liable in federal court even though the agency may claim immunity. This situation would hold true for a municipal park ranger, although as mentioned above, in the case of a municipal agency the department has no immunity from civil rights action. However, a situation may occur where the individual park ranger is found at fault, but the agency, state or municipal, has not violated any constitutional rights and is not held liable.

Conversely, as concluded in Owen v. Independence (1980), it is possible for an individual law enforcement officer to claim "qualified immunity," absolving the officer from liability while the municipality employing the officer may still be held liable for civil rights violations. The officer "must demonstrate that he acted with good faith belief that his actions were within his lawful authority and that reasonable grounds existed for his belief base upon circumstances at the time he acted" (Douthit v. Jones 1980). In any case in which a law enforcement officer can justify his/her actions under these conditions, the officer should be able to claim "qualified immunity" from civil rights suit initiated under 42 U.S.C., Section 1983 (1983).

Guidelines for Park Agencies and Employees

Park agencies and personnel must first be aware that steps can be taken to reduce the likelihood of a liability suit based on violations of constitutional rights. Liability circumstances differ for employees and employers, and this should be addressed in providing protection to individuals and agencies in the case of a liability suit.

A systematic and thorough analysis must be undertaken to evaluate all park law enforcement policies and procedures of an agency, particularly in aspects involving arrests and the use of deadly force. Customs, both informal and formal, should be reviewed. If an agency does not have sufficient written policies to guide the actions of its park rangers or other law enforcement personnel, then implementation of these policies should begin immediately. In addition, all park law enforcement personnel should understand the policies and fulfill them at all times when acting under the color of law.

Training needs and programs must be scrutinized to ensure that state of the art training is available and received. In the past, most claims against municipal agencies have challenged "inadequate training" and a "failure to supervise" in an attempt to name the agency as a defendant in a case (Freidman, 1988). A directory recently compiled by the Park Rangers Association of California (Bryce, 1989) demonstrates the weakness many park agencies may have in defending claims against these challenges. Of the 77 agencies {employing park rangers} responding to the directory, 83% of them performed some level of law enforcement services, as compiled by Hendricks, Cruse (1990). The diversity of law enforcement training of respondents ranged from those requiring that park rangers receive 40 hours of training prior to employment to those that require training at a Peace Officer Standards and Training academy (Bryce's directory cited in Hendricks, Cruise, 1990).

Agencies need to provide all personnel performing law enforcement functions with annual updates and continual training. Qualifications at firing ranges should be judged to ascertain if they will prevent possible liability action. Are night shooting and moving target qualifications required? Do personnel qualify the required amount of times annually according the departmental policies? Are defensive tactics taught that adhere to current acceptance levels of the use of force? Do employees attend annual training sessions that update them on civil and criminal law and procedures in the appropriate jurisdiction?

The past year has seen the use of deadly force by park rangers on three occasions in the western United States. The California State Park System had their first incident in the use of deadly force after 19 years of employing park rangers as armed peace officers. The visitor services and protection that park rangers must now deal with have created these situations, and deadly force is a tool that unfortunately must be used under the necessary circumstances.

To avoid civil rights liability suits, park agencies must be certain that personnel are prepared to deal with the use of deadly force. Precautions to reduce or eliminate potential violations of constitutional rights are of the utmost importance to both individuals and agencies. Even one case of excessive use of deadly force can be extremely costly to all personnel involved. It may have been avoided by a systematic evaluation of factors such as the customs, policies, and procedures of an agency, and the appropriate training levels of park law enforcement personnel.

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Environmental Interest Groups and the Courts: The History of a Legal Strategy

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ABSTRACT: Throughout the history of the United States, individuals or small groups with a dispute against the government had few options. The U.S. judicial system would seldom interfere with other bureaus of government. If a group was too small to have electoral powers, it was essentially voiceless in the government policy-making process. This began to change in the late 1960s, as social trends began to have an effect on the court system. In the case of special interest groups concerned with the environment, the changes enabled them to seek court intervention in ways that were previously impossible. The passage of the National Environmental Policy Act and a landmark Supreme Court ruling regarding what can be considered "harm" have helped environmental activists challenge government agencies with an increased likelihood of success.

In the late 1960s, the Disney Corporation began to work on a plan to expand their entertainment empire to include a ski resort complex. Disney wanted to have a resort near what was then their center of operations in California. The site that they eventually selected was in the Mineral King Valley, which was part of the Sequoia National Forest. Mineral King Valley had been the scene of extensive mining operations during the 1800s, but its ecology had fully recovered from the abuse it had received from the primitive mining operations. The area was considered "de facto" wilderness. Disney's proposal to develop the valley into a major alpine ski area outraged many California environmentalists, and the Sierra Club filed suit to block the proposed development (Sax 1980).

Initially the Sierra Club sued on the grounds that commercial development would be in conflict with the congressionally designated Sequoia Game Range. Before the legal action even came to court, the Sierra Club's case received an important boost from the passage of the National Environmental Protection Act {NEPA} of 1969 (Culhane 1981; Orren 1976).

The National Environmental Policy Act was a product of the growing awareness of environmental problems by many Americans. Fueled by Rachel Carson's shocking Silent Spring and some highly publicized incidents such as Ohio's Cuyahoga River actually catching fire, the NEPA created the Environmental Protection Agency. It also made the federal government legally obligated to consider the effects of its policies on the natural environment and required that any construction or development involving federal lands or federal funding produce an Environmental Impact Statement before beginning work. No Environmental Impact Statement had been prepared for the Mineral King project (Nelson 1982; Culhane 1981).

Tools for the Interest Groups

Interest groups are collections of individuals with common attitudes, values, or needs. These individuals form groups because groups have more influence in the political arena than do individual

citizens. Interest groups may be large or small, formal or informal in nature. They may be organized for almost any type of cause or need. Traditionally, interest groups composed of commercial and corporate interests had better financing, better organization, and better access to policy makers than did smaller "grass-roots" groups (Culhane 1981).

Prior to 1970, special interest groups confined their efforts at policy intervention to lobbying and other persuasive methods. These were methods that the larger, better financed corporate lobbyists excelled at. Strict legal interpretations and the tradition of the courts not interceding in the affairs of other government agencies gave smaller groups little opportunity for legal action.

> "Until recently, reformers and consumers were poorly organized, inhibited by public ideology of scientific decision making and dollars and cents rationality, excluded from hearings by restrictive rulings on administrative intervention and....without standing in courts" (Orren 1976).

The concept of STANDING is an important one to this paper. In a legal sense, the term "standing" refers to one's status in a legal issue. The term "standing to sue" is defined as "the legal capacity to maintain action as a plaintiff" (Ballentine 1983). Traditionally, for a court to grant standing to plaintiffs and therefore allow them to file a suit, the plaintiffs had to show that the defendant in the suit had a) caused them physical or financial harm, and b) broken some law, contract, or other responsibility while causing that harm. Being granted standing is often considered a legal victory in and of itself. By granting standing the courts concede that the plaintiffs have a valid point. Also when the plaintiffs are granted standing and prepare to continue the legal action against the defendant, they are entitled to ask the court for an injunction {a court order to refrain from acts under dispute} or a restraining order {a court order to maintain the status quo until hearings begin} (Ballentine 1983). In the instance of an environmental group acting against development, restraining orders and injunctions are vitally important. Because of the lengthy process required to bring a complex case to court, it may be several years before the entire judicial process is completed. A pending injunction may stop construction or development for as long as the case is under consideration.

Changing Attitudes, Changing Roles

The 1960s was a decade dedicated to social conscience. The dramatic demonstrations against the Vietnam war and the growing environmental awareness that culminated in the first Earth Day were causing many Americans to question traditional attitudes and beliefs. Federal judges and Supreme Court justices were not immune to this tide of changing attitude. Particularly in regard to the matter of legal standing, there was a subtle shift underway regarding what the courts were considering as "harm." The courts were beginning to recognize claims of psychological harm {or the potential of psychological harm} as legitimate (Orren 1976). The new national interest in the environment was also being given credence with the recognition that people could be harmed if someone affects their quality of life by damaging the natural environment (Wicks 1987; Orren 1976).

When Congress passed the National Environmental Policy Act, they made a legal commitment that the United States government would give thorough consideration to the natural environment in any development or construction with which the federal government was connected. It was also a legal commitment to do as little damage to the environment as possible while still operating a modern industrial nation. Since the federal

government is a party in some way in almost every major public works project {by providing funding, granting permits, issuing leases, etc.} and is the largest single landholder in the U.S., NEPA made the various federal agencies responsible for thousands of potentially harmful actions all over the country (Culhane 1981).

Always Sue the Government

The lawsuit which stemmed from the Sierra Club's action and which eventually reached the U.S. Supreme Court was titled Sierra Club vs. Morton. The "Morton" in this case was Secretary of the Interior Rogers Morton. In almost every single legal action involving controversial developments, the lawsuits are aimed at a government agency. The Disney Corporation was not doing anything illegal in seeking to build a ski are. The party in this case that could be found at fault was the government. The federal government was legally committed to providing environmental impact statements, considering the environmental effects of their decisions, and protecting a legally existing wildlife refuge. Therefore the Secretary of the Interior was named as the defendant in the case. The practice of suing a government agency for not properly carrying out their regulatory responsibilities is consistent in most class action suits and other legal actions by grass-roots interest groups (Orren 1976).

Losing the Battle, Winning the War

Sierra Club vs. Morton was heard by the Supreme Court in April of 1972. The actual results of the court's decision seem contradictory, but they were to revolutionize the grass-roots environmental movement. The Sierra Club was denied standing to sue. The High Court ruled that the Sierra Club's position did not actually represent the opinion of California citizens and other responsible environmental groups. The vitally important part of the court's decision was that potential injury to recreational, environmental, and aesthetic values "...may amount to 'injury in fact' sufficient to lay the basis for standing...."(Orren 1976) Even though the Sierra Club was not recognized as an adequate legal representative of the parties concerned in this suit, their reasons for suing were recognized as valid by the U.S. Supreme Court.

This case was one of a few critical decisions by the High Court between 1970 and 1972 that liberalized the concept of standing. By recognizing non-economic injury as being an acceptable reason for legal action, the court created a means for special interest groups to seek legal intervention in many situations which they had previously been unable to have any influence. Quality of life, environmental and recreational values, and aesthetic values could be injured, and responsible and representative groups from within the community could contest these injuries. It was a modern revolution. It empowered everyday citizens to stand up to giant corporations and government agencies which had previously been too powerful to fight. The fledgling environmental movement had a new and powerful weapon to use against agencies and projects which previously it could only complain about. This weapon has been in almost constant use since the court's decision in 1972.

The Mineral King Result

The final results of Sierra Club vs. Morton are an excellent example of the power the courts have given to special interest groups. The lawsuit delayed the development of the Mineral King Valley for more than five years. Other California environmental groups joined the Sierra Club, and further suits were filed against the Interior Department and the Forest Service. The Disney Corporation, faced with the prospect of having to

wait several more years for an Environmental Impact Statement to be completed and having already invested several million dollars in the project, withdrew its bid for the development. In 1978, under the Carter administration, the Mineral King Valley was made a part of Sequoia National Park, thereby protecting it from any major recreational development.

Even though the Sierra Club technically lost their original lawsuit, the Supreme Court's decision gave them tremendous leverage in their battle against the Mineral King development. With recreational and aesthetic values recognized as legitimate grounds for standing to sue, environmental groups could ask for injunctions and restraining orders that would maintain the status quo until the issue could be decided in court. Since a legal action may require several years to complete the process of preparation, hearing, and appeal, the environmental groups now had a method to confound and delay projects which they opposed. The delays and legal complications of a lawsuit would also drive the cost of projects and developments up significantly.

The delays, higher costs, damaging publicity, and overall hassle of legally battling special interest groups has created a new attitude among developers and government agencies. Environmental groups are most likely to be invited to public hearings, and their opinion is often sought by land use planners in an effort to prevent the lawsuit process from beginning.

Since 1972, environmental groups have used the new interpretation of "harm" to contest the construction of nuclear power plants, hydroelectric dams, and off-shore oil drilling. The U.S. Forest Service has been sued over its timber-cutting allocations and road-building policy. This summer the Supreme Court will hear a case involving issuance of mining permits on Bureau of Land Management areas throughout the U.S.. This case is being brought by a coalition of environmental and recreational interest groups and will challenge the authority of the government agency to issue the mining rights to public lands. Here in the state of Utah, the Wilderness Society is challenging the Bureau of Land Management's management policies for grazing lands. These are two current examples of the power to challenge government agencies and large corporations that was given to grass-roots interest groups by the Supreme Court. Every public planner and land-use manager in the U.S. will be living with the results of the Mineral King case for the foreseeable future.

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Yosemite National Park and Curry Company
An Opinion

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This year marks the 100th Anniversary of the creation of Yosemite National Park, the third oldest national park in the U.S. after Yellowstone and Sequoia. Another anniversary of Yosemite is the adoption of the General Management Plan ten years ago. The plan called for reducing the commercial services run by the park's concessionaire, Curry Company, including a 17% reduction of hotel rooms in Yosemite Valley. It also called for the eventual elimination of private vehicles in the congested valley.

Ten years later, the National Park Service (NPS) has yet to fully implement the plan. In fact, the NPS would like to revise it. A principal advocate of the revision is Curry Company. They want to replace some old tent cabins with new motel units. Among others things, they also want more parking lots and several hundred dormitory rooms for Curry Company employees {this despite the relocation of many NPS employees to El Portal, a community outside the valley}.

The primary purpose of a national park is the preservation of a natural treasure for today and tomorrow. National parks are not amusement parks. National parks should retain as much wilderness as possible; development should be at a minimum. Furthermore, national parks should not be places for profit and commercialism. Curry Company's involvement in Yosemite National Park, especially in Yosemite Valley, is out of bounds with respect to park philosophy.

Recently, figures released by the NPS showed that Curry Company paid only $635,772 in franchise fees to the federal government in 1989 {$599,195 in 1988 and $517,568 in 1987}. Neither Curry Company nor the NPS will reveal the amount of profit Curry makes in Yosemite nor the gross revenue. The latter can be calculated: by law, the concessionaire fee Curry Company pays the government is 3/4 of 1% of the gross sales at Yosemite. Hence, the gross revenue of the Curry Company in 1989 was $84.7 million! Compare this to the NPS budget for all Yosemite operation: $17.6 million in the 1989-90 fiscal year {$800,000 less than the previous year}. Here are some more revealing numbers to make you cringe: the Fresno Bee has reported that $75.5 million was spent by the NPS in Yosemite during the past decade. Of that sum, $24.6 million was spent to rehabilitate Curry Company facilities or infrastructure directly benefiting the Curry Company. Only $403,000 was spent on resource protection.

A letter by Curry Company to former hotel guests, tourist agents, and suppliers requested readers to petition the NPS to maintain hotel rooms in the Valley at current level, convert tent cabins to additional hotel rooms, construct extra parking lots, allow Curry Company staff to remain in the Valley {vs. relocation to El Portal}, and build additional meeting facilities—all proposals that are not in line with the 1980 General Management Plan.

In 1993, the Curry Company's contract expires. The company likely has a lock-in contract renewal. The NPS should demand a significant increase in the concessionaire fee to assist in resource management, visitor protection, and maintenance of the park; a limitation on Curry Company profits; a reduction in the length of the next contract {30 years is much too long}; and forbiddance of Curry Company to undermine the General Management Plan.

Let me add that Curry Company is a subsidiary of MCA, an entertainment conglomerate. In other words, the NPS and American people are not dealing with some tiny company. MCA maintains a formidable lobbying presence with Congress. I don't know what MCA's net worth is, but I will point out that MCA purchased David Geffen's music company in March of this year. Geffen's artists include Guns N' Roses, Don Henley, Peter Gabriel, Kitaro, Joni Mitchell, Pat Metheny, and Cher. Geffen's company had 1989 revenues in the $175-225 million range. As part of the deal with MCA, Geffen receives $545 million worth of MCA stock that will pay some $7 million a year in dividends. Surely if MCA can give so much to Geffen, they can be more generous with Yosemite. Don't you agree?

A strong outcry against Curry Company and MCA may change things in favor of a Yosemite as a national park, not some amusement park or a place for the almighty dollar. Some conservation/ environmental groups are considering the formation of a non-profit corporation that would challenge the Curry Company contract in 1993. Wouldn't that be interesting? For our part, we can write to the Superintendent of Yosemite National Park, as well as to your federal representatives on Capitol Hill. Please make your opinion known on this matter. We can all make a difference!

The address for Yosemite is: National Park Service, Yosemite National Park, CA 95389. The current superintendent is Michael Finley.

Sources for this editorial include articles that have appeared in the Modesto Bee, San Francisco Chronicle, and Newsweek.

A Word From The Editor

This is the second issue of the California Ranger this year. Once again the articles were collected by Doug Bryce and proofread by Dorene Clement. My thanks to both of you for your time and effort! Two of these articles came out of the University of Utah and the other two from within this state. Thanks must go to these authors for making this issue possible. Thank you all!

For another issue to be published, more articles must be submitted. **Articles should be 1,000 words or more, and include photographs and/or other graphics.** Please include a biographical sketch of no more than 100 words. Articles, comments, or subjects would be appreciated.

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