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U.S. Department of the Interior
National Park Service
and
National Recreation and Park
Association

Received

JUN 1 1984

Trends

1984
Volume 21
Number 1

DOCUMENTS
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Vandalism





Trends

A publication of the Park Practice Program

The Park Practice Program is a cooperative effort of the National Park Service and the National Recreation and Park Association.

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Trends, a quarterly publication on topics of general interest in park and recreation management and programming; *Grist*, a quarterly publication on practical solutions to everyday problems in park and recreation operations including energy conservation, cost reduction, safety, maintenance, and designs for small structures; *Design*, a quarterly compendium of plans for park and recreation structures which demonstrate quality design and intelligent use of materials.

Membership in the Park Practice Program includes a subscription to all three publications and a library of back issues arranged in binders with indices, and all publications for the remainder of the calendar year.

The initial membership fee is \$105; annual renewal is \$45. A separate subscription to *Trends* is \$25 initially, and \$18 on renewal. Subscription applications and fees, and membership inquiries should be sent *only* to: National Recreation and Park Association, 3101 Park Center Drive, Alexandria, VA 22302.

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Introduction

The willful or malicious destruction of public or private property is a problem that affects everyone—the owners and/or managers of the property as well as those persons who want to use the property or facilities. Although vandalism to public property has increased in the last two decades, it is certainly not a modern-day phenomenon.

In the 1700's, a Philadelphia Street Commissioner by the name of Benjamin Franklin was concerned about the city's fish bowl-type street lamps that were being destroyed by vandals. These lamps were imported from London at considerable expense and were costly to replace. Franklin developed a new type of lamp known as the Franklin Street Lamp which consisted of several glass panels. If one panel was broken, the lamp could still function until it could be repaired, at much less cost than the imported ones.

Over the years, park and recreation areas and facilities have experienced considerable amounts of property damage and destruction which have severely impacted on operating budgets. However, substantial research into the causes, effects and public perceptions of vandalism, along with determined park managers to combat this problem, has resulted in new approaches to controlling and minimizing vandalism.

This Winter 1984 issue of TRENDS shares some case studies, research projects, design strategies and community out-reach programs that have recently been developed throughout the park and recreation community to effectively deal with vandalism. Also, the Who Can You Turn To? section on page 46 provides a resource for publications relating to this topic.



Robert M. Powers



Robert M. Powers



Robert M. Powers

In 1 1/2 years, over 30,000 square feet of graffiti have been removed from a variety of masonry surfaces in New York's Central Park.

Vandalism Control Management Offers Effective Cost Savings for Tight Park Budgets

by Monty L. Christiansen

Vandalism has become a perennial drain on the budgets of park and recreation agencies throughout the United States. Nationally, the cost to these departments because of vandalism has been estimated to be over \$500 million a year. Too often the actions of park visitors—sometimes as recreators, frequently as trespassers—cause damage to the environment, facilities, equipment, and areas which have been entrusted to public park and recreation agencies.

Park vandalism is as varied as the multitude of wrongdoers who are involved, the activities they are engaged in, their motives, and the damage caused. In other words, vandalism is an umbrella description of many problems. It is unrealistic to expect to find 'THE solution' (singular) to such a collection of complex problems, but it is possible to eliminate some forms of vandalism and minimize others, as well as reduce the damage and cost of those forms which inevitably will occur.

The ultimate objective of a management system for vandalism control is to reduce unnecessary expense by using the most cost-effective approaches, including both appropriate social and physical strategies. There is no *single* universal solution; because vandalistic behavior (actions) and its consequences (damages) are separate but related aspects of the total problem, both need to be modified if vandalism is to be reduced.

Vandalism Control Management (VCM) is a comprehensive process for park and recreation departments. It offers a systematic program to reduce costs through problem definition, behavior interpretation, objective setting, data collection, strategy selection, implementation, assessment and follow-up.

These processes are briefly described here.

First, Determine the Specific Problem

Before making *any* investment, an assessment should be made of the type and extent of vandalistic damage which occurs in each park. This assessment can determine which facilities are most frequently vandalized, identify the predominant kinds of damage, establish priorities for repair or removal, and provide data necessary to develop a park vandalism control management program.

For comparative purposes, it is necessary to have a program initiation or *baseline facility conditions survey*. Examples of similar damage surveys are those done prior to packing and loading furniture by a moving company or by a landlord prior to leasing an apartment. Just as these 'baseline' condi-

tions are compared to those of the moved furniture upon arrival at its destination, or the apartment upon evacuation of the leased premises, so also does the park facility conditions inventory provide a basis for comparison.

The facility conditions inventory is a standardized, uniform and reliable method of recording the vandalism location, the item damaged, the type and the extent of damages noted. The type of damage can be quickly noted from a uniform generic classification system such as the one shown in Table 1.

A priority rating scale should be established as maintenance policy for the agency. This rating should be based upon the impact the vandalism may have upon the safety of people and wildlife, the disruption or suspension of park services or programs, and the creation of social, moral, or aesthetic displeasure of the public.

Table 1

RECOMMENDED UNIFORM VANDALISM DAMAGE CLASSIFICATION SYSTEM

Category Type of Damage Due to Vandalism

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Breakage
Fracturing, shattering, smashing, or crushing apparatus, equipment or facilities, or parts thereof.</p> <p>2 Surface Graffiti or Marking
Superficial writing or drawing on, or discoloring the surface of a wall, door, partition, panel, sign, or other facility or apparatus.</p> <p>3 Disfigurement
Scratching, cutting, denting, carving, gouging, or penetrating through the surface, either exposing the undersurface or making a hole completely through the item.</p> | <p>4 Disassembly or Removal
Unfastening screws, bolts, nuts, nails, or hinges to take apart a piece of equipment, apparatus or facility.</p> <p>5 Burns
Combustion, charring, scorching, or singeing of flammable materials.</p> <p>6 Blockage
Obstructing, plugging, or stopping utility supply or waste lines.</p> <p>7 Vegetative Damage or Loss
Breaking, chopping, burning, nailing, making ruts or removing trees, shrubbery, flowers, turf or groundcover.</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



Breakage, such as this lavatory basin, is just one of seven recognized major categories of vandalism. Strategies to reduce vandalism should be based upon the susceptibility/vulnerability of the facility.



Souvenir collectors quickly strip common bolts and other fasteners to remove expensive signs.

Penn State Univ.

M. Christensen

The following maintenance priority scale is one example:

Priority 1: Vandalism presents imminent serious danger to park users, employees, or wildlife

Priority 2: Vandalism presents potential danger to park users, employees, or wildlife

Priority 3: Vandalism disrupts or suspends major park programs or services

Priority 4: While not disruptive of use, vandalism has high visibility or social impact.

Priority 5: Vandalism is not disruptive of use and has low visibility

Keep the Facts Current

After a baseline status report of all the parks and facilities has been obtained, it is possible to accurately note and document changes—both positively as adaptive maintenance corrects the damages originally identified as well as when preventive VCM strategies are implemented; and negatively, when more vandalism occurs.

Two procedures are necessary to do this. First is the completion of a thorough, periodic inspection which is documented by an itemized inspection form. Next is the establishment of a mandatory vandalism incident reporting procedure, again documented by a clear report form.

These forms are not just paperwork—they insure accurate records, aid good communications to the proper maintenance supervisor for work scheduling, and—very important today—provide a trackable log of actions taken by the agency for evidence if necessary in

liability litigation in case of injury to park users due to the vandalism.

Information from these forms can help determine where VCM efforts would be most cost-effective by identifying the most expensive incidents, the most frequent targets of vandalism, the most common type of damage, the highest average cost of repair, the period when most incidents occur, etc. Instead of using a costly “blanket approach” for all facilities throughout the entire system, VCM emphasis can be focused upon specific objectives which can then be measured and evaluated.

Set Measurable VCM Objectives

After the initial information gathering, the next step is to set realistic, achievable objectives to reduce vandalism expense.

An agency which can meet its objectives demonstrates that its resources—natural, fiscal, and personnel—are being managed in a business-like manner and that there is demonstrable success in reducing vandalism.

Choose Appropriate Vandalism Control Strategies

Park vandalism control management must be cost-effective. This should be the key to VCM strategy selection. This can be planned just as carefully as other aspects of park management.

Using a well-chosen set of several, rather than just one strategy (the elusive ‘final

solution’), will make a comprehensive VCM program which may include preventive measures, in which the park department takes the initiative before incidents occur, as well as reactive measures, which provide corrections or adjustments to previous efforts.

There are two approaches that, when used together, have been effective. These have been called the social and the physical vandalism control strategies.

Social Approaches Reduce Vandalism as Behavior

There are five principal social ‘tools’ that have been effective in reducing vandalistic behavior: publicity and public relations, education, rule enforcement, general operations, and cooperation.

Publicity. It is important that a park department have a clear policy regarding publicity about vandalism. It is recommended that publicity be used in conjunction with a public education campaign to make people aware of the efforts of incidental vandalism, including the loss of recreational opportunity, loss of facility use, as well as provide examples of what the repair cost might have provided instead. If the agency has a policy authorizing a reward for information leading to the conviction of individuals causing deliberate vandalism, publicity can be an effective tool as well. Positive publicity about vandalism reduction cooperative programs can provide recognition to helpful groups and organizations as well as illus-

trate how the department is taking preventive measures to control vandalism.

Public Relations. Staff should be trained in positive public contact and public relations. All staff—whether providing program services, maintenance, protection, or law enforcement—should treat the park user as an individual and help create a social atmosphere of friendliness between the park visitor and the agency.

Education. Agencies should provide staff training about vandalism. To be effective, it is essential that park and recreation agencies have sensitive, understanding, and responsible staff who know how to anticipate and prevent instances of vandalism before they occur, how to minimize existing opportunities for vandalism, and how to modify vandalism targets to reduce the possibility of repeating incidents. Employees should become aware of vandalism causes and types, social and physical vandalism control strategies, how to use incident and periodic inspection procedures, etc.

Users of particularly vulnerable or susceptible targets of vandalism can be informed of the consequences of avoidable or preventable acts of incidental vandalism. Examples of ways this can be done include eye-catching posters at common gathering places in parks (wash houses, visitor information centers, registration booths, etc.), inclusion of a message as part of a permit application or park brochure, and interpretive explanation at the site of vandalism during the period of unavailability and repair, and through daily casual personal contact with visitors by park personnel.

Rule Enforcement. These are the basic guidelines for rule enforcement:

All rules should be realistic, clear, positive, and understandable. Ineffective rules go ignored when the agency does not have the enforcement resources or does not have a consistent interpretation of what constitutes a violation.

The mere presence of park employees helps reduce vandalism. Staff uniforms provide a non-conspicuous 'employee presence.' Parks with staff living in the park or using a campground host pro-

gram have found this 24-hour presence to be an effective deterrent to nighttime vandalism.

Rewards. Some agencies have been successful in offering a reward for information leading to the arrest and conviction of vandals charged with acts of destruction resulting from a specific incident. It is most effective when the agency is able to obtain a decree to restitution as well as the imposed fines or imprisonment.

General Operations. Three general operations strategies may help reduce vandalism:

(1) Full use of park facilities by the public actively engaged in recreational activities is a deterrent to loitering and surreptitious vandalism. In effect, large numbers of people using a facility usually provide an inherent self-policing function to ensure that it is not abused.

(2) When facilities are available on a permit or reservation basis, it may be practical to obligate damage liability to the users as part of the permit contract by requiring a damage deposit when the permit is issued.

(3) Where revenue-producing programs or facilities exist—fee activity centers, concessions, and especially unsupervised pay telephones or vending machines—agencies should have a daily procedure of removing all money from these facilities and leaving the empty cash drawers wide open before closing the building. This fact should be well publicized through prominent signs at each point of money collection.

Cooperation. Several park departments have joined forces with other community crime reduction programs or volunteer surveillance systems. Perhaps best known is the National Community Watch Program. In addition, because so many civic and service organizations have contributed funds, labor, and materials to public parks, there is an obvious proprietary or vested interest in the care of these facilities. These organizations are often willing to undertake vandalism reduction campaigns to help.

There appear to be two benefits from court-park department cooperation. The first is the possibility of receiving equitable restitution to pay for the necessary repairs due to vandalism incurred.

The second is the rehabilitation of offenders through work programs such as the Court Referral Program.

Physical Approaches Reduce Vandalism as Facility Damage

The previous VCM strategies were social approaches. Design and maintenance are physical approaches. Physical and social strategies are best applied in conjunction with one another as part of a complete vandalism control management program.

A well-documented record of vandalism-caused repairs and the effects of adaptive maintenance can help *update agency specifications* of standard park facilities such as benches, tables, drinking fountains, lights, sanitary facilities, etc. Building to these updated specifications will prevent previous mistakes, omit easily vandalized facilities, and provide 'hardened' facilities from the start.

Park departments can establish a procedure of *prompt maintenance* to vandalized facilities. This prevents exposing the damage to other, perhaps impressionable, park visitors who might feel the agency does not care, and thus might add more damage to what is already there. It also has the effect of denying the deliberate vandal the pleasure of having his or her handiwork exposed to the public.

An *adaptive maintenance* program, which improves vandalized items by changing or strengthening broken parts, is better than repairing a damaged facility back to its previous condition. If this practice is based upon the type and severity of vandalism, facilities can be economically upgraded on an 'as needed' basis instead of doing restorative repair with the possibility of frequent re-repair or a blanket replacement program to substitute all possible targets with extra-duty facilities.

The generic types of vandalistic damage are breakage, burning, disassembly and removal, surface graffiti and marking, disfigurement, blockage and vegetative damage. See the damage classification table for descriptions.

There are six principal physical vandalism control strategies:



Colorful graphics—reflections of wonder. . . images of flowers, butterflies, and beauty—these are apparently preferred to unadorned walls. This mural on a park building has survived three years without defacement while other walls gathered reoccurring graffiti.

M. Christensen

Incident Prevention: Stop 'em from doing it!

The ultimate protection from vandalism is to prevent it from occurring at all. This may be accomplished by either removing the probable vandalism target or by controlling accessibility to them.

If it is impossible to control access to the park after hours, it is recommended that buildings which contain probable vandalism targets be strongly secured at night. Architecture may be designed with clerestory windows for natural lighting to eliminate lower windows and unnecessary interior lighting. Some parks remove all lamps from all sports or area lighting after the use season. Others have a 'no glass' development policy for the park.

Process Hindrance: Make it difficult and time-consuming

Much incidental or opportunistic vandalism is the result of impulsive actions which, to the individual, appear to be so easy to do without threat of disclosure or punishment. By increasing the difficulty or risk, it is possible to make some vandalism not worth the effort required.

This is especially true for signs and other items which are popular souvenirs. These should be mounted above reach when possible or secured with special fasteners which cannot be removed with-

out proper tools or techniques. While these special bolts, screws, or nuts may be more expensive than common fasteners, they may be worth the extra cost if they prevent removal of expensive signs, etc.

Activity Deflection: Let 'em do it, but to something else

There are various fun activities, seemingly innocuous and insignificant by themselves, which can individually or collectively abuse facilities and dilapidate an area. In some instances, it would be more effective to provide a tempting legal alternative or expendable targets for such actions.

Even the simple provision of bulletin boards outside campground restrooms and showerhouses have been effective in reducing graffiti on those building walls. Erecting and clearly designating a totem pole for carving in a park may save numerous trees and picnic tables from disfigurement as well.

Damage Reduction: Protect and strengthen the targets!

No park is vandalism-resistant. Some facilities are inherently susceptible to damage. Others are conspicuous and tempting targets; still others routinely receive damaging abuse or misuse. Often it is cost-effective to harden these facilities by using stronger materials,

more durable products, and heavy-duty construction. The initial extra cost is cheaper over the life of the facility than frequent and costly repairs to unhardened targets damaged by vandalism.

Obvious examples are those facilities which are easy to break. Glass mirrors in park restrooms can be replaced with polished stainless steel or acrylic mirrors, glass windows and lamp refractors can be replaced with polycarbonate plastics, porcelain sanitary fixtures can be replaced with stainless steel or aluminum, wooden doors can be replaced with steel doors, . . . The list can go on and on.

Repair, Cleanup, or Recovery Implementation: Make it easy to fix or find afterwards!

Certain forms of vandalism are unpreventable, or prevention may be prohibitively expensive. In these situations, periodic repair or refurbishing is an acceptable, cost-efficient VCM procedure to provide a specific level of maintenance. These facilities should be modified to make these periodic restorations quick, convenient, and economical.

Park restrooms are almost routinely vandalized by graffiti, disfigurement, and fixture blockage. By sealing wall surfacing, using special materials and fasteners, and by providing a convenient pipe chase for plumbers, these constantly repeating forms of vandalism can be quickly and economically corrected.

Conspicuously 'branded' portable items make park ownership obvious and helps in the recovery of items removed from the park and later discovered elsewhere. Picnic tables, benches, sports equipment, and other portable items can be imprinted with a



Why facilities are vandalized needs to be determined to prevent recurrence. Here a fence enclosing a basketball court was cut open because youngsters felt justified in providing their own entrance when the gate was locked.

woodburner, router, or other device so that stolen items can be readily identified.

Perpetrator Detection: Take away their masks of secrecy

There are instances—for example, when stolen property might be recovered, repair would be very expensive, health and safety of individuals could be impaired, or when restitution by convicted vandals is a principal source of funding for repairs—when it is recommended that vandalism-prone facilities be sited and maintained for easy surveillance.

Facilities within sight of park work stations, neighbors, sheriff or police patrols are less frequent targets for vandalism than those out of sight. For the latter, electronic systems may be warranted if probable vandalism would be expensive enough to justify the expense of the detectors. In either case, the loss of anonymity may be sufficient to deter vandals.

Evaluate Strategies to Keep VCM Program Effective

A combination of social and physical strategies should be selected as a concerted package or program; no single solution will control the complex variety of problems jointly described as 'vandalism.' By comparing previous and current conditions, these strategies can be evaluated. Those strategies which are successful may be combined with modified, revised, or completely new strategies to replace unsuccessful approaches.

This article is a synopsis of *Vandalism Control Management for Parks and Recreation Areas*, a 130-page manual which was prepared under contract to the National Park Service. Copies (xerox or microfiche) are available from the National Technical Information Service (NTIS). To promote wider distribution, NPS has permitted Venture Publishing, Inc. of State College, PA and E. & F.N. Spon, Ltd. of London, England to print a more economical paperback edition.

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VANDALISM COSTS YOU...



... BEAUTY

Walls, fences, trees and buildings or painting and other maintenance are necessary to keep the park attractive.



... CONVENIENCE

Damaged park facilities may be closed for repairs or need replacement.



... SAFETY

When vandalism is rampant, safety is a major concern. Safety is a priority for maintenance.



... MONEY

Your tax dollars pay for repairs. A damaged park facility may be replaced.

HELP STOP VANDALISM!

Please report all incidents to the Park Rangers



NATIONAL PARK SERVICE
United States Department of Interior



Educational campaigns to reduce park vandalism must be personal. Visitors need to know how vandalism diminishes their own enjoyment.

M. Christiansen

Vandalism and Its Relationship to Design

by Brian J. Mihalik, Ed.D.

Today's architect is trained to address many considerations when designing public facilities such as civic and recreation centers, schools, and parks. However, the architect's training needs to assume different proportions today because of rising operational costs which can exceed ten times the initial construction costs. Therefore, an architect, although an artist, must assume the role of a building supervisor, maintenance person, custodian, security guard, user and vandal before he or she can properly design a public facility.

Currently some architects, particularly those employed by federal land management agencies and large city park and recreation departments, have developed a self-taught architectural style where design, utility of function, maintenance requirements, and vandalism prevention are all components of the planning process. Vandalism prevention through design can help reduce the willful or malicious destruction of public or private property.

However, inadequacy of design is, in itself, a type of vandalism. Examples of these types of designer-initiated non-malicious vandalism could include damaged turf areas and flower gardens caused by poorly designed pedestrian flow patterns, vehicle damage to athletic fields because of a lack of maintenance vehicle access roads, and vandalized signs due to poor design and location.

There is no way to totally stop vandalism in our public facilities. At best we must try to understand the reasons behind vandalism and anticipate methods and procedures to limit vandalism. Much can be done through thoughtful and creative designs. A designer, in conjunction with the appropriate

users of a structure or park, should address vandalism in the areas of planning, building site location, grading, pedestrian and vehicular circulation, material specifications, restroom design, ease of supervision and maintenance, site furnishings and landscaping.

Planning, Site Location and Grading

There are basic considerations that must be made before any design may be used. The first consideration is the selection of an architect. Make your choice based on the architect's competence and experience in designing your needed type of public facility.

The second consideration is to become quite familiar with the site's environment and the people who will utilize the facility as users or employees. Both designers and public facility administrators must know the land forms, vegetation, site orientation, and populations' past and present use of the land.

Buildings should be located close enough to play and athletic areas so as to serve the needs of participants, but not close enough to become a scapegoat for athletic frustrations. Buildings should be designed away from easily climbed trees and fences as these items could be used to help a vandal gain access to buildings. Vehicles in a parking lot act as screens to hide vandals and provide easier escape routes for fleeing vandals. If a structure is located on a site where eye contact with passing vehicles is combined with high pedestrian flow, vandalism to this structure may be reduced.

Grading is often overlooked in the planning process as a deterrent to vandalism. Slopes and berms can be utilized as a multi-purpose



Extensive pedestrian traffic between an existing parking lot and a new library building results in unsightly footpaths and damaged turf.

Clemson Umre

item that can restrict or channel vehicular or pedestrian access. They can be used as security walls around buildings if structures are designed into earthen banks. Because poor maintenance has been shown to increase vandalism to sites, slopes should be graded so that they are easy to maintain.

Because youths are attracted to standing water as a play area, the proper grading of athletic fields and turf areas is essential. Inadequate grading can become an attractive nuisance and thus the cause of non-malicious vandalism.

Pedestrian and Vehicular Circulation

Pedestrians should be allowed as much freedom of movement as possible, but avoid mixing pedestrian and vehicular traffic if possible. Be conscious of the will of a pedestrian in walking from one site to another. Determination of logical pedestrian flow patterns is essential. The planting of attractive flower gardens or turf areas between two heavily visited sites by pedestrians is a design flaw that should not be tolerated. The architect or designer should use changes in materials, levels, or landscaping



Pedestrian traffic across the turf is discouraged by the proper use of berms and trees with low-lying branches.

Clemson Univ.

to produce interesting but logical and workable lines of movement. Earth berms may be used to contain pedestrians to circulation paths.

Pedestrians should not be dominated by vehicles. Reduce vehicle circulation to a minimum by using one-way circulation when possible. The use of gentle curves and speed barriers may keep drivers alert and driving at a safe speed. In park settings, however, the multiple use of pedestrian paths by maintenance vehicles should be encouraged. Not providing maintenance vehicles access only encourages maintenance crews to improvise service routes. The maintenance crew that drives across wet athletic fields because of inadequate maintenance vehicle paths is a type of non-malicious vandalism caused directly by poor design.

Materials Specifications

Certain materials used inside of buildings are vandal-prone if the facility is unsupervised. Avoid the use of fabric-covered accordion walls, sheetrock walls, suspended acoustical tile ceilings, and all other soft materials in hallways and restrooms. Concrete block walls painted with epoxy paint are simple, durable and washable.

Ceilings receive both malicious and non-malicious vandalism. This problem may be reduced through the use of two minimum ceiling

heights. Corridors and restrooms should have a minimum ceiling height of ten feet. Offices and classrooms should be a minimum of eight feet.

Mechanical equipment is often the target of vandalism. Receding mechanical equipment into the wall has proved to be a successful deterrent. Mechanical controls should be located in a secure central area with additional security provided through a locked panel. Mechanical and custodial rooms should be provided with deadbolt locks.

Due to use and abuse, doors suffer considerably. When it is possible, avoid the use of doors. However, if doors must be used, two types of doors are common: 1) a solid-core wooden door, and 2) metal doors devoid of glass surfaces and set in metal frames. The door should have non-removable pins in door hinges with hydraulic door closures to prevent doors from being slammed. Glass and aluminum doors present a problem as these doors provide a substantial amount of breakable space through which entry may occur. Use these only where adequate supervision is provided. Seasonally used buildings should be equipped with a limited number of doors and windows which are centrally located. Overhead doors made of steel may then be used to form a double barrier, protecting conces-

sion windows, doors, and other vulnerable openings.

Illegal entry to buildings is most often gained through windows. This phenomenon is easily explained in that glass windows are very vulnerable. Windows are like doors in that use should be limited or eliminated when possible. When windows are necessary, place them where they overlook circulation areas.

Plastic windows are now widely used because of their high impact strength. There are two basic kinds of plastic—acrylics and polycarbonates. Acrylics have good optical properties and last about thirty-five years. Impact strength of acrylics is 17 times the strength of plate glass. However, the price of acrylics limits its use as it costs about two times as much as plate glass. Polycarbonates, the second source of plastics, is very prohibitive as it costs three to four times as much as plate glass. It does, however, have the highest impact strength, as it is 100 times as strong as plate glass. The life of polycarbonates is placed between five-to-ten-years according to the manufacturer.

Plastic panes do, however, have a few drawbacks. They will mark, yellow, scratch, and are not totally vandal-proof. Plastics, although having a high impact strength, have "play" in the frame. A blow in the corner of the window may pop the plastic out of its frame allowing entry.

Often architects desire to enhance the interior environment with natural lighting from skylights. However, because forced entry is often sought on the roofs of buildings, skylights should be avoided unless: a) there is no access to the roof, b) they are capable of resisting attack, c) they

are really necessary. Prevention of access through skylights is possible through the use of security grills installed in conjunction with skylights. The skylight may be shattered by a vandal but entry is still difficult because of the grill.

Restrooms

One of the most commonly vandalized items in a park or building is perhaps the restroom because of lack of supervision. Therefore, two design methods have been used to curb vandalism in restrooms: 1) use vandal-proof materials, and 2) design locked utility corridors. The architect must be aware that the simplest and bulkiest materials are better. Walls and partitions should be made of reinforced concrete block painted with epoxy paint because it is durable, washable, and resists odors. The floor should be constructed of concrete and sealed to resist staining and odor absorption.

The architect should design a restroom with a central utility corridor so that all hardware, plumbing, drains, wiring, etc. may be concealed and secured. Equipment in the restroom should be minimal, consisting of vandal-proof designs. Vandal-resistant electric hand dryers mounted flush are recommended over paper towels. Mirrors should be made of stainless steel. Because toilets and sink facilities are easily damaged, stainless steel toilets and sinks have often replaced vitreous china equipment. If the price of stainless steel is prohibitive, commercial grade or prison grade vitreous china is another alternative. Because controls are often broken or removed from the water faucets, wall-mounted pushbuttons may save repair cost and the use of water.

Ease of Supervision and Maintenance

A designer must be sensitive to the problems of supervision because he or she can easily create a nightmare for the supervisor of a facility or create a vandal's paradise. Designing buildings with recessed doors or enclosed external staircases which may act as a hiding place for vandals who desire to damage property and avoid detection should be avoided where possible. Supervision is a key element in preventing vandalism.

A community center in southern New Jersey was designed specifically so a minimum number of supervisory staff could control the facility. A single central supervisor area provided 360° viewing of all corridors, gymnasium, and game rooms. Where walls restricted sight lines, shatterproof glass was installed to allow control. The architect made a concentrated attempt through design to control unwanted acts.

Because inadequate maintenance is related to increased vandalism, the architect must design from this viewpoint as well. Because maintenance crews can see flaws that may be easily corrected, their advice in the design process is invaluable. Once more, if the design is not efficient the maintenance department may not maintain the facilities adequately. Experience has shown that there is a high correlation between the appearance of public facilities and the incidence of vandalism. Therefore, maintenance must not be inhibited but encouraged by designers to reduce vandalism.

Signs, Fences, Picnic Tables and Vending Machines

Because signs often bear the brunt of vandalism, there are steps that can be taken to help reduce vandalism. Signs should be attractive, durable and carry positive messages. Avoid the use of signs with negative instructions when possible. However, if you must use signs, include the reason for the regulation. Informing the public may help prevent vandalism to the sign.

The latest trend in signs is the use of bulky materials such as wood with routed letters. These signs are easy to maintain and can often be made in-house. Color-coded plexiglass sheet is another good material to use for signs because it is colorful, attractive, and inexpensive. Avoid the use of signs made of formed letters because they are easily broken by vandals. The letters may find themselves in a vandal's bedroom as wall decorations.

Because fences are like doors and windows, use them only when necessary. The most vandalized portion of a fence is the gate. Therefore, unlock gates or remove them if possible. Number 11 chain link fences with heavy clad zinc coatings and equipped with extra vertical supports are preferred where people climb or lean on the fence. When building athletic fences, account for windscreen load and use appropriate materials, proper depths for poles, and sufficient concrete footings to minimize wind damaged fences especially when adding wind screens.

Because wood picnic tables will always be targets for wood carvers, concrete table tops offer several advantages over wood; they are not easily moved by vandals,



This library sign is difficult to vandalize because of its location above a pond. It replaced a ground-level sign that was constantly vandalized.

Clemson Univ.

they are easy to maintain, and spills are easily cleaned. Table legs and tops can be pre-manufactured by in-house crews in the offseason with the use of commercial picnic table molds. These tables should withstand most acts of vandalism but will be difficult to move once located at a given picnic site.

Many vending machines are frequently vandalized to obtain money that is enclosed in them or because they malfunction. Columbus Metro Parks in Ohio has found a solution to this problem. They place their vending machines in a recessed sheltered wall with the machines enclosed by a 1¾ inch solid core door with slots cut to provide an adequate view of the merchandise. Doors are fronted with Formica for appearance and ease of maintenance; frames and jambs are made of metal; security is provided by the use of locks at the top and bottom of the door. The machines are then secured at night by the use of a roll down steel door.

Landscaping

Plants suffer from both malicious and non-malicious vandalism. Grass should never be used where sharp changes in direction occur or under acidic trees. Pedestrian paths appear quickly as people cut corners. When selecting trees for public places choose mature trees with the following qualities: lacks falling fruit, deep rather than surface roots, low maintenance requirements, an attractive appearance both in the spring and fall, and tolerance of heat, dirt, and pollutants. Trees with smooth bark such as beech are easily carved and should be avoided. All species have specific qualities and preferred locations. Therefore, it is

often easier to use undesirable or mature weed trees that already exist on the site rather than young plants which are susceptible to vandalism.

When planting trees use as mature a plant as possible. A nine centimeter diameter tree is more capable of withstanding abuse. Trees are best planted with a clear stem of two to two-and-one-half meters and an overall height of at least four meters which will put branches out of reach of most people. Use prickly plants like holly, hawthorn and berberis around susceptible plants to provide protection. When thorny plants are used near buildings, provide plenty of room for access by custodians or trash will accumulate and possibly increase vandalism.

Conclusion

The architect can no longer design in a vacuum. Magill (1976) stated that designers must create to serve the social and cultural needs of people rather than the plaudits of one's peers. Planners, architects and developers could be considered vandals as a consequence of their design failures.

Presently vandalism prevention through design receives mixed reviews from academia. Selected landscape architects are being instructed to prevent vandalism through design, but the words of a southern School of Architecture Dean also indicated the opposite.

The Dean did not feel it was the responsibility of the architect to design around vandalism. In his view, his students would compromise design values for a fortification ethic.

Obviously, there is no universal solution or even agreement as to the role of academic preparation as a deterrent to vandalism. However, some professionals have predicted that 75 to 90 percent of all vandalism could be eliminated through design. Although these figures are high in certain instances, selected government agency architects know from experience that design does reduce vandalism.

Hopefully, this article will assist the reader in solving some of his or her problems. Report and share experiences with design successes and failures with your fellow professionals. One of the best possible solutions is for landscape architects, educators, users, and administrators to be creative, to communicate, and to be willing to work together to eradicate or minimize vandalism.

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Vandalism: Law, Violations, and Intervention in Recreation Settings

by Harriet H. Christensen and Nanette J. Davis

Recreation managers report vandalism as a growing problem that affects budgets, natural resources, and enjoyment of an area by users (Alfano and Magill 1976, Christensen in press, U.S. Department of the Interior 1978). Because so few studies have been conducted, the true nature and extent of vandalism in outdoor recreation areas remain unknown; for example, how much vandalism occurs, what kinds, costs incurred by agencies, and so forth. However, there are studies that document perceptual differences between users and managers. For example, studies have demonstrated disagreements between users and managers about what is appropriate and what is inappropriate in a recreation setting (Clark et al. 1971a; Roggenbuck et al. 1980). Although the nature and extent of the problem is important to identify, fewer studies have dealt with questions such as "what works to combat these problems, where, when and under what conditions?" (Christensen and Clark 1983; Clark 1976; Samdahl et al. 1982).

This article describes managers' perceptions of vandalism and their beliefs about the relative effectiveness of various intervention strategies used in developed campgrounds in California, Oregon, Washington, and Alaska. Specifically, we will (1) describe managers' concern for different types of vandalism; and (2) indicate some of the prevention and control approaches currently employed and their perceived effectiveness.

Vandalism and Social Theory

Most sociological theories that address vandalism as crime make



A tree chopped down and water polluted by litter and garbage represent a loss of environmental quality that is hard to restore.

an assumption that vandalism is an offense against property perpetrated by a willful offender who shares a propensity for misbehavior with other members of his or her age, race, social class, family background, and social status. These are called the *opportunity* or *means-end* theses, or *subcultural* perspective. For a more thorough discussion, refer to Clinard and Wade 1958, Cohen 1966, Greenberg 1981, and Merton 1957. Both the opportunity model and the subcultural approach offer a limited view to deviance. Most delinquency studies obscure the meanings of vandalism because they homogenize the behavior; for instance, they presume a subclass of deviant youth to be the primary culprits. They neglect the larger structural and environmental factors that contribute to lawbreaking, such as laws, enforcement procedures, and other types of official reaction.

Another approach to understanding deviance relies on societal reaction, also known as the *labeling* or the *interactionist* perspective. This suggests that it is the interaction of the person who commits the rule infraction and of those who respond to it that defines vandalism (Becker 1963, Kitsuse 1962). An exclusive focus on societal reactions and definitions of vandalism, however, ignores both the larger social implication and changing norms and practices of control. In the case of vandalism, it is important to consider the resource and facility depreciation, and to understand specific managerial responses to these impacts.

These theories have generated

important research on vandalism, but they leave unanswered issues of law and official control. Such empirical studies have failed to clarify the social sources of vandalism. In Western culture, the exact amount of vandalism, precise costs, and a profile of the vandal are unknown. We know that the vandal is still perceived by some as malicious and destructive. In fact, a stereotype vandal does not exist; the working-class male adolescent has been invalidated as a stereotype. Vandals have been found in urban, suburban, and rural areas, in working class to upper class families, in various ethnic groups, and in both genders (Bates and McJunkins 1962, Donnermeyer and Howard 1980, U.S. Dept. of Justice 1982).

While the social sources of vandalism remain shrouded in uncertainty, the literature does offer some insights about who commits these acts, what targets are involved, why the acts occur, what behavior constitutes vandalism, and what and how social audiences are reacting.

What is missing in these studies is a focus on law and social control. Early control theory suggested that vandalism occurs because it is not prevented through personal controls within the individual or through social controls such as interventions (prevention and control strategies) initiated by others (peers, recreation managers, law enforcement officials)(Reckless 1972).

In evaluating impacts and finding ways to mitigate them, *conflict-control* theory has practical

value because it is concerned with rules and their impact on users. More recently, some theorists have begun to focus on conflict-control theory which stipulates that there are inherent conflicts between those who rule and those who are ruled, and that violations are more adequately understood in the context of official actions and policies rather than as the result solely of the individual violator's behavior. Davis (1975) proposes that we examine law and violations as situational. In circumstances where control and intervention are legitimate (appropriate, effective, and participatory) deviance will be minimal.

In other situations, where law and official actions can be identified as illegitimate (inappropriate, ineffective, and isolating) by significant public sectors, deviance rates can be expected to rise, often beyond the carrying capacities of the system.

Research shows that in many regulatory situations, laws favor the more powerful over those with little political power, and public officials may remain aloof and indifferent in their relations with clients or users (Davis and Anderson 1983). In outdoor recreation settings, this means that effective laws and intervention strategies should (1) be locally appropriate — responsive to local norms and values, (2) be diverse — adaptive to various area conditions and user activities, and (3) invite citizen participation.

Lucas (1982, 1983) points out that in recreational settings excessive regulation or over-regulation can produce reverse effects; for example, more rather than less rule breaking. One con-

tributing factor to some of the environmental impacts is that attitudes and behaviors regarding rules may be inconsistent among users; users may be unaware of the rules, not agree with the rules or violate the rules for various personal reasons, such as making a political statement or acting out a personal frustration.

Vandalism in some respects may take on the characteristics of a "folk crime"; that is, crime that (1) is prevalent among a large number of persons in similar situations; (2) does not violate mores, that is, there is little social support for the relevant laws and rejection of the violators as bad or criminal persons; and (3) is often dealt with outside the conventional criminal justice system. Ross (1960-1961, 1973) argues that folk crimes relate to the kinds of laws created in modern times to deal with the increasing complexity of modern life, rather than emerging from grassroots pressures (see Gibbons 1981a, b).

We assume that there is a spectrum of vandalism from "not so serious" to acts that are "very serious." The folk crime, or "not so serious" kind of vandalism, may comprise many incidences of vandalism in outdoor recreation areas. Social control in this instance is aimed at more benign forms of intervention, such as education or visibility of official personnel, as opposed to coercive approaches, such as law enforcement. Our data seeks to clarify these alternative approaches in terms of intervention by managers and their beliefs about the relative efficacy.

Methods

In response to managers' concerns, the USDA Forest Service, Recreation Research Unit, Seattle,

Washington, in collaboration with university cooperators and other public and private agencies, is conducting a series of studies to develop appropriate and cost-effective programs to potentially reduce vandalism. Our approach is to develop descriptive information on the magnitude, dynamics, and importance of vandalism across environmental settings and variable conditions. Based on an analysis of the interrelationships of the above, experimental programs will be developed and tested to determine what works and what does not. Programs determined effective will be applied and monitored in selected settings.

During autumn 1982, questionnaires seeking basic information on the nature and extent of vandalism and other types of depreciative behaviors were sent to five federal agencies responsible for providing outdoor recreation opportunities. Agencies participating in the assessment included the USDA Forest Service; USDI Fish and Wildlife Service, National Park Service, and Bureau of Land Management; and the U.S. Army Corps of Engineers.

A complete census was conducted of personnel working in the areas of recreation or resource management, law enforcement, planning, maintenance, and cultural resource management in California, Oregon, Washington, and Alaska. This assessment included people at various management levels. The mailed questionnaire had an overall return rate of 90 percent. See Table 1 for a summary of participating agencies and number of managers.

Operational Definition of Vandalism

The dictionary definition of vandalism is: "deliberately mischievous or malicious destruction or damage of property . . . willful or ignorant destruction of artistic or literary treasures" (Random House Dictionary of the English Language, 1973). To understand vandalism and eventually develop prevention and control strategies, however, it is necessary to focus on three components: law or regulation, violation, and current intervention practices. Because of a lack of consensus, some social scientists today are returning to a dictionary definition of vandalism, formulating their own definition, or borrowing from others (Matza 1968). Following suit and relating this to outdoor recreation, the operational definition for our work follows:

Vandalism is a *social definition* (not absolute) and includes the range of perceptions, attitudes, labels, or interpretations attached to inappropriate (non-normative) behavior in recreation settings by managers, administrators, resource specialists, users, planners, and researchers.

Vandalism is *behavior* that depreciates the physical and aesthetic qualities of the environment and recreational experience in recreation settings (Clark et al. 1971b, General Services Administration 1982).

Intervention to vandalism may be formal or informal prevention and control strategies. A formal intervention occurs when a warning is expressed or citation is issued to a violator by the ranger or other authority figure. Informal

Table 1. Participating agencies and number of respondents (N) from each state

Agency	State				Total
	California	Oregon	Washington	Alaska	
	----- in percent -----				
Forest Service	66(N=181)	60(N=135)	55(N=58)	43(N=28)	60(N=402)
National Park Service	10(N=27)	3(N=7)	14(N=15)	15(N=10)	9(N=59)
Bureau of Land Management	11(N=30)	29(N=65)	5(N=5)	19(N=12)	17(N=112)
Fish and Wildlife Service	5(N=14)	4(N=8)	9(N=9)	23(N=15)	7(N=46)
Corps of Engineers	8(N=21)	4(N=9)	17(N=18)	—	7(N=48)
	41(N=273)	33(N=224)	16(N=105)	10(N=65)	100(N=667)

mal reactions occur through indirect management approaches such as educational programs.

Results and Discussion

To evaluate impacts of and controls for vandalism, two kinds of information are needed: (1) magnitude or objective measures of the problem such as costs and specific and measurable information about who is vandalizing, where, when, why and so forth; and (2) importance of the problem to both users and managers — subjective value judgments. Ideally we would want objective and reliable measures of the magnitude prior to measures of importance (Clark and Stankey 1979, Stankey 1982).

In this article we deal with reports from managers on the incidence of the problem and their experience with what works to mitigate impacts within their administration. Certain cautions are in order: (1) here, we are basically reporting subjective measures of the importance of the problem; however, some responses by managers may be based on the culmination of objective information in addition to available records or administrative studies; and (2) we are reminded that the

frame of reference is different for managers reporting from various states — e.g., what is perceived as serious vandalism in Alaska may not be viewed similarly by managers in California.

Table 2 summarizes managers' perceptions of the importance of the three kinds of vandalism found at developed campgrounds — vandalism to public facilities, natural resources, and users' property. Examples include: safety signs shot to the extent that the message is unreadable, demolished restrooms, carving on trees, and fires built in restrooms. Other impacts include vandalizing geysers, illegal firewood gathering, molesting wildlife, and damaging vehicles at trailheads. Managers in California reported public facility vandalism as more serious than managers in other states, and Alaska officials reported it as least important. California has more developed campgrounds than Alaska, thereby providing more facilities to vandalize, but this disparity between the two states may be due to other contributing factors as well — higher human density, different values, and so forth.

More managers in Alaska reported vandalism to users'

Table 2. Perceived importance of vandalism by managers in developed campgrounds

	Vandalism targets in developed campgrounds				
	Perceived as very much of a problem ¹				
	Forest Service	National Park Service	Bureau of Land Management	Fish & Wildlife Service	Corps of Engineers
Vandalism of public facilities	50(N=265)	33(N=30)	37(N=30)	—	50(N=14)
Vandalism of natural resources	37(N=265)	37(N=30)	22(N=32)	—	18(N=28)
Vandalism to users' property	12(N=253)	48(N=29)	8(N=25)	—	15(N=27)

N= Number of respondents

¹ Managers were asked to report their perception of the problem. The three response categories provided were: not at all, somewhat of a problem, or very much of a problem.

property as a problem than did managers in California; likewise, more managers in Washington perceive it as a problem than in Oregon. Reasons why are unknown at this time. Vandalism to natural resources was perceived by managers as more of a concern in California, Alaska, and Oregon than in Washington.

Managers were provided with a list of specific intervention strategies and asked to report the perceived effectiveness of each practice. Although many practices were perceived as effective, actual effectiveness of most of these strategies is unknown. One kind of intervention strategy involves actions taken directly by a user or group of people. This might include the participation of users in monitoring areas or reporting witnessed infractions to the authorities.

A second kind of intervention revolves around management taking action, and it includes practices whereby agency personnel are visible. Examples include: on-site host; entry stations with attendants; or visibility of agency personnel conducting maintenance, interpretive work, fire control, or other kinds of tasks. In addition to visibility, educating

the public about expectations may take place either at the site (at a fireside chat) or away from the site (at clubs and schools). Enforcement, access to the area, and fees are strategies some managers believe to be effective.

Generally, managers in all four states reported visibility practices to be effective in reducing problems. Managers in California believe visibility of agency people to be most effective but other practices were believed to be working well. For instance, working with users to determine their needs and desires was reported to be very effective which may reflect managers' experiences with working with users in the past. Closures of isolated and problematic sites was a measure favored by managers to reduce impacts. Managers also asserted that site and landscape design as well as vandal-proof materials are effective in the management of inappropriate behavior. In contrast they had fewer expectations that users would monitor their area.

Considerable numbers of Oregon managers regarded increased visibility, as well as public reporting of illegal incidents, to be very effective

strategies. Anonymous reporting practices have a long history in Oregon and this belief in the effectiveness of reporting may reflect previous success stories. Likewise, Washington managers favored increased visibility and also held that the public reporting of witnessed infractions is an effective strategy.

The data are limited in that we do not know what specific problems these strategies are addressing. For instance, in Alaska vandalism of natural resources is reported by managers as a problem, more so than vandalism of public facilities or vandalism of users' property.

Managers believe that entry stations, hosts at the site, and more enforcement are very effective in reducing impacts. In contrast, fees and closure of sites are perceived as ineffective. Because of the lack of observational and specific data for specific problems, however, we do not know which strategies are really effective and under what conditions.

Conclusion

Studies of social control often identify single intervention strategies to account for the reported increase or decrease in rates of deviance. Conflict-control theory, however, points to the difficulty of enforcing laws under conditions of widespread violations and emphasize that there are no regulatory panaceas. Some vandalism is so common as to be nearly invisible in terms of official reaction (e.g., littering, graffiti). What Gibbons calls "mundane crime" and Ross refers to as "folk crime" may be the customary activities of people with little access to political channels. If much of this vandalism is

folk crime, then we need to be cautious about the type of intervention employed to avoid alienation by users. Under these ambiguous conditions of social regulation, control theorists recommend flexible or "adaptive control" (Lemert 1972).

In our study, the response of recreation managers to intervention is evidently a broad-based, diverse approach ranging from user participation to education, official presence, reduced opportunity, and enforcement. Whether managers actually employ these practices or not cannot be discerned from these data. Managers may be expressing their ideological preferences rather than practices actually employed. We argue for more benign approaches in that these mitigate any potential alienation between managers and users. How do managers balance formal and informal control and what circumstances influence one approach over another? Do less populated areas require less rigorous law enforcement and more dependence on local norms and values?

The expectations and arguments of adaptive control suggest much more leeway for volunteerism and other existential approaches. Where a flexible system can be shown to both use appropriate interventions and integrating users, then we would argue we can talk about reducing vandalism. Future research should focus on the questions: What are "folk" as opposed to serious kinds of vandalisms? What intervention strategies should be used for these different kinds of vandalisms?



Vandalism to public facilities extends across the recreational opportunity spectrum from well-developed to primitive settings.

Harriet Christensen,



Involving users at recreation areas and visibility of personnel are a few of the many management strategies perceived by managers as effective in combating vandalism.

Harriet Christensen,



Harriet Christensen,

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An earlier version of this paper titled "Social sources of vandalism: a theoretical inquiry" was presented at the American Society of Criminology 35th Annual Meeting, November 9-12, 1983, Denver, Colorado.

This work is based on a cooperative agreement between USDA Forest Service, Pacific Northwest Forest & Range Experiment Station, and Department of Sociology, Western Washington University.

Vandalism: Taking The Offense

by Richard Kauffman

It is no secret to park and recreation directors all over the country that vandalism to property and equipment is an extremely costly crime. Though no hard figures are available, it is safe to assume that literally millions of dollars in labor and material are spent annually just to undo the damage that vandals have caused. Vandalism by definition is the willful or malicious destruction of property. In park and recreation areas these realities extend beyond this expected definition of smashed picnic tables, cut swings, broken windows, etc., to include the destruction of trees, natural areas, and other more passive kinds of property.

Common vandalism experiences in our field include damage to ball-fields from kids joyriding; broken glass in our play areas; security fences around swimming pools being cut; light fixtures in parking lots, around buildings, and even on playing fields and courts are used as targets; picnic tables and benches are broken; play equipment is deliberately misused and broken; basketball backboards and rims are beaten and misshapened; our trees are cut down; and graffiti is everywhere. How then can Park and Recreation Departments cope with this kind of rampant destructive force? In Alexandria, Virginia, the Department of Recreation, Parks, and Cultural Activities decided to fight back, or to take the offense.

Public Awareness Campaign

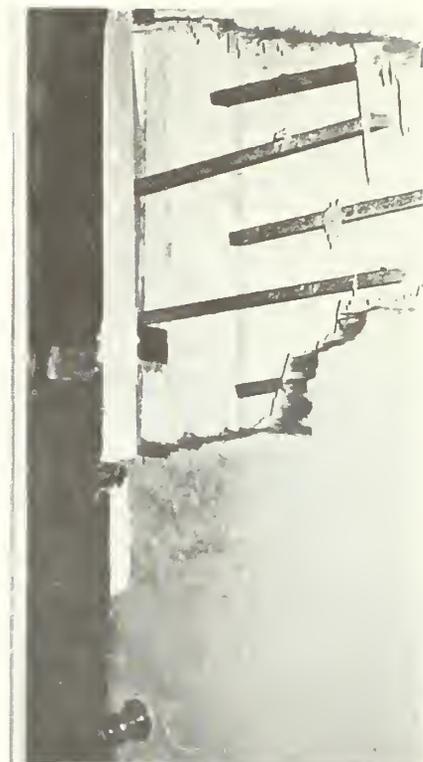
Tired of seeing new play equipment used for whittling posts, broken windows, cut fences, etc., the Department, under the leadership of Joe Hensley, Director; Richard Kauffman, Deputy Director; and Moses Simmons, Parks

Division Chief, decided to launch a campaign to make the public more aware of the extent of the vandalism problem. As a first step, the Department developed a slide show depicting various park and recreation areas and/or equipment that had been vandalized. Using the department's speaker's bureau, they took the "show on the road" to various citizens groups. Eventually the slide show was able to depict vandalized areas in each area of the city so that the show was more dramatic in its appeal to the citizens organizations in a given area of the city.

The original goal of increasing the public's awareness of the extent of the vandalism problem was achieved. With that success came other benefits: complaints regarding the conditions of parks or equipment were reduced and/or persons were more understanding and aware of the difficulties facing the department; because of the heightened awareness of the public, some funding was obtained to increase the equipment replacement program; and, incidents of vandalism were reduced.

In addition to graphically demonstrating the extent of vandalism in Alexandria to citizens groups, the Department also launched a campaign to increase the awareness of the private sector through slide shows and speeches to the Kiwanis Club, the Soroptomist Club, and other business-oriented groups. News releases were sent to local papers detailing the types of vandalism in Alexandria, and the estimated cost of the damage (\$100,000 in FY 1982).

Other City Departments, including the school system, were shown the slide show and given an orientation as to the extent of the problem, and their cooperation in



This door to a Recreation Center was destroyed by vandals.

Alexandria Rec. Parks & Cult. Act.

reporting acts of vandalism was solicited.

Once the awareness program was implemented, the Department set two other goals to achieve in its effort to combat vandalism: Police cooperation and preventive measures.

Police Cooperation

In order to gain the cooperation of the police in combating vandalism it was extremely important to get the message to as many police officers as possible. To that end, and with the cooperation of the Chief of Police, representatives of the Recreation and Parks Department made a presentation, including the slide show, at every police department *roll call* for one week. The impact was extremely successful. The goal was to ensure that each officer understood that vandals were persons who willfully and maliciously destroyed property resulting in an enormous cost to the citizens, and were not just youngsters having fun.

Also, vandals were committing crimes for which there were *penalties*. The Department stressed that it would prosecute in all cases

where vandals were apprehended. This policy, coupled with the heightened police awareness, resulted in the need to work with juvenile authorities regarding penalties.

Penalties

A vandal is generally a term applied to an unknown person who has caused destruction or damage to property. Unknown because one rarely sees a "vandal" or has the opportunity to see justice prevail with regard to the damage done by a vandal.

However, in Alexandria, with so many people now aware of the extent of the problem, the unheard of occurred: vandals were caught. If not in the act, then through creative and/or astute investigation. Once caught, penalties had to be levied.

Methods used to penalize vandals included restitution (cash payment) for labor and materials used to repair damage to a ballfield done by a teenager "circling the bases" in his car (the license number was secured by a school employee); prosecution of several youngsters who cut a fence to get into a swimming pool after hours (the police apprehended them in the act); and "working it off" for a young lady who had indicated on the walls of a recreation center who her boyfriends were (there were several—she confessed after the center director suspended the boyfriends until she came forward).

Perhaps the most graphic indication of the success of gaining police cooperation occurred when a police officer caught two nine-year-old boys carving their initials in a piece of wooden play equipment. He took the youngsters



Vandals set fire to wooden seats in an amphitheater.



The dedication sign at Alexandria's Simpson Stadium was completely destroyed.

home, and told their mother that the Recreation Department would be filing charges of vandalism. While that never happened, the boys were "sentenced," with the cooperation of their mother, to pick up trash and broken glass throughout the park.

Preventive Measures

Creating a more aware public is itself probably the best way to prevent or to reduce incidents of vandalism. There are, however, a number of other ways Park and Recreation Departments can help to reduce the probability of vandalism. Included in Alexandria's campaign against vandalism was a concerted effort to consider van-

dalism as a reality whenever planning or refurbishing a facility, or whenever repairs or replacement of equipment occurred. Some of those preventive measures include:

- The installation of flood lights with Texas shields high enough and bright enough to illuminate entire areas
- Reconsider the use of wooden play equipment vis-a-vis metal, or a combination of wood and metal
- Replace the mulch used in play areas with sand. Mulch cannot be cleared of broken glass, etc.; and can burn or smolder, creating another hazard
- Berms used as buffers between a park and a street have

been eliminated wherever possible

- Citizens groups have been "contracted" to clean parks in their areas, creating a sense of community pride, and lowering the cost of maintenance of the park

- Stronger, more durable, basketball rims are now available

- Do not plant softwood plants (azaleas, boxwoods, etc.) in active areas

- Plant larger trees (4" or more in diameter) in active areas. They will have a better chance of survival

- Fences should be at least 5' in height with no top rail

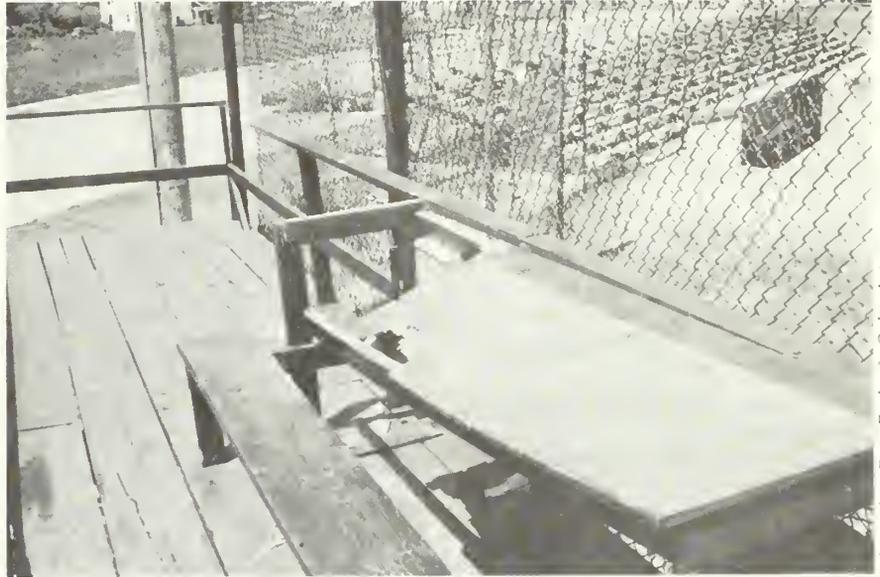
- Outside electric boxes should be of a thicker metal (old traffic control boxes are ideal).

It must be remembered that each community is different, and that the historic knowledge of the community by park and recreation officials is also a good tool to use in preventing vandalism and/or theft.

In Alexandria, for example, we do not install new tennis nets in the spring until after the fish have stopped running in local streams (we learned that the hard way).

Summary

Since the spring of 1982, when Alexandria started its campaign against vandalism, new incidents of vandalism have decreased about 50%. This success is directly attributed to the increased awareness of all Alexandrians of the problems and costs of vandalism, and to the preventive measures adopted by the Department to reduce the possibilities of vandalism.



The scorer's table at Alexandria's Municipal Stadium was vandalized.

The success of this campaign, however, should not be measured in one year. In order to maintain a successful fight, the awareness techniques must be continually utilized. In particular, the presentations to citizens groups and at police roll calls are crucial to maintaining the awareness of these groups. Also, news releases are another good method of educating the public, and conveying the facts concerning vandalism.

The benefits of initiating an at-

tack on vandalism are not only realized in a financial sense through the reduction in labor and material spent to repair, replace, etc., but they include a more sympathetic public, willing to be allies in preventing vandalism in their parks.

Richard Kauffman is Deputy Director of the Alexandria, Virginia, Department of Recreation, Parks & Cultural Activities.

Central Park Graffiti Removal Program

by Robert M. Powers and David A. Rosen

Graffiti has become a major form of vandalism throughout the country. Despite increasingly large expenditures to combat it, the problem persists. A unique and successful approach to graffiti removal has recently been implemented in New York City's historic Central Park. This article outlines the steps taken to establish and implement the Central Park program. Our objective is to provide a comprehensive model which can be used to help form similar programs in other major parks and park systems. The Central Park Graffiti Removal Program was formed in late 1981 under the direction of the New York City Department of Parks and Recreation and the Central Park Conservancy, a non-profit organization dedicated to raising private funds for the restoration of Central Park. Its formation was in response to nearly 40,000 square feet of graffiti which had accumulated in the past fifteen years on the numerous buildings, bridges, monuments and natural rock outcroppings.

Attempts by the New York City Parks Department Historic Monument Crew to clean and maintain the monuments within Central Park had been unsuccessful. This small crew of seven people has the responsibility for the maintenance, repair and restoration of all the monuments within the five borough park system (1500 monuments within 24,800 acres of park-land). The Monument Crew did not have the time or resources necessary to clean and maintain the diverse elements within Central Park. Acknowledging the difficulty of keeping the park from becoming overrun with graffiti, the City periodically awarded contracts to various cleaning contractors. But these "one shot" contracts were



Robert M. Powers



Robert M. Powers

A variety of removal systems and products were used to remove the extensive graffiti throughout Central Park.

only for a small area of the park and failed to have a significant impact since the surfaces were free of graffiti for only a short time before they were "hit" again.

What was needed to completely remove the 40,000 square feet of existing graffiti and to effectively ensure the fast removal of all future occurrences was a full time crew concentrated in the park and devoted exclusively to graffiti removal. By implementing a comprehensive and concentrated removal effort within the park boundaries, the impact of a park being reclaimed would be obtained. It was our objective to make that impact in order to show the public that Central Park was a well-maintained and safe resource

to be enjoyed by the New York City citizenry.

Working towards the difficult and at times elusive goal of a graffiti-free Central Park, a number of preliminary steps were taken before operations began. These steps included:

1. Conducting a survey of the park's graffiti,
2. Raising the necessary capital to implement and support the program,
3. Executing a formal training program, and
4. Purchasing the necessary equipment and supplies.

Survey

The survey of all the graffiti within the park was conducted by

a Columbia University Historic Preservation student intern during a two-month period. Information collected during this process provided valuable data on the square footage of graffiti, where it was located, and the type and condition of the masonry surfaces upon which the graffiti was located. Based on the information provided by the survey, it was possible to make the following important projections:

1. How many staff hours would be required to clean the entire park as well as specific locations.
2. The type of equipment and machinery required for the task.
3. The type and amount of cleaning supplies needed.

The importance of conducting an accurate survey of the graffiti cannot be overemphasized. Without the knowledge gained from this process, it is impossible to make the necessary management decisions in establishing a comprehensive program. In addition, the survey data is ultimately very useful to the crew supervisor in the field. With this information in hand, the supervisor can easily plan the day's route and specify the time and materials necessary for each location.

Fundraising

Probably the most important and often the most difficult step in the formation of a program of this size and nature is the raising of capital needed to start and to support the project. The costs include salaries, removal supplies, machinery, protective clothing and vehicle. Also included were the costs of the training program. The initial start-up cost for the Central

Park program in 1981 was approximately \$47,000.

Through the Conservancy's fundraising efforts, the Graffiti Removal program received commitments for funding for two years. Major contributors were the Banker's Trust Company which donated over \$65,000, the Osborne Foundation, and the National Trust for Historic Preservation. The New York City Department of Parks and Recreation provided the salaries for two employees, office space and storage facilities for the equipment and supplies. Only through these generous private contributions was this program made a reality. The City of New York could never have been the sole provider for the program. The coordination of funding and services from both the private and public sector was integral to the creation and successful implementation of the program.

Training Program

The third step in the formation of the Graffiti Removal program was conducting a formal training program which introduced the crew members to the disciplines, techniques and dangers involved in the cleaning process. Only by having skilled, knowledgeable and prepared crew members can a successful program be executed.

The Center for Building Conservation, a New York City based not-for-profit organization committed to the collection and dissemination of building conservation technology, was contracted to develop the curriculum for the two-week training program and to provide specifications for the equipment and supplies necessary for the program. The training program consisted of both classroom lectures and field demonstrations

emphasizing the following disciplines:

1. *History*—Depicted the evolution and development of Central Park from the 1860's to the present. The historic and architectural significance of the man-made and natural elements were discussed. The importance of the program was placed within this context to develop among the crew members a sense of pride and proprietorship in the park.

2. *Geology*—Introduced the crew members to the variety of masonry and stone surfaces within the park including granite, marble, brick, limestone, concrete and Manhattan schist. Compared the formation and composition of each of these surfaces.

3. *Chemistry*—Taught the basics of the chemical composition of paints and inks as well as the chemistry of the paint removers used to remove these markings.

4. *State of the Art in Masonry Cleaning*—Outlined were the multiple cleaning techniques available including pressure washing, poulticing and hydro-blasting. Each technique was demonstrated and evaluated and its use in Central Park was scrutinized.

5. *Occupational Safety*—Emphasized were the hazards involved in the various cleaning processes. The crew members were shown how to best protect themselves and the public from these hazards. Special consideration was given to the importance of wearing protective clothing and respirators during operations.

Purchases

From the specifications for the equipment and supplies completed by the Center for Building Conservation, the necessary purchases were made. The following list summarizes the components integral to

the implementation of a successful and efficient program.

1. *Vehicle*—To be used for the transportation of personnel, equipment and supplies. The vehicle must be powerful enough to pull a 200 gallon water tank and should be customized to include a trailer hitch, shelving and a pressure hose reel. Approximate cost is \$15,000.

2. *Machinery*—A portable cold water pressure washer with the capacity to deliver up to 1,500 p.s.i. pressure is the centerpiece of removal operations. The machine should also be adaptable to connect with a detachable, wet blast grit attachment with siphon. Approximate cost is \$6,000.

3. *Water Tank*—If a permanent supply of water is not regularly available at the removal site, it is necessary to have a portable water source. A 200 gallon, stainless steel tank mounted on full sized tires and hitched to the vehicle provides the required versatility. Approximate cost is \$3,000.

4. *Protective Clothing*—

a. *Protective Rainsuits*—These suits should consist of a hooded jacket with chemical resistant zippers or snaps, and either bib-styled overalls or elastic waistband pants. They need to be resistant to alkali and solvent-based paint strippers and be relatively tear-resistant. A reinforced, PVC coated rainsuit performs well. Approximate cost per suit ranges from \$25 to \$50.

b. *Boots*—Recommend ankle high work rubbers to slip over work boots. Approximate cost is \$15 per pair.

c. *Gloves*—Flexible, neoprene coated gloves with knit linings and a dipped, rough finish are quite resistant to chemical degradation. Approximate cost is \$50 per dozen.

d. *Respirators*—Use an over-the-face respirator with disposable,

organic vapor cartridges and dust mist prefilters. Approximate cost for outfitting each crew member per season is \$50.

e. *Hard Hats with Faceshields and Sound Barriers*—Complete and comfortable head and face protection. Approximate cost is \$40 per crew member.

Once all the equipment described was purchased, operations began.

The objective of the first season of operations was to remove as much of the graffiti as possible from the most visible locations in the park to display to the public that the park was once again being properly maintained. In the second season, which began in April, 1983, the crew concentrated mostly on the less visible sites. By the end of this season it is anticipated that all but the most problematic areas should be free of graffiti. To date, the three-man crew has removed over 30,000 square feet of graffiti.

Removal Systems

In order to effectively remove this vast amount of diverse graffiti from the wide range of masonry surfaces, it was necessary to employ a variety of removal systems and products. Specifically, five removal systems were employed in Central Park.

1. Alkaline Paint Strippers
2. Solvent Based Paint Strippers
3. Solvents
4. Abrasive Cleaning
5. Poulticing

Table 1 outlines the systems and products used on the diverse Central Park surfaces. We would like to emphasize that these are products proven effective in the unique circumstances of Central Park. Each specified product should be

carefully tested before being used in your location.

Alkaline Paint Strippers

The Alkaline Paint Strippers found to be the most effective on the brick and many of the granite surfaces in the Park were "Sure Klean Heavy Duty Paint Stripper" manufactured by ProSoCo Incorporated and "Brawn" by Penetone Corporation. These strippers worked particularly well on multiple layers of alkyd and acrylic spray paints and brushed-on oil based paints which have been on the surfaces for years. These two very potent strippers usually need to remain on the surface for a long period of time (30 minutes to 2 hours) to effectively remove most layers of paint. Before any alkali stripper is applied, pre-wet the surface and prepare a test patch to check for possible staining or other negative effects which the stripper may cause to the masonry.

In addition, these strippers need to be neutralized and the surfaces thoroughly rinsed with water. This is extremely important since the major drawback of this type of remover is the deposition of salts within the cleaned surface. Neutralization and a complete water rinse reduces the possibility of salt efflorescence. Special attention should also be paid to wearing the appropriate protective clothing specified in the previous pages, since contact with these strippers can cause severe burns.

Solvent Strippers

The most effective Organic Solvent Strippers used in the Central Park Project were "706 Paint Remover" manufactured by Anti-Graffiti Systems and the "DWR Series 1 and 2" manufactured by KRC Research. These strippers

Table 1

Recommended Techniques

Masonry Surface	Alkaline Type		Solvent Type			Pure Solvents			Poulticing	Hydro-blasting		
	HDS	Broom	706 Strpt	DHR I	DHR II	Acetone	Methchlorde	DHP		Blk Beauty	Beach Sand	1/2 Grit
Pink Granite	✓	✓		✓	✓							
Grey Granite			✓	✓	✓							
Marble				✓	✓			✓				
Limestone			✓									
Polished Granite						✓	✓					
Polished Marble						✓		✓				
Brick	✓	✓			✓							
Concrete Block											✓	
Cast Concrete											✓	
Manhattan Schist Outcropping										✓		✓

were effective in quickly removing alkyd and acrylic single layer spray paints and some magic markers from masonry surfaces such as limestone, granite and marble. Due to their milder chemical composition, it is less likely that these products will cause the staining or efflorescence associated with the alkalis. Thus these systems were frequently used on the granite and marble monuments.

A variety of straight solvents were useful on small patches of magic marker and spray paint on polished granite and marble surfaces. Acetone, methylene chloride and dimethylformamide each individually applied to the marking with a white rag produced excellent results. Thoroughly rinse the surface after the application of the solvent.

Abrasives

Three different types of abrasives were used in the program. Each of these products was used in conjunction with a hydro-blasting unit which is easily attached to the gun of the pressure washer. Whenever using these products, it is extremely important that the operators be fully protected from the dangers of silica particles. All personnel working in the immediate area must be wearing the proper respirators with silica pre-filters.

The three abrasives used were:

(1) Grade 00 "Beach Sand"—used on insignificant poured-in-place concrete or concrete block surfaces, (2) Coarse grit sand (1/4 or 1/2 grit)—used on Manhattan Schist outcroppings, and (3) "Black Beauty." This mineral grit is a by-product of the burning of coal and was also used on Manhattan Schist outcroppings. Besides being an extremely effective abrasive, Black Beauty is a low free silica grit and costs approximately one-half the amount of sand. Unfortunately the product is not as readily available as most sands since it is sold by only a few distributors of abrasive products.

Poulticing

A minimal amount of poulticing to remove graffiti was attempted during the 1982 and beginning of the 1983 removal seasons. More extensive experimentation of this technique will continue through the 1983 season. It is anticipated that this system will be utilized primarily on more problematic surfaces such as limestone and possibly sandstone.

Coatings

In addition to removing graffiti, the Central Park Team tested various graffiti-resistant coatings to determine the feasibility of incorporating into the protective maintenance system of Central Park. Experimental coatings were applied

to insignificant architectural features such as power boxes and concrete block service buildings which were frequent sites of reoccurring graffiti. Each coating will be evaluated on the following criteria:

1. Impact of ultraviolet radiation on the coating.
2. Ease of removal of graffiti from the coated surface.
3. Resistance of coating to solvents and strippers used in the removal process.
4. Adherence of coating to substrate after exterior exposure.

To date, two graffiti-resistant coatings have performed well using these criteria. They are "Sure Klean Graffiti Control" manufactured by ProSoCo, Inc., and "CPU 663" which is manufactured by KRC Research Corporation. Continued experimentation and evaluation of new and applied urethane, acrylic and polyester graffiti-resistant coatings are continuing.

Park Monitoring

Monitoring the park for new incidents of graffiti has become a keystone of the program. Approximately 1,000 square feet of graffiti have reappeared since operations began, all of which has been immediately removed. At least once a week the crew monitors all the sites that have been cleaned. If a previously cleaned site is rehit, the crew immediately re-cleans the



Robert M. Powers



Robert M. Powers



Robert M. Powers

Workers remove graffiti in New York's Central Park.

area. The key to keeping these sites free of graffiti is not to let up, but to clean the site immediately.

To date, two types of structures have not been cleaned by the Graffiti Removal Crew. Of primary concern are the bridges within the park. Constructed largely of New Brunswick sandstone, this porous and fragile masonry requires special attention. A continuing study of how to clean this type of surface is being pursued by the Center for Building Conservation in collaboration with the Central Park Conservancy and George Wheeler of the Metropolitan Museum of Art. The second type of surface which has not been cleaned are in those areas not frequently used by the public or not managed by the park's maintenance personnel. Until the future use of these areas is determined, the structures within these areas will remain uncleaned.

Conclusion

The Central Park Graffiti Removal Program has been extremely successful in meeting the goals established before the commencement of operations in May, 1982. In one-and-a-half years over 30,000 square feet of graffiti have been removed from a variety of masonry surfaces. The rate of recurrence of new graffiti is below 4%. Experimental cleaning/removal techniques and products as well as barrier coatings have been applied and evaluated. Technical information learned from the operations is being disseminated to professionals in the field as well as to the public. With the exception of a few locations, Central Park is free of graffiti. Any new occurrences can be easily and quickly removed. The difficult and elusive goal has been obtained. It is our hope that the success of this project will stimulate the formation and execution of similar styled programs throughout the country.

Robert Powers is presently employed with the National Park Service, Mid-Atlantic Regional Office in Philadelphia. David Rosen is attending the Harvard University Landscape Architecture Program.

A User-Orientation to Managing Vandalism

by John L. Heywood, Gary W. Mullins and Sally Blower

Vandalism is a persistent problem in parks and recreation areas that can have detrimental financial effects on organizations and adverse psychological effects on visitors. Selection of vandalism control strategies will be more effective and efficient if managers are aware of visitors' perceptions of the vandalism problem.

Vandalism is perhaps one of the greatest threats to the provision of quality park and recreation opportunities facing managers in the 1980s. Unchecked, it can have detrimental financial effects on organizations and adverse psychological effects on visitors—a combination which spells disaster for the sponsoring organization.

In the past two decades, the frequency and extent of vandalism has increased and its distribution has become more concentrated. Hence, certain areas have sustained a disproportionate amount of damage. Publicly-owned places in densely populated areas have borne the brunt of vandalism. Consequently, many inner-city parks have deteriorated considerably.

Vandalism is of substantial concern to both visitors and managers in many recreational areas. Results of recent research studies on vandalism indicate the considerable magnitude of the problem and provide evidence for its differential distribution and concentration in urban areas. These studies reveal severe deterioration in a significant number of city parks as a result of vandalism. A general conclusion of much of the vandalism research in the 1970s has strongly suggested that vandalism is an extremely expensive national problem which is often poorly managed by public agencies.

Vandalism in recreational areas can be analyzed in terms of two major effects: financial effects on managers and psychological effects on visitors. Although psychologists and sociologists have extensively researched the causation of vandalism, they have, unfortunately, scarcely noted its effects. Therefore, the limited body of research in this area must be viewed with comparative caution. Tentative conclusions, however, can be drawn from the sparse results of psychological and socio-medical research. This scientific evidence appears to corroborate circumstantial evidence and supports speculation that vandalism can, indeed, have detrimental psychological effects on people.

Psychological Effects

Studies in U.S. Forest Service campgrounds and Canadian provincial parks have shown that depreciative behavior may induce feelings of sadness, depression, and

cynicism; thus, it may significantly detract from recreational experience. It also has been demonstrated that vandalism can contribute to the deterioration of physical and mental health in the elderly.

Supposedly, the psychological effects of vandalism result in reduced visitation levels and ultimately, in the misuse of parks and other recreational areas. In fact, visitation levels have dropped substantially in various highly vandalized parks. Whether psychological effects of vandalism are the cause of such non-use or are simply a correlating factor is mere speculation. Thus, future research is necessary to quantitatively assess the magnitude and importance of these effects.

Financial Effects

The financial effects of vandalism on park management are two-fold. First, expenses incurred as a



The factual and value perceptions of damage to the natural environment differed for managers and visitors.

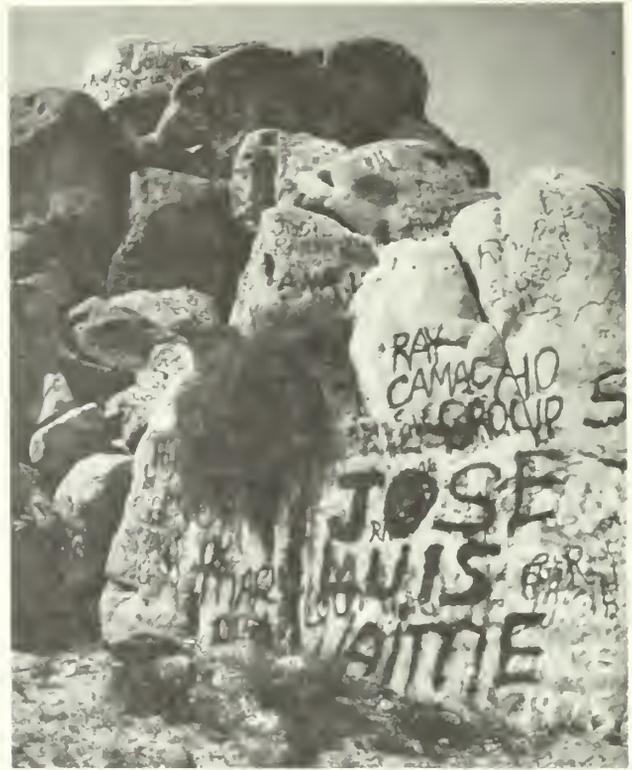
result of vandalism are responsible for reduced financial resources. Second, expansion and preservation of programs or facilities are then curtailed. Mitigation of the effects of vandalism often entails significant expenditures. Damaged facilities must be repaired or replaced, and installation of control systems can be exorbitantly expensive. Such corrective or preventive measures can utilize a significant portion of the management budget. For example, the U.S. Forest Service spent a significant 15 percent of its total 1978 recreational management and instruction budget on controlling vandalism and rectifying its effects.

As vandalism increases, the expenditure for its control rises and consumes a progressively greater percentage of the budget. Vandalism-caused budgetary restrictions can hinder facility or program expansion and development. The financial effects of vandalism, in terms of expansion restraints, can be considerable.

For example, in 1978, the U.S. Forest Service in California spent \$1,500,000 on vandalism control. If control of such depreciative behavior had not been needed, these funds could have been used to provide over 700 new camp or picnic sites. Since vandalism management can consume a sizable portion of the park and recreation budget, it becomes a particularly crucial consideration in an age of budget cutting. Constant whittling away of funds for repair and replacement purposes is seriously restricting facility improvement and program development in many areas.

Selection of vandalism control strategies, therefore, becomes a critical management decision. One approach, addressed recently by Thayer and his associates in *Van-*

Vandalism such as this extensive graffiti can have detrimental psychological effects on park visitors.



John Heywood

alism: The Menace to Leisure Resources in the 1980s, published by the National Recreation and Park Association, is to consider successful vandalism control strategies utilized in other similar park systems. Adoption of this approach, however, ignores one aspect of managing the problem—the perceptions of both the park manager and the users. These two populations must be taken into consideration.

Currently, the treatment of park vandalism lies mainly under the jurisdiction of middle- and upper-level managers. Managers generally aim for a unified approach to vandalism management based upon professionally acceptable criteria. This adoption of a managerial perspective can be described as a professionally-oriented approach. Because managerial judgments are the only views considered in professionally-oriented park management decision-making, the consequence can often be a stereotyped rather than an innovative approach to the treatment of vandalism. Although the management approach is professionally agreed upon, neither the economic effectiveness nor the practical efficiency of this strategy has yet been evaluated. To add a broader perspective to this problem, more research data based on dimensions

other than the professional orientation alone are needed.

Visitor/Manager Perception Study

A recent research project at The Ohio State University sought to add a visitor orientation to the problem. In that study visitors' and managers' perceptions of three levels of four different types of vandalism in parks within a major Ohio urban park system were measured. Perceptions of high, moderate and low levels of litter, graffiti, damage to the natural environment, and damage to man-made facilities were used as levels of measurement/categories. Study sites included six different urban park areas ranging in size from 46 acres to 4,806 acres. One hundred and twenty visitors and twenty-two managers were studied. Results show that:

- Factual perceptions of the types and extent of vandalism differed for managers and visitors. Managers' assessments of littering, damage to man-made facilities, and natural environment damage indicated that these problems were occurring at higher levels than visitors actually noticed.



J.M. Wert

Visitors considered high litter levels to be most detrimental.

- Managers were unaware of the factual perception differences between themselves and visitors.
- Value perceptions of the importance of different types of vandalism differed for managers and users. For example, managers considered high levels of damage to the natural environment as the most detrimental while visitors considered high litter levels to be most detrimental.
- Managers were unaware of the value perception differences between themselves and visitors.

Visitor needs have always been a primary emphasis in urban park management. In practice, however, visitor needs have been assessed by management professionals and have not been evaluated based on research of visitors' requirements. Therefore, park management decisions tend to be determined by professionally appropriate criteria to the exclusion of visitor need criteria. The philosophy of park management, however, is for the most part moving away from the rigid, stereotyped approach of the past towards more holistic, humanistic ideals using research-based strategies. Hence, managers who are becoming more responsive to and more concerned about the visitors' perceptions of problems may be thought of as adopting a user-oriented approach.

Management decisions have always been based on the utili-

tarian premise that park problems should be addressed in a way that produces the maximum benefit for the user. The extent to which managerial decisions actually fulfill their objectives depends upon the degree to which managers comprehend visitor views and needs.

Since practical and economic reality decree that all levels of vandalism cannot be completely eliminated, the comprehension of visitor views is critical for efficient and cost-effective management.

Theoretically, such a user-oriented approach to management would ensure that the various types and levels of vandalism are reduced to the extent that both financial and psychological effects are minimized.

Institution of this approach depends upon soliciting visitors' views on the types and levels of vandalism they consider most important. Acceptable and unacceptable levels and the types of vandalism could be deduced from interviews with park visitors. Management of vandalism based on the resultant data should ensure that the most important types and levels of vandalism be given priority treatment. Theoretically, the last important types and levels of vandalism have the lowest priority or need not be treated as they would presumably cause only minimal detrimental effects on visitors.

Adoption of the user-oriented approach could also result in considerable financial savings, as it might be shown that only partial elimination of vandalism would be necessary. The budget allotment could thus be reduced by the minimal expenditure for vandalism control satisfactory to the user. Consequently, maximal expansion of facilities and programs could take place. Utilization of the user-oriented approach for vandalism management should eventually result in an increase in the quality of urban parks and park management, and in visitor satisfaction. There is a critical need to address current perceptions of vandalism held by managers and visitors in urban parks, and to analyze the effectiveness of management in terms of a user-oriented approach as well as based on management standards.

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Park Watch in San Jose

by Jay Castellano

Biebrach Park . . . one evening in April 1979 . . . vandals start a fire in the tool room of the shelter building. The fire destroys the wood structure and its contents. The restrooms, within the concrete block section of the building, are the only things left intact. Arson investigators determine that gasoline was used to set the fire. Alcoholic beverages are found on the roof of the structure and on a nearby picnic table. Cost of the damages—\$50,000.

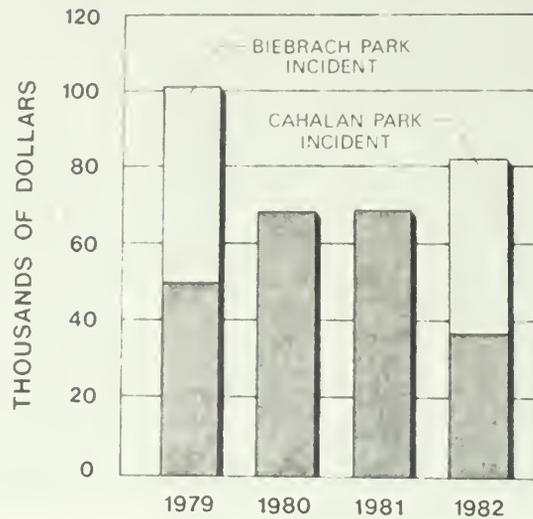
Cahalan Park . . . evenings in May and June 1982 . . . vandals take down eight light poles, destroy two softball backstops, and damage the tennis backboard and play apparatus. Repairs will cost \$42,000.

These are only two of the numerous vandalism incidents which occurred in parks throughout San Jose, California, during the period 1979 through 1982. Vandalism repairs totalled over \$330,000. Still, vandalism was not the most common crime that occurred. Police and Park Ranger reports showed that during this same period there were more incidents of assaults, narcotic violations, and sex-related offenses—all on city parks alone.

In order to alleviate this situation, the San Jose Parks and Recreation Department, with the support of its Parks and Recreation Commission and City Council, has since been using an "Action Plan" that outlines various strategies to be used to reduce and prevent crime in parks. The key strategy of this "Action Plan" is the Park Watch program.

Park Watch is similar to the nationwide Neighborhood Watch Program, coordinated by local Police Departments. It utilizes

VANDALISM COSTS



Repairs from 1979 through 1982 totalled over \$330,000.

citizen participation through community meetings to prevent and reduce crimes in parks. Park Watch requires cooperation and commitment from park neighbors (those whose homes or businesses have visibility of the park) and park users to report any unusual or suspicious park activities to the Police or Fire Departments, Park Rangers, or local recreation community center. A very important note is that San Jose Parks and Recreation is interested in gaining the assistance of park neighbors and users in combating crime in parks. The Department asks that citizens who witness incidents simply notify the proper authorities and allow them to handle the situation as is most appropriate.

Park Watch Meetings

During the summer of 1983, the Parks and Recreation Department coordinated and facilitated Park Watch meetings for residents and users around twenty of San Jose's 152 parks. The selection of parks was made through the cumulative suggestions of Recreation Supervisors, Park Maintenance Supervisors, and Park Rangers. The selection criteria was a combination of 1) current park crime rates, 2) parks whose recent crime increases indicate a potentially eruptive situation, and 3) parks whose neighbors and/or users have ex-

pressed a desire for this type of program.

With input from the Park Ranger staff and the Crime Prevention Unit of the San Jose Police Department, it was determined that the three most appropriate topics of discussion for a Park Watch meeting would be a Neighborhood Watch overview (in which the principles of crime prevention and reduction through community involvement are reviewed), the Park Watch presentation (which describes in detail how park neighbors and users may apply these same principles specifically to parks), and a question and answer period between the community and various city staff members.

Based upon this format, the information presented, and the concerns most commonly expressed at the meetings, the specific city staff asked to represent their sections at each Park Watch meeting are the: Citizen Safety Project Coordinator, responsible for the general coordination and facilitation of each meeting; Recreation Supervisors, available to discuss recreation programming as a crime prevention strategy; Park Rangers, the primary focus of the question and answer period; and the Park Maintenance Supervisors and City Council representative, each serving as city resource staff available to participate in the question and answer period with the Rangers.



San Jose Parks & Rec. Dept.

Park Rangers were some of the city representatives addressing community concerns at a Park Watch meeting.

As mentioned before, the major objective of the program is to encourage citizens to contact the proper authorities when an incident is witnessed. Therefore, during the course of the meeting, the phone numbers, as well as the range of responsibility and jurisdiction, of the Police and Fire Departments, Park Rangers, and local recreation community center are continually emphasized during each meeting.

Just as Park Watch meetings have been an opportunity for city staff to communicate with the citizens, the meetings have also been an opportunity for the citizens to express their specific concerns to staff. Though these concerns will obviously differ from park to park, and even more so from city to city, the major problems occurring in San Jose parks, according to the neighbors and users, involve park curfew violations, malicious mischief (vandalism), alcohol and narcotics use, consequential speeding of vehicles around parks, and parking violations. In addition to asking for the enforcement of the laws and ordinances relating to the above, communities frequently ask the city for additional security lighting on parks to deter late-night, inappropriate activities.

Measurements of Success

As a result of the Park Watch meetings, an ideal measurement of success would be to see an increase

in the amount of calls-for-service to the authorities by those who attend the meetings, assuming that the actual incident count for that area remained the same after the meeting. In other words, for that same area, because there would be more calls-for-service from which crime reports may originate, crime reports would show an increase in crime. Within the San Jose system, a record of calls-for-service by individual park site and by caller cannot be effectively traced currently. Still, enforcement officers have subjectively reported an apparent increase in calls.

The other measurement of effectiveness to be used in San Jose are the follow-up Park Watch meetings at which citizens offer their feedback on the program.

Preparatory Guides

Based on an analysis of the project's initial strengths and weaknesses, the following are some of the notes used to improve San Jose's program and its delivery system. These notes are intended to serve as preparatory guides to those who are in the midst of preparing their own Park Watch-type of program.

- It is extremely important that this program, though originating in Parks and Recreation, be developed in cooperation with the

Police Department. In addition to agreeing on inter-departmental reporting and response responsibilities, the Park Watch meetings (contents, materials, clientele, etc.) must complement Police programs that deal with crime prevention (Neighborhood Watch). Also, the Police are obviously the primary informational resource for any crime prevention presentation.

- For greater meeting attendance and program effectiveness, staff must address their publicity efforts to not only the residential park neighbors, but also the neighboring businesses and the park users—everyone who may serve as the eyes and ears of the law enforcement agencies for a particular park. Of course, the largest Park Watch groups will be able to see and report the most incidents. Additionally, identifying key community members to help talk to other neighbors about Park Watch and any upcoming meetings is definitely a profitable investment.

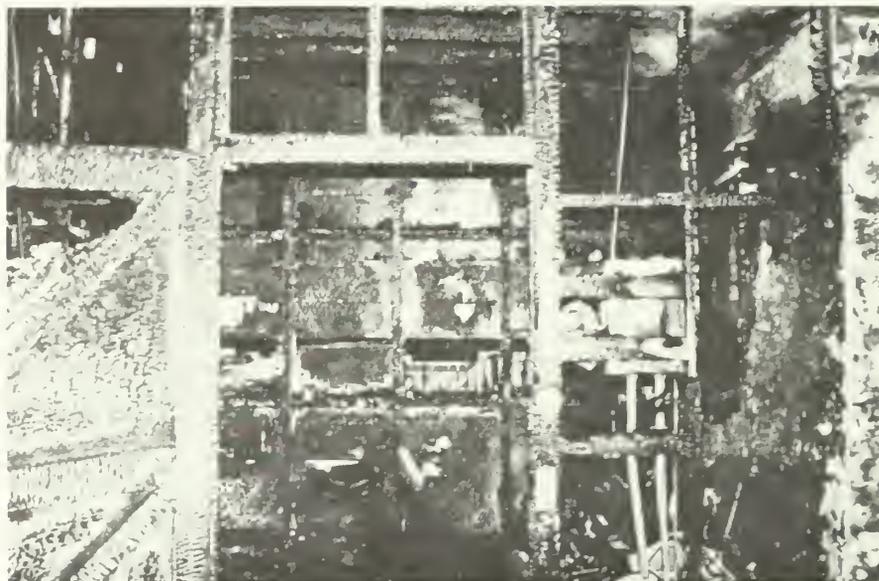
- In presenting Park Watch, it is important that Parks and Recreation staff attend the meeting with other city staff as additional resources.

As previously mentioned, San Jose Park Watch meetings include Park Rangers (and Police, as available), Parks Maintenance staff, City Council representative and the Recreation Field Supervisors. It must be realized that Parks and Recreation staff are experts on maintenance and programming, the Police and Rangers are experts on law enforcement, and each must stay within their specialty to be most effective. However, if the community and their park concerns are to be addressed as completely and as promptly as possible, Parks and Recreation should facilitate these types of community meetings.

Since San Jose Park Watch was first publicized in January 1983, park crimes city-wide have decreased by 19.3% as compared to the same period the previous year. A more specific example of Park Watch success is Cahalan Park of South San Jose. A Park Watch meeting was held to address their \$42,000 vandalism incidents of May and June 1982. The residents were given the basic Park Watch information regarding the different law enforcement agencies and their phone numbers. They also had the opportunity to communicate their concerns about additional patrolling of the park by Police and Park Rangers, expediting vandalism repairs (particularly security lighting), and the installation of speed bumps on the residential streets surrounding Cahalan Park. Since their Council representative was attending the meeting, their concerns were immediately heard at the highest level in the system.

One month later at a follow-up Park Watch meeting, new security lighting was installed, park patrols were adjusted to give more attention to Cahalan Park activities, and the Traffic Operations Department was preparing a needs study for street undulations surrounding the park.

This is only one example of actions and citizen satisfaction to be fostered by Parks and Recreation Departments through the active facilitation of inter-departmental cooperation, coordination of concerned neighbors, purposeful community meetings, and a sincere desire to improve park safety and problems. The San Jose Parks and Recreation Department has seen Park Watch reduce vandalism repair costs and crime rates drastically. Community involvement and general public awareness of



Park Watch meeting fliers must be distributed to park neighbors and users.



MAKE THIS NEIGHBORHOOD
A SAFE PLACE TO LIVE
ATTEND YOUR



PARK WATCH & NEIGHBORHOOD WATCH MEETING

THIS IS A PROGRAM TO ELIMINATE CRIME AND VANDALISM
IN YOUR NEIGHBORHOOD AND ON YOUR PARK.



I'M YOUR PARKS & RECREATION
REPRESENTATIVE
CALL ME FOR FURTHER INFORMATION

MEETING TIME

MEETING PLACE

OFFICE LOCATION & PHONE NUMBER

Results of an arson incident in Biebrach Park, San Jose, in 1979.

this type of program is helping San Jose to keep its parks an enjoyable environment for public recreation.

Jay Castellano is the Citizen Safety Project Coordinator for the City of

San Jose Parks and Recreation Department. More information on San Jose Park Watch may be obtained by contacting Mr. Castellano at 151 West Mission Street, San Jose, California 95110, (408) 277-4661.

Effectiveness Evaluation of Management Alternatives for Dealing with Park Safety and Security Problems

by James E. Fletcher

In recent years, a growing concern about the impacts of crime on park use has been expressed by park administrators and members of user publics (see Conners, 1976; Conway, 1981; Chubb and Westover, 1981). If a park manager suspects that perceived or actual safety and security problems are adversely affecting visitor use of a park, a detailed identification and description of the nature and extent of these problems should be the first step in planning management alternatives directed at reducing these problems. The manager should then attempt to measure the effectiveness of these management alternatives by implementing one or more on a trial basis and closely monitoring the change in the number of actual as well as perceived safety and security problems. This can be a time-consuming and costly process which requires careful control and monitoring to accurately assess the results.

The information presented here includes a description of one approach used to formulate and test management alternatives directed at park safety and security problems. In addition, a discussion of the findings from the study are presented for managers who may be considering similar approaches for dealing with safety and security problems in their parks.

Site Selection and Study Objectives

Somerville Lake, Texas, was chosen as the study site for this research because it was considered representative of many U.S. Army Corps of Engineers reservoirs in terms of use characteristics and management practices. The study was undertaken during the summers of 1981 and 1982 to document park safety and security problems at Somerville Lake and



Entrance station at Welch Park, Somerville Lake, Texas.

U.S. Army Corps of Engineers

to test the potential effectiveness of major managerial alternatives available to the reservoir manager that could be utilized to reduce or eliminate major safety and security problems.

The three objectives of this study were:

- a. Identify and describe the types and numbers of safety and security problems that park users experienced at the lake,
- b. Determine how those problems affect visitor perceptions of safety and security in the parks at Somerville Lake, and
- c. Evaluate the effect of user fees and controlled visitor access on actual and perceived safety and security problems in the parks.

Collection of Data for Evaluation

During the first year of the study, an identification and description of safety and security problems and their impacts on visitor use and enjoyment of the parks at Somerville Lake was completed to serve as baseline data for

effectiveness evaluation. Baseline data for the first year and follow-up data for the second year were collected from two sources:

- (1) crime and incident reports from area law enforcement agencies and the park managers; and
- (2) structured on-site interviews with park users.

All data reported for 1981 and 1982 were collected between 15 May and 15 September, the period of heaviest use at Somerville Lake. Sample size the first year of the study was 504 on-site interviews and 629 the second year.

The two sources of data used for evaluation were selected for the following reasons:

- (1) If crime and incident reports were the only data sources from which data were collected and if, for example, increased patrols were a management alternative selected to address crime problems in the parks, reported crime might increase because of the availability of patrol officers which would facilitate more reporting even though the actual crime rate might have declined. Therefore,

reported crime alone might lead the manager to conclude that crime in the parks was a growing problem despite increased patrols, or that patrols were ineffective in reducing crime problems since reported crime does not usually provide an accurate indication of actual crime when major management changes are made.

(2) On-site interviews with park visitors should give the manager a more accurate assessment of actual crime problems, crime rates and accidents, since many crimes and accidents are not reported to agencies. Data from interviews provide a more complete view of the problem and a more sound basis upon which to measure the effectiveness of management alternatives directed at reducing the problems.

(3) Statistics on reported crime provide no information on visitor perceptions of crime and accident problems. Since human perceptions shape behavior, the manager needs to assess visitor perceptions regarding park problems and how those affect visitor behavior. On-site interviews are a good method for gathering data to assess visitor perceptions regarding (1) problems and (2) the relative effectiveness of management alternatives which could be directed at addressing those problems. In addition, data on visitor perceptions collected before and after management changes can be used to evaluate the effects of the changes on perceptions and behavior.

Evaluation of the Effectiveness of Controlled Access and Use Fees

During 1981, five Somerville Lake parks (Welch, Overlook, Big Creek, Yegua Creek, and Rocky Creek) were managed by the U.S. Army Corps of Engineers and two

(Birch Creek and Nails Creek) were managed by the Parks Division of the Texas Parks and Wildlife Department. Two of the Corps-managed parks (Welch and Overlook) were designated as day-use areas, though camping was permitted but not encouraged. Access to these areas was controlled with no entrance gate or gate attendant. The three remaining Corps-managed parks and the two state parks were managed for fee camping and day use. Fee booths and gate attendants were provided at each of these areas during the fee season (March through October). In addition, the state parks were patrolled by commissioned law enforcement personnel employed with the parks.

Welch Park, Overlook Park, and Big Creek Park accounted for 40 (74.1%) of the 54 violations and accidents reported to park authorities and area law enforcement agencies between 15 May 1981 and 15 September 1981. Welch Park alone accounted for 27 (50%) of these, while Overlook accounted for 8 (14.8%) and Big Creek 5 (9.1%).

Safety or security problems (i.e., park rule violations, crimes and accidents) were reported as having been experienced at Somerville Lake by 195 (38.9%) of the 504 persons interviewed in 1981. Eighty-eight (45.1%) occurred within a designated park area. Disturbing the peace was the most common type of problem with injury and theft as the second and third most common problems in the parks. According to persons interviewed, only 27.1 percent of all incidents were reported to a park ranger, park attendant, or local law enforcement officer. Minor offenses, such as disturbing the peace and theft of less than \$50 were the least reported. However, some felony crimes, such as sexual

assault and sexual indecency, were also under-reported (see Table 1).

Park users' perceptions of safety and security problems in the parks were measured by asking interviewees if, in their opinion, each of eight types of crime was a problem in the parks at Somerville Lake. According to 1981 data, driving while intoxicated was perceived to be a major problem by 60 (13.5%) of the interviewees, while 57 (12.6%) perceived disturbing the peace to be a major problem. (See Table 2.)

A statistical analysis of interviewee responses to the eight perceived crime problems and major park rule violations in Somerville Lake parks revealed that a significant difference existed between mean or average responses of interviewees from the fee parks and the mean responses of interviewees from the parks which contained one or more non-fee areas. Thus, a major finding of the first year of the study was that actual and perceived crimes in fee parks with controlled visitor access were significantly fewer than in non-fee parks with uncontrolled access.

During the spring of 1982, most of Overlook Park was converted into a fee area with controlled access through a manned entrance gate. On 1 July 1982, Welch Park, a non-fee Corps-managed area, was leased to the City of Somerville, Texas. The city converted the park into a fee day-use area and began to channel all traffic through a manned entrance gate. Hourly patrols by the city's police department were also begun. Detailed data on actual as well as visitor-perceived safety and security problems collected and analyzed prior to these two conversions facilitated the evaluation of the impacts of these changes on actual and perceived safety and security problems.

Table 1
Problems Experienced by Visitors Interviewed in the
Parks at Somerville Lake, Texas—1981 and 1982

Type of Problem	Number Experiencing the Problem		Percentage of Total Respondents	
	1981	1982*	1981	1982
Theft of less than \$50	23	14	4.6	2.2
Theft of \$50 or more	18	2	3.6	0.3
Vandalism	17	11	3.4	1.8
Disturbing the peace	80	71	15.9	11.3
Assault	6	2	1.2	0.3
Sexual assault	6	4	1.2	0.6
Holdup	4	0	0.8	0
Sexual indecency	15	13	3.0	2.1
Accidental injury	26	33	5.2	5.2

*Some respondents reported more than one problem.

Between 15 May and 15 September 1982, 49 separate incidents involving crimes, major park rule violations and accidents in the parks were reported to park authorities and area law enforcement agencies. Of these, 7 (14.3%) occurred in Welch Park, which was a drastic decrease from the 27 (50%) incidents reported from that park in 1981. A large portion of Overlook Park was converted to a fee park with controlled access prior to the collection of the 1982 data. Overlook accounted for 14 (18.6%) of the incidents reported in 1982. However, only 3 of these 14 incidents occurred in the fee portions of Welch and Overlook where access was controlled which demonstrates that parks with controlled access are more secure for visitors than parks with uncontrolled access at Somerville Lake.

Only 141 (22.4%) of the 629 visitors interviewed in 1982 reported having experienced a safety or security problem during a visit to Somerville Lake. This was a significant decrease (16.5%) over the 1981 figures. Seventy-six (53.9%) of these occurred within the seven designated park areas. Data on specific types of problems experienced by visitors interviewed in 1981 and 1982 presented in Table 1 show a reduction in the percentage of visitors who reported having experienced one or more of eight crimes in 1982 as compared to 1981.

The three parks with non-fee public use areas (Welch, Overlook, and Big Creek) accounted for 43 (56.6%) of the 76 incidents reported in 1982. This was a decrease of 7 (14.0%) from the 50 reported during on-site interviews during 1981. However, the percentage of the total number reported remained about the same—i.e., 56.8% of all reported inci-

idents in 1981 and 56.6% in 1982. A more detailed analysis of the time and place of occurrence of each incident reported from Welch, Overlook, and Big Creek in 1982 revealed that 72% of the incidents occurred in a non-fee area of the park where uncontrolled access was permitted, or occurred in Welch Park prior to its conversion to a fee park with controlled access on 1 July 1982.

Data on crimes committed in the parks at Somerville Lake as reported (1) to park authorities and area law enforcement agencies and (2) to interviewers during on-site interviews show an overall reduction in the crime rate in 1982. The greatest reduction occurred in that portion of Overlook Park which was converted to a fee area with controlled access in 1982 and in Welch Park after its conversion to a fee park with controlled access on 1 July 1982.

A detailed analysis of 1982 interviewee perceptions of crimes in the fee areas compared with those from the non-fee areas of Welch Park and Overlook Park revealed that interviewees in the non-fee areas of these parks perceived each of eight crimes and major park rule violations to be greater problems in those areas than interviewees in the fee areas. The 1982 data also revealed that 48 (8.5%) of the persons interviewed in the seven parks at Somerville Lake perceived driving while intoxicated to be a major problem, and only 38 (6.7%) of the 1982 interviewees

perceived disturbing the peace to be a major problem (see Table 2). Thus, the 1982 statistics on perceived crime problems in the parks showed a marked decrease (5.0%) for driving while intoxicated and 5.9% for disturbing the peace) over 1981. This lends support to a conclusion that visitors perceived the parks to be safer in 1982 than in 1981, which may largely be explained by the conversion of the two parks with the highest visitor-perceived crime rates (Welch and Overlook) to fee areas with controlled visitor access through a manned checkpoint. In addition, Welch Park was routinely patrolled by the Somerville Police Department after 1 July 1982, which further impacted actual and perceived crime problems in that park as evidenced by reported crimes and visitor perceptions measured by the on-site interviews.

One common visitor response to actual or perceived crime in a park area is avoidance of the area (see Chubb and Westover, 1981). The impacts of actual and perceived safety and security problems on park use and enjoyment were evaluated in this study by asking interviewees if they would avoid any of the parks at Somerville Lake because of crime problems, and if so, which parks they would avoid. In 1981, 8.9 percent of the persons interviewed said they would avoid one or more of the parks at Somerville Lake. Of the 8.9 percent, 7.7 percent indicated that they would avoid either

Table 2
Visitor Perceptions of Crime in Somerville Lake Parks
1981 and 1982

Type of Crime	Visitor-Perceived Significance of the Problem					
	Not a Problem		Minor Problem		Major Problem	
	1981	1982	1981	1982	1981	1982
	Number (%)	Number (%)	Number (%)	Number (%)	Number (%)	Number (%)
Theft	306 (68.0)	428 (75.4)	113 (25.1)	120 (21.1)	31 (6.9)	20 (3.5)
Vandalism	329 (72.6)	439 (77.3)	100 (22.1)	104 (18.3)	24 (5.3)	25 (4.4)
Assault	388 (86.2)	483 (85.6)	49 (10.9)	71 (12.6)	13 (2.9)	10 (1.8)
Holdup	388 (86.8)	509 (90.4)	48 (10.7)	49 (8.7)	11 (2.5)	2 (0.9)
Disturbing the peace	261 (57.6)	388 (68.4)	135 (29.8)	141 (24.9)	57 (12.6)	38 (6.7)
Sexual assault	399 (88.7)	502 (89.5)	40 (8.9)	54 (9.6)	11 (2.4)	5 (0.9)
Sexual indecency	389 (86.3)	483 (86.4)	47 (10.4)	65 (11.6)	15 (3.3)	11 (2.0)
Driving while intoxicated	267 (60.3)	392 (69.5)	116 (26.2)	124 (22.0)	60 (13.5)	48 (8.5)

Welch Park or Overlook Park, while 1.2 percent said they would avoid one or more of the five remaining parks (Yegua Creek, Rocky Creek, Big Creek, Nails Creek, or Birch Creek). In contrast, only 30 (5.5%) of the persons interviewed in 1982 indicated that they would avoid one or more of the parks at Somerville Lake. Of these, 30, 13 (2.4%) indicated that they would avoid Welch Park and 6 (2.2%) said that they would avoid Overlook Park, which was a reduction from 1981. This finding together with the findings previously discussed support a conclusion that the conversion of Welch and Overlook to fee areas with controlled visitor access resulted in a significant reduction in perceived and actual crime in those areas, which should result in greater visitor use and enjoyment of these areas.

Increased Park Patrol

Since increased park patrol is one management alternative for dealing with actual as well as perceived crime problems, the potential impact of patrol by rangers and law enforcement officers on safety and security perceptions of park visitors were evaluated in this study by asking the visitors who were interviewed if the occasional appearance of a ranger or law enforcement officer made them feel more safe or less safe during their park visits at Somerville Lake. A

total of 78.5 percent of the 1981 respondents and 77.3% of the 1982 respondents indicated that the occasional appearance of a ranger or law enforcement officer made them feel more safe or much more safe, 17.5 percent of the 1981 and 20.6 percent of the 1982 respondents indicated that they would feel neither more safe nor more unsafe, and only 4.0 percent of the 1981 and 2.1 percent of the 1982 said that they would feel more unsafe or much more unsafe. The persons who indicated that they would feel more unsafe or much more unsafe were all in the 15 to 24 age group. Therefore, routine park patrol appears to improve visitor perceptions of safety and security held by the park users at Somerville Lake. However, actual implementation and monitoring of law enforcement patrols would provide a more sound basis for evaluation. This is a viable management alternative which should be tested in a future study of this type.

Conclusions

Managers should be aware that this study did not include collection and analysis of data from non-users of the parks at Somerville Lake. Such a study may have revealed that non-users might have been willing to use the parks at Somerville if safety and security measures were improved. This is implied in the data collected and analyzed on reasons for less use and enjoyment of the parks. How-

ever, a study of non-users would have to be conducted to more clearly evaluate this implication.

From analysis of the crime and accident reports, and the visitor responses on interview items concerned with perceived safety and security in the parks, it was concluded that the areas with controlled access were safer than the areas with uncontrolled access at Somerville Lake. This difference may be largely attributed to the fee park areas having controlled access through a manned entrance station and requiring all visitors to check in with the station attendant. Persons who have a desire to commit deviant or criminal acts may not like the visibility that they receive at these controlled entrances and therefore go to the areas with unrestricted access.

In addition, the two state parks are routinely patrolled by commissioned park law enforcement officers, which may further deter deviant behavior in those areas. This appears to be supported by the finding that the two state parks had the lowest crime rates of the seven parks at Somerville Lake, and Welch Park experienced a significant decline in its crime rate after its conversion to a fee park with controlled access and routine police patrol by the Somerville Police Department.

This study (1) revealed that actual and perceived safety and security concerns negatively affect use and enjoyment of parks; (2)

demonstrated that perceived crime rates in the seven study parks were much higher than the reported crime rates, but varied proportionately and in the same direction as reported crime rates between parks; (3) showed that crimes, particularly minor offenses, were under-reported, especially those that occurred in non-fee parks; (4) demonstrated that safety and concerns were important reasons for reduced use and enjoyment of certain park areas at Somerville Lake; and (5) revealed that safety and security problems and concerns were greatest in parks with unrestricted access.

Methodology used in this study should be useful to resource managers to (1) identify, more clearly define, describe, and determine the relative importance of reasons for reduced use and visitor satisfaction in order to more efficiently allocate limited management resources to address these problems; (2) profile the nature and importance of safety and security concerns of park users as a first step to identifying potentially effective management strategies to address these concerns; and, (3) test possible management strategies, such as increased patrol by rangers and law enforcement personnel, which are directed at addressing safety and security problems. In addition, the managerial implications discussed in this report should be applicable to most Army Corps of Engineers recreation areas in dealing with visitor safety and security problems.

Somerville was chosen by the Army Corps of Engineers as the study site for this research because it is representative of many Corps of Engineers reservoirs around the United States in terms of use characteristics and management practices. Though the results of



Sign and entrance station at Overlook Park, Somerville Lake, Texas.

this study must be regarded as tentative, related research in other types of parks around the U.S. using the same or similar data collection and evaluation methods may serve to build upon the Somerville findings, thus providing a more sound basis of managerial guidelines directed toward improving park safety and security in other types of recreation areas.

NOTE: The study discussed here was supported through funding provided by the U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi.

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Vandalism—The Continuing Menace

by Carl E. Schoening

Five years ago the Montgomery County Park Department formed a special Task Force to deal with the ever increasing problem of vandalism. Our purpose was to study and identify what types of vandalism were occurring, to determine the locations where it was happening most frequently, and to devise preventive measures. We realize that vandalism cannot be completely controlled due to the circumstances under which it is perpetrated, i.e., drug related, spontaneity, peer pressure, idleness, etc. However, the Task Force, by combining the talents and ideas from the various park department divisions, provided some positive insights into this perpetual problem that will help prevent or reduce the frequency and severity of vandalism incidences within our 26,000-acre park system. Our approach was to study four major areas of concern:

- Design—structural and landscape
- Park maintenance techniques
- Park police role—security and patrol
- Community relations—informative outreach

Defining Vandalism

In order to more fully understand the true meaning of the subject before us, I read several books and articles pertaining to vandalism and researched methods to combat it. All of us can conjure up a definition for vandalism without difficulty, but the following definitions provide a clear understanding of this recurring problem.

As defined by Grady Clay, Editor of *Landscape Architecture Magazine*, vandalism is *a message of deep anger, frustration and abnormal standard of conduct*, and as defined by Joe Haggerty, Asst.

Director, Morris County, N.J. Park Commission, vandalism is *willful and thoughtless behavior resulting in the destruction or defacement of park and recreation areas and property*.

Design Criteria

The most significant accomplishment of the Task Force was the formulation of Guidelines for Design and Construction of Park Buildings in Montgomery County, Maryland. These guidelines, which were adopted as departmental policy, provide definitive information to both staff designers and consultants to ensure that building designs encourage measures that will prevent or minimize the effects of vandalism during the concept/design and planning stage. All building plans will be reviewed by a design review committee including the architect, maintenance superintendent, recreation staff, building maintenance supervisor, horticulturist, and park police, to determine if we are avoiding past mistakes and are anticipating future problems.

Many potential maintenance and vandalism problems can and should be solved during the planning, design and construction phase. Design is like a thread that is interwoven into all that we attempt to accomplish, involving from its conception—maintenance, protection and security, and public relations.

Further, it should be noted that generally damage will be less of a problem at a facility that serves a variety of people and thus is widely perceived as a community benefit. As you review the following Building Design Guidelines, you will note that our purpose and intent is to reduce vulnerable objects like windows, doors, gutters and

downspouts, etc., as a means of coping with potential vandals.

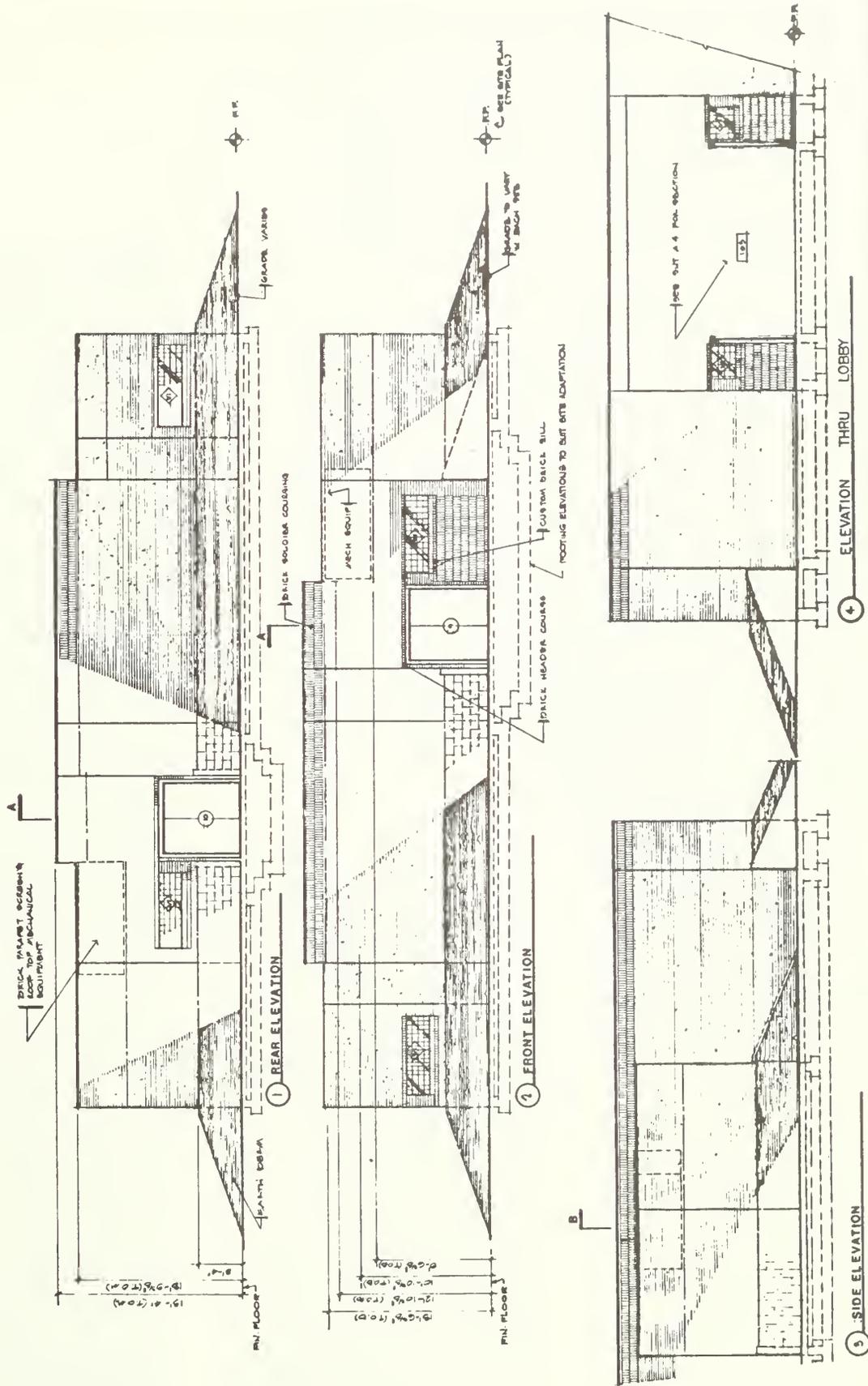
General Guidelines for Design

- A. Design for low maintenance and vandal-resistant facilities.
- B. Design for all unintended uses—considering every wall is a potential graffiti tablet, every gutter a chin-up bar and every window a target.
- C. Use durable and easily-repaired materials and surfaces.

Specific Recommendations Include

- A. *Lighting*—provide ample interior and exterior lighting for safety and vandalism-reduction.
- B. *Windows*
 - 1. Locate high and use vandal-proof materials (example: Lexan)
 - 2. Eliminate windows on the backs of buildings or those on woodland sides.
 - 3. Skylights are effective substitutes for windows.
 - 4. Use small windows or those with small pieces of glass that are less expensive to replace.
- C. *Doors*
 - 1. Location—consider visibility of entryway.
 - 2. Should have metal plate welded to metal door.
 - 3. All double doors must have middle post.
 - 4. Eliminate as much exterior hardware as possible.
- D. *Gutter and Downspouts*
 - 1. Use recessed gutters and internal downspouts.
- E. *Roof*
 - 1. Use standing metal seam with severe slopes whenever possible.
 - 2. Avoid asbestos/composition/wood shake shingles on one- or two-story buildings.
- F. *Walls*
 - 1. Use fireproof materials.

SPENCERVILLE RECREATION CENTER - Designed with vandal-proof features.



2. Provide easily repainted surface.

G. Restrooms

1. Walls—easily cleaned, durable material (example: Spectra glaze).

2. Partitions—block walls with swing doors.

3. Mirrors—eliminate.

4. Fixtures—use “super-secure” at shelters.

5. Shelter restrooms—should be equipped so that plumbing can be drained in the winter (freeze-proof).

6. Vent stacks—need special design consideration to prevent vandalism.

H. Lighting

1. Interior-use—recessed fixtures.

2. Exterior—buy vandal-proof fixtures.

3. Provide adequate lighting at all entrances and for the building perimeter.

4. Parking lots and walkways must be lighted when buildings are used at night.

I. Fireplaces

1. Eliminate.

J. Entrance Ways

1. Avoid recessed situations.

2. Place where highly visible to streets/roadways and available lighting.

K. Landscaping

1. Provide adequate visibility to all entrances.

2. Keep deciduous trees elevated for visibility.

3. Avoid planting shrubbery next to buildings that may provide hiding places.

4. Avoid using gravel or stones near buildings which can be picked up and thrown.

5. Do not plant trees so close to building that they can provide access to roof.

L. Location

1. For recreation buildings

situated at remote sites, consider providing an apartment as part of the structure for security.

As a result of this study our staff architect designed a recreation building that accommodated a majority of the Task Force’s “anti-vandalism” recommendations. The most important vandal-proof ideas incorporated into this design include recessed gutters and enclosed downspouts, skylights, reduction of windows and unscalable walls. Our new construction crew is currently completing this structure and the building will be dedicated for public use in late November 1983. We anticipate that this building will be highly successful and the design will be repeated as a duplicate facility at other park locations in the future.

Park Maintenance Techniques

Psychologically good housekeeping, clean and well kept parks and prompt repairs offer major deterrents to vandalism. The “three R’s” of a park maintenance program should include:

- Repair splatters and graffiti promptly.

- Repair damage quickly to protect the agency from liability and eliminate tempting more damage from vandals.

- Replace items that break easily and/or frequently with more resistant materials.

General observations and experience of park departments throughout the United States unmistakably indicate that unkempt, neglected parks are more susceptible targets for acts of vandalism. Maintaining neat, clean and attractive parks promotes the image of caring and discourages vandals! Preventive maintenance is simply being aware of possible damage

before it starts. Effective response can only be accommodated by an effective reporting system by Park Police officers, park maintenance workers and the public. Response to minor damage should be on an almost immediate basis.

Park administrators should be aware of the associated costs attributable to vandalism and should consider the morale of employees who need to make constant repairs.

Park Police Role—Security and Patrol

Police forces can provide an effective deterrent to vandalism by active patrol, surveillance and their omnipresence. To increase police effectiveness the *frequency* and *time* of patrols in areas with a high vandalism incident rate should be considered. Police can inform and encourage neighbors to call headquarters when suspecting acts of vandalism. Distributing the station telephone number and assuring callers that they can remain anonymous and that a patrol car will respond will strengthen police effectiveness.

To assist police in their patrolling, all building entrances should be designed for ease of observation, and over-planting at entranceways should be avoided. Building security measures to be considered include: providing adequate lighting, frequent police patrols, key control and use of tamper-proof locks, and staggering of custodial and staff time as much as practical. The most effective building security measure we employ is our electronic alarm system which is connected directly to police headquarters and manned 24 hours a day.

A concerted effort should be made to develop *cooperation* be-

Spencerville Recreation Center, designed with vandal-proof features.



tween recreation staff, maintenance staff and Park Police involving notification of group use, information concerning closing time and notice of permits issued.

Park Police can make a positive contribution to the Design Review Committee and should be actively involved in your community relations outreach program.

Vandalism Statistics

During 1978 we experienced 399 incidents of vandalism throughout our park system. In 1978 the months with the highest incident rate were June and October, whereas in 1982 the high incident rate was in July. Therefore no particular pattern is demonstrated. Our incident rate has decreased to 206 in 1982, showing an *improvement of 48%*.

The monetary loss due to vandalism in 1978 was \$29,055 and in 1982 that figure was reduced to \$17,413, showing a dramatic *40% decrease* in costs. It should be noted that these figures do not reflect damage caused by arson-type offenses and do not include labor repair costs.

Formerly our statistical data was computed manually but due to the efforts of Major Athey Turlington of our Park Police Division, this data is being computerized and is readily available.

Community Relations: Informative Outreach

The Task Force discussed in detail various means of educating, informing and involving the county citizens in the struggle to prevent vandalism.

Educational Programs: The Montgomery County Police Department sponsors an effective Vandalism Prevention Program for sixth through ninth grade students

Portable exhibit used in community relations efforts.



which reaches 20,000 students throughout the school year. The "Anti-Vandalism" program is presented every other year, so as not to reach the same audience, with the main thrust being the early development of attitudes toward anti-vandalism.

This awareness and educational program for teens features the film "Handwriting on the Wall" which depicts the psychological impact and emotional hurt inflicted upon vandalism victims.

Vandalism caused \$150,000 worth of damage to schools in 1978 and is steadily increasing. Youth in the 13-15 age bracket are the most frequently arrested for crimes against property. Therefore the Montgomery County Police Department is targeting this particular audience in an effort to curb the problem.

The elementary school children are shown a film entitled

"The Club House" which dramatically illustrates to the youngsters how it feels to have your property senselessly destroyed. While "the gang" is out vandalizing a school, some other kids destroy their prized possession—the "Club House." Both films were purchased for the police department by the Montgomery County Board of Realtors.

"I want you to stop and think for yourselves and not just follow your peers," explains Corporal Ted Parker as he tours the schools. "After all, it is you and your families who pay for vandalism—in increased store prices, insurance payments and taxes, and you are held totally responsible for paying the damages." His message is clear as he includes park-related vandalism as destroying their own recreation buildings, playgrounds and ball-fields.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**Community Involvement:**

Several members of the Task Force addressed civic and community associations, where severe and repetitive vandalism occurred, to solicit their cooperation and assistance in combatting this prevalent problem. Our purpose is to encourage greater community involvement in controlling vandalism by notifying police; appealing to community pride; discouraging parental indifference and providing for parents' awareness of children's whereabouts and activities. Discussion emphasizes tax implications, explaining who really "pays" in loss of service and in wasted tax dollars.

Parents should be made aware that they are held responsible for damage incurred by their children aged 17 and under, and must make restitution up to \$5,000. In some cases work projects for offenders can be arranged.

The utilization of civic association newsletters to inform community groups of destructive acts in their neighborhood can be an effective means of promoting vandalism awareness.

Outreach Program: The Task Force explored various "Anti-Vandalism" campaign ideas including vandalism bumper stickers (Vandalism Costs You!); a vandalism hot line; public service

radio messages; poster programs, etc. However, we agreed to concentrate our efforts on constructing a portable vandalism display which can be used most effectively at various public libraries, shopping malls, fairs and special events where Commission exhibits are requested. The exhibit, designed and built by our Exhibit Shop, consists of a folding case which features actual photos of our park facilities. On the back is a scene of the same facility in a vandalized condition. The photo section is designed to be easily changed. As vandalism problems arise in a particular area, photos of that facility can be taken and exhibited when staff members speak to the appropriate civic or school group. Attached to the exhibit is a literature rack where supplies of the enticing quiz, "Are you Vandal Wise?" are placed.

Community relations is an important managerial tool that tends to link all aspects of our study together in an effort to inform the public of the problems at hand and provides a means of soliciting their assistance in a positive way.

Summary

The purpose of our Task Force was to gain greater insight and understanding of our vandalism problem, to review and develop

managerial resources to deal with vandalism, and to devise a conscious strategy for using these resources effectively to combat vandalism. The success we have achieved over the past five years, I believe, is attributable to increased awareness, concentrating on control, material selection and attacking the problem through the design element.

Vandalism cannot be completely eliminated but through efficient design criteria, promotion of good maintenance practices, effective police support and community relations effort, a considerable reduction surely can be achieved.

Carl E. Schoening is Associate Director of Parks for the Maryland-National Capital Park and Planning Commission in Silver Spring, Maryland.

Sensitizing Youth to the Effects of Vandalism

by C.M. "Bud" Girtch

Vandalism. What Park and Recreation Agency doesn't have the problem? We are not aware of any agency that doesn't experience some form or another of this plague. It strikes by nibbling away at you, your facilities, and your budget, and sometimes drives you to your knees with the viciousness of it all.

It is very important to remember Boren's Laws of Bureaucracy: *"When in doubt, mumble. When in trouble, delegate. When in charge, ponder."* Too many of us have addressed vandalism in just this manner. The results have not been very positive. "Fighting" vandalism takes action and decision-making. You have to confront the problem and not ignore it, hoping it will go away.

In the Seattle Department of Parks and Recreation we have facilities vandalized in the same fashion as other agencies. Our approaches to combatting the problem have been much the same as other agencies—immediate repair, change of materials used, attempt to identify cause or stimulus for behavior, alarm systems, park watch programs, and the list goes on.

Police Department Cooperation

The biggest hurdle we have had to get over was developing an understanding with the Police Department. Vandalism is a problem to and for parks, and we need their assistance. But crime statistics in Seattle show the parks as one of the better places to be. By and large, serious crimes occur elsewhere. Parks generally are places to *not* be held up, molested, killed, raped—so the parks have a rather low priority in the eyes of police for enforcement. There also is an

attitude or feeling by police that "we don't work for parks." Further, there is the ever-sensitive issue with the police, particularly the Fraternal Order of Police, of budget and staff cutbacks, and the thought that "free help" by others might eliminate some officers' jobs.

Security Officer

The Seattle Parks and Recreation Department does not have its own police or ranger function and must depend upon the Seattle Police Department for security and enforcement functions. Our Security Officer works as a liaison between the Police and Parks Departments. He is a deputized, sworn officer and functions within our Department in a coordination, interpretation, and educational capacity. He also works with the Police Department in the same areas. Through this coordination, we have been able to receive an excellent response from police when breaks occur in facilities protected by alarm systems. He has also been able to delicately handle those sensitive situations between the two departments and to create a sense of harmony in missions. It takes constant nourishing with the police to maintain the rapport.

Officer Friendly Program

About four years ago we decided that, like the stock or commodities market, we needed to deal in the future—to take options in the future market. One idea was to sensitize the city's youth to the effects of vandalism in Seattle's parks. To this end we asked the Police Department to include in their Officer Friendly presentations in the elementary schools, discussions about vandalism to public facilities including parks and

schools. It was agreed that the points to be emphasized when speaking about vandalism to fourth, fifth or sixth graders were:

- Explanation of what vandalism is: willful and malicious destruction or defacement of public or private property.

- Parks are their property and responsibility, just as their bicycles, footballs, skateboards, etc. They should protect the parks and playgrounds as they would their bikes, etc.

- Parks are for their use and the parks cannot be used if they are not in proper condition. They should make sure they use the parks and playgrounds in the right ways, without damaging anything.

- If they break a basketball hoop today, tomorrow neither they, nor their friends, will be able to play basketball. If no damage is done, then everybody can enjoy and use the facilities.

- If they know children who talk about and perform vandalism on property, they should try to influence the vandals to change their minds about destroying property. Suggest non-destructive things to do instead. Encourage them to help protect public property and not destroy it.

Is it successful?—We don't know yet. We are still betting on the future. The reaction of the youngsters has been positive to date. We hope the values introduced by Officer Friendly will carry through the vandalism stage for most of them. The tools for measuring vandalism are imperfect because it is difficult to gauge ups and downs and trends. However, the extent of vandalism has decreased at the schools. Vandalism in the parks has held at about the same dollar value but has changed in nature from breakage to graffiti or unwanted art work.



Seattle Parks & Rec. Dept.

Wet turf areas in Seattle's Meadowbrook Park are damaged by automobiles and 4-wheel drives.

Police Cadet Explorer Scouts

Another area of reaching out and betting on the future is the use of Police Cadet Explorer Scouts. Our Security Officer has used the troop for several years for crowd, traffic and parking control at special events, Seafair Hydroplane races, Marathons, and other large impact events. A side benefit of this participation has been a greater awareness on the part of these 16- to 19-year-olds of the negative impact vandalism can have on the parks system—a system which is trying to serve the community, and of the individuals causing the damage.

When we have had repeated incidents of vandalism at a park site, i.e., tearing up turf areas with automobiles and 4-wheel drives, squirreling or cutting donuts, the

Scouts have assisted by staking the area out and identifying car make, license number and driver, if possible. If we can't get enough evidence to prosecute, the Police have provided us with the name and address of the car owner from the license number. Our Security Officer makes a visit to inform the owner of the incident and observation, and warns that if the vehicle is observed again, prosecution will take place. Either way the problem seems to be resolved.

The use of Explorer Scouts is always in non-threatening situations so that they are not unduly exposed to danger. Where there appears to be more threatening situations, we have used the reserve Police to stake out areas of repeated break-ins or thefts.

With these two additional tools and some more time, we hope to reduce the number of vandalism

incidents and dollars value per incident throughout the Seattle parks system.

Bud Girtch is Director of Operations for Seattle's (WA) Parks and Recreation Department.

Vandalism: A Research Priority

by Laura B. Szwak

“Develop for the practitioner a package of methods to identify patterns of vandalism and a series of effective management techniques (and/or facility designs) to combat this behavior.”

In 1980, the U.S. Department of the Interior asked producers and users of research in the field of recreation and parks to identify serious knowledge gaps in the research. Over five hundred professionals in the public and private sectors of recreation and parks took part in this exercise and listed 117 tasks. These same professionals also prioritized the tasks, resulting in a research agenda for recreation and parks. The task statement above was rated as one of the top ten tasks needing priority research attention.

The professionals who developed the agenda characterized their role in the field as researchers, practitioners, and administrators. Interestingly, practitioners and administrators rated the task on vandalism in their top five needing research attention, but the task did not appear at all in the researchers' list of 20 priority tasks.

As part of the development of the research agenda, the top ten tasks were analyzed to determine why they appeared on the agenda as priority knowledge gaps in recreation and parks. A thorough literature search was performed on the subject of each task. This article presents the findings of this literature evaluation concerning vandalism in parks and recreation. The publication describing the development process and results of the entire research agenda is available from the National Technical Information Service. This task represents an issue in recreation and park management and not simply a research question.

Financing operation and maintenance continues to be a problem for leisure service managers. Federal grants-in-aid for outdoor recreation capital development and land acquisition are available to States and local governments, but the grantees must continue to finance the maintenance of these facilities and areas. Research studies show that the incidence of vandalism rises as deterioration due to lack of maintenance increases. People are more likely to litter in areas where litter has accumulated. Abandoned buildings attract acts of vandalism, i.e., broken windows, graffiti and other problems.

Therefore, vandalism is a serious problem confronting administrators of public leisure services because financial resources to repair damages or replace equipment destroyed by vandals, if not anticipated, are either unavailable or taken from program areas. Therefore, the task addresses a major practical problem in the delivery of leisure services.

Despite the high rating of the vandalism task in the research agenda process, the study of vandalism behavior and management strategies to combat this behavior has enjoyed considerable attention of researchers, managers and other writers in the recreation and parks field. One computer search of documents from the National Institute of Justice produced 70 references concerning vandalism in recreation and park areas. In 1976, the U.S. Forest Service sponsored a symposium devoted entirely to the subject of vandalism and outdoor recreation.

Two propositions are explored which may explain why recreation and park professionals rated this task as a priority research need.

1. Research has been conducted on the subject, but significant knowledge gaps remain.

2. Sufficient research has been conducted on the subject, but dissemination and packaging of the research results have not been effective.

Behavior Patterns

Many studies classify vandals or identify the causes of depreciative behavior. According to the research, the reasons why people commit vandalistic acts range from troubled childhoods to sociological explanations of peer group behavior to changes in the demographic composition and attitudes of society. Understanding the motivations behind vandalism is a prerequisite for controlling the behavior. However, many of these factors are beyond the control of the park and recreation practitioner.

The behavior patterns needed by practitioners are those prompted by variables specific to their managed site(s) or area(s). By anticipating behavior, recreation and park practitioners may prevent or control damage more efficiently.

Management Techniques

Research about coping strategies for managers to deal with the problems of vandalism include defensive and diagnostic approaches.

Defensive strategies involve techniques designed to deter the potential vandal on-site. Some of these strategies include direct controls, i.e., controlled entrance and exit sites and user permits; vandal-resistant design of structures, equipment and areas; heightened enforcement and visibility of security forces; increased lighting; retribution paid by the offender and/or family;

appropriate punishment to fit the crime; publicized convictions; and increased fees or surcharges to cover the costs of damage caused by vandals.

Diagnostic approaches focus on reducing the number of potential vandals by involving and educating the public in general. Community involvement and development of a sense of responsibility by users are prominent themes throughout this research. These studies focus on the on-site users and the off-site public: a) involvement of the users on-site to discourage vandalism when encountered in a recreation setting, and b) promotion of community awareness of the problem incurred because of vandalism. Formal public involvement programs may include nonprofit organizations or employment of a "sentinel" or volunteer host, whose presence discourages illegal behavior.

Another diagnostic approach to prevent vandalism includes information and education programs. Such programs describe the rationale for certain rules and regulations through positive signage or interpretive services. Educational programs have traditionally focused on instilling proper values and attitudes about illegal behavior and its effects on the environment so that appropriate behavior will result.

Architectural and environmental design, especially as it relates to defensible space and use by people, is a common approach to reducing the costs of vandalism in recreation areas. Some studies show that design does not deter vandalism as consistently as a regular maintenance schedule that prevents deterioration. Nevertheless, design and construction represent the most commonly used technique to combat vandalism by municipal leisure



Walter Smalling Jr.



Department of the Interior

Signs are particularly susceptible to acts of vandalism.

services. A multidisciplinary approach among planners, architects, users, maintenance personnel and other individuals involved in the design, construction and eventual use of an area and/or facility also seems to ensure better vandalism prevention.

Research Gaps

As described, research studies have addressed ways to control vandalism in recreation and park areas. The major research gap appears to be a task in the evaluation of specific techniques. Few studies document the effectiveness of a particular method in a controlled environment and a variety of situations.

Some studies have, however, described the application of a specific strategy and evaluated its effectiveness. For example, a Swedish study monitored the effectiveness of the use of policemen as recreation leaders on incidents of depreciative behavior (Eniksson & Kuhlhorn 1977). The practice did not alter vandalism rates. Studies also have documented the use of incentives on littering behavior (Goodrich 1980). These studies, usually in the form of case studies, illustrate useful techniques for a particular area. However, the interaction of social, physical, political and environmental variables at other locations may produce entirely opposite effects. What is needed, therefore, is an evaluation that also includes a detailed description of the factors — on and off site — that influence the success or failure of a technique. Original research on vandalism may not be as needed as replication of existing prevention strategies in various settings.

Vandalism in recreation and park settings is an issue because public

and private agencies cannot afford its costs, both financial and social. An administrator may be hesitant to implement a system of vandalism prevention without some guarantee that the financial investment will produce a savings in monetary as well as social costs. Therefore, another aspect of the problem particularly important to the practitioners is the cost effectiveness of a vandalism prevention program or a particular strategy. For example, an administrator may question expenditures for both vandal-resistant equipment and implementation of an extensive education program.

One prerequisite for evaluating a strategy for vandalism prevention is a reporting system for recording the occurrences, frequencies and types of vandalism for depreciative behavior typical of recreation sites. A consistent reporting system provides baseline data prior to and after implementation of a particular management strategy for vandalism control. By measuring the change or lack of change evidenced in the data, the manager can evaluate the effectiveness of an action. Without such data, managers may allocate precious resources in a less efficient manner. A reporting system identifies what constitutes vandalism and measures the effects of vandalism in factors such as man-hours, replacement/repair expenses, and other management costs.

Development of a reporting system is a problem because of inconsistent definitions of vandalism evidenced in the literature and by recreation managers. Some studies measure vandalism through financial loss to the managing agency, loss to the user or visitor of the site, or both. Some management guides include depreciative behavior acts, such as rule violation or visitor

harassment, in their assessment of vandalism. Many times abuse directed toward a site's visitors is labeled as the "social costs" of vandalism, especially appropriate for leisure service managers concerned with the quality of the visitor's experience.

As research indicates, incidence of vandalistic behavior depends on the combination of situational factors and use characteristics. The current research gives the administrator or manager some general clues to apply which analyzes the various environmental and social variables of a site to enable the administrator to produce an effective management strategy for the control and prevention of vandalism. The U.S. Forest Service, through the Pacific Northwest Forest and Range Experiment Station, has developed a draft model identifying factors leading to depreciative behavior. This model offers some insight in the identification of behavioral causes. The model highlights opportunity as an important variable contribution to depreciative behavior. A checklist of effective practices based on empirical research, adapted to specific area characteristics and including a measure of cost effectiveness would be a tool to aid the practitioner in park and recreation settings.

An examination of vandal-free environments may also reveal some suggestions for deterring depreciative behavior without extensive longitudinal study. Little research was found on this topic.

Dissemination and Packaging

Research has been conducted on vandalism — its causes, deterrents, results, and available techniques. However, these findings have either

not reached the practitioners needing information or they have not been packaged effectively.

Many articles written on vandalism are found in publications targeted specifically for practitioners. These publications include the Park Practice Program and *Parks and Recreation* magazine. Practitioners also seem to get information through sharing information and experiences with other practitioners. Conferences, symposia, and training sessions also represent significant methods of exchange. The Maintenance Management School sponsored by the National Recreation and Park Association includes a session on vandalism prevention. These forums do not offer a systematic, coordinated attack on the problem, but they do provide an opportunity for researchers and practitioners to exchange information.

Professionals in other disciplines such as law enforcement, education, business, and defense also consider vandalism a problem and are working on practical solutions. Coordination among these professionals would be an efficient approach to reduce the impacts of vandalism significantly. Schools offer community education programs to deal with the behavior, and not the symptoms, resulting from vandalism. Personnel in law enforcement and criminal justice agencies not only catch and punish perpetrators, but they also design a system of reform or restitution to reduce future incidents. Defense-related agencies conduct research on vandal-resistant materials, such as glass impervious to bullets. Recreation may not be mentioned in the research, but its applicability to recreation resources can be useful. Packaging the results from work produced in these other fields

is also needed for the administrators and practitioners in recreation.

Vandalism in recreation areas has been researched. It has also been the subject of conferences and publications several times. But, vandalism continues to strain the resources of recreation services. The managers need information appropriate to their use as well as where to find it when they need it.

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DOCUMENT(S) NO. v. 21 no. 2

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Trends

1984

Volume 21

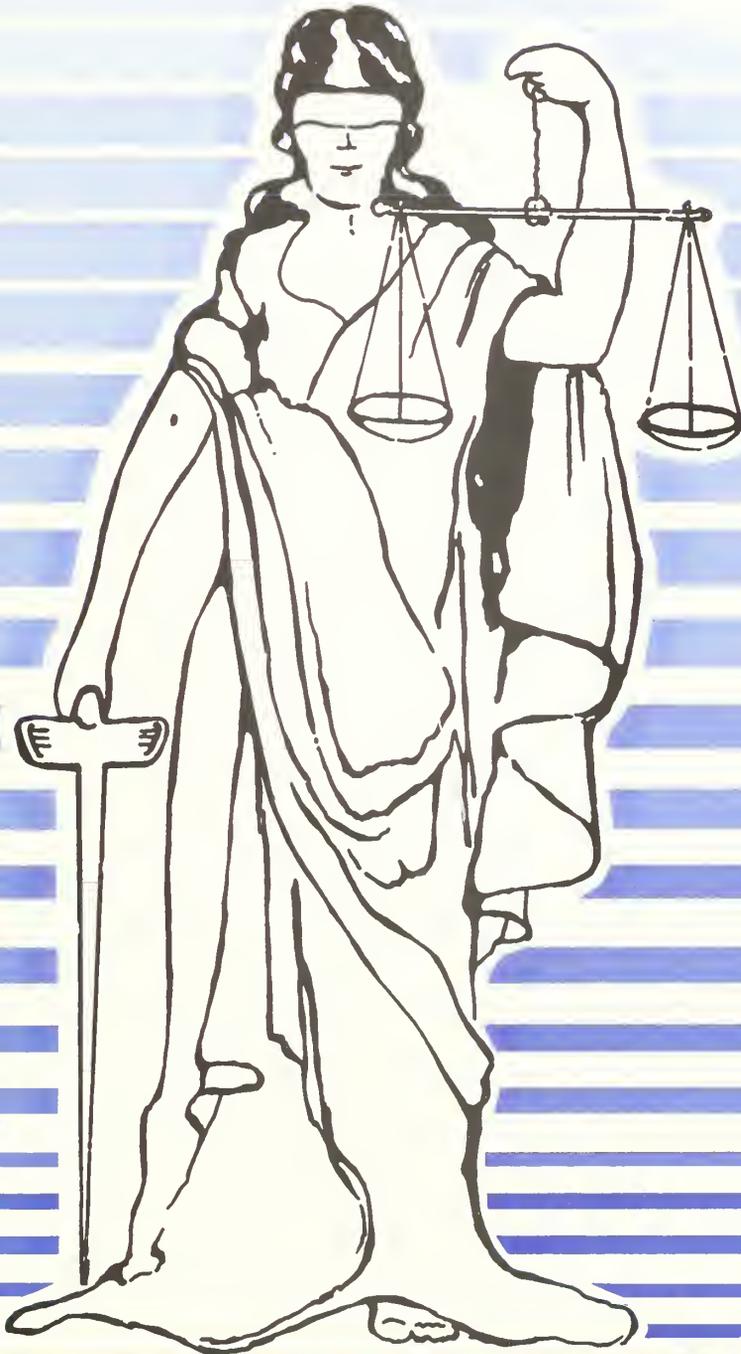
Number 3

Law-Related Issues for Park and
Recreation Managers

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Trends

A publication of the Park Practice Program

The Park Practice Program is a cooperative effort of the National Park Service and the National Recreation and Park Association.

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The Park Practice Program includes:

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Articles, suggestions, ideas and comments are invited and should be sent to the Park Practice Program, National Park Service, Washington, D.C. 20240.

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Introduction

by Lowell V. Sturgill

Gone are the days when managers could leave the law to lawyers and police officers. In today's litigious society, injuries sustained by visitors to recreation areas may well result in civil lawsuits under a variety of tort themes against both government bodies as well as individual employees and managers. For this reason, the modern park and recreation manager must familiarize himself with topics such as personal liability not only to fulfill his public duties, but also to protect himself against potential individual liability.

Tort Claims are Increasing in Great Numbers

It should be of great concern to every park and recreation manager that their considered and deliberate actions may save the taxpayers millions of dollars annually through proper attention to the safety and protection of employees and visitors. According to the National Center for State Courts in Williamsburg, Virginia, more than 13 million civil actions were filed in the United States for 1978 alone, which is the last year in which a national total was available at this writing. In the Federal sector, the Administrative Office of the United States Courts has stated that more than 144,000 civil cases were filed in the Federal Courts in 1978, and that their number has increased to be in excess of 255,000 in 1983. This is an increase of 75 percent in 5 years.

Judgments of six and seven figures are becoming increasingly commonplace. As persons become

more aware of these settlements, they become more interested in filing claims they may possibly win. Claims are filed over such matters as a sliding board, which should have been repaired or removed, which led to a child's toe being cut off; an alleged encouragement to cross a street because of sidewalk placement in an area in which there was no crosswalk which allegedly resulted in a pedestrian being struck by a car; a failure to install a "wet paint" sign on a recently painted park bench which ruined an expensive suit; and a lady who slipped on an acorn in a park area and tore her pantyhose. Disputes that used to be settled by communication are now settled by stacks of legal documents.

As it should be, people are also becoming more aware of their legal rights. The media have played a great part in educating individuals in legal matters. Newspapers report settlements in jury trials ranging from several hundreds of thousands to millions of dollars. Television currently offers a very popular program dealing with litigants in small claims matters in which the court cites points of law in support of its decisions. The program advises its viewers not to take the law into their own hands, but to "take it to court." And this is what has been occurring—people are taking it to court in an unprecedented manner. To those whose business it is to process these claims, it seems at times that everyone is a potential plaintiff looking for a prospective defendant.

Governmental entities are becoming an increasingly popular

target for damage and injury claims. As visitation to recreational areas has increased greatly with the availability of leisure time, so have the claims and suits which result from injuries sustained by the public.

Unfortunately, not everyone who visits a park or recreational area leaves with only pleasant memories and pretty pictures. A large number of these persons will suffer injuries or property damage and seek a source other than themselves to be responsible for their damages. One such visitor in National Capital Parks (Washington, D.C. metropolitan area) sustained a broken ankle in a fall. When asked for details on what caused her to fall, she responded, "it wasn't my fault, so it must have been the Government's."

Persons engaging in recreational activities sometimes do not exercise as much caution as they normally would. Some persons expect to be protected from their own negligence. A defective piece of sidewalk should be obvious—unless the visitor is so overwhelmed by exhibits or the scenic view that they are not looking where they are walking. Still other visitors consider recreational areas to be a sort of Fantasyland where no evils exist and nothing can cause them harm.

Trend Toward More Dangerous Recreational Activities

Park managers should become keenly aware of the potential for liability within their areas of jurisdiction. Recreational activity is no



National Park Service

Hang glider in the wilderness. Sports enthusiasts are seeking an ever-expanding source for satisfying needs for thrill and personal achievement.

longer limited to playgrounds, campgrounds, hiking, swimming, or fishing. Today's sophisticated park visitor engages in snowmobiling, hang gliding, jet-skiing, mountain climbing, and four-wheel-drive recreational vehicles. Relaxation for some park visitors now involves thrill-seeking and risk-taking, particularly among young adult males, some of whom engage in hazardous activity to gain attention. These types of recreational activities not only involve danger to the participants, but also to other visitors who do not engage in them. Management should cooperate with law enforcement personnel to assure proper enforcement of regulations for the safety of all visitors.

Good Maintenance Can Prevent Torts

Many actions or decisions routinely made, particularly regarding park operations, involve some potential for liability. Nowhere is this more evident than in park maintenance activities. Dead limbs fall from shady trees and damage property or severely injure persons. Nicely designed, spaced, block walkways are aesthetically pleasing in an area where everyone wears tennis shoes, but in an urban area they become a trap for a

woman's high heels. Fence posts are removed from the ground, and the holes are left unfilled. Trees are removed from an area to establish a ballfield, a picnic spot, or trails, and a forgotten stump is left to become a tripping hazard. A wooden guardrail at an overlook begins to rot and gives way under the weight of a tired visitor leaning against it. Playground equipment is left unchecked until a rusty chain breaks and causes a severe back injury. All of these situations occur frequently, all are a good basis for civil action, and all were totally preventable.

A manager cannot be everywhere or see everything. Management must encourage and insist on more awareness by its supervisors and employees to remain constantly alert to potential hazards and make corrections as rapidly as possible.

Good Recordkeeping Can Save Dollars

The importance of good recordkeeping cannot be overemphasized. With the liberal statute of limitations for filing civil actions in most parts of the country, it is important that inspections of buildings and facilities be made frequently and be well documented. Similar-

ly, maintenance operations to correct deficiencies should also be well logged and the records of repairs kept for evidence in court actions. Too often, maintenance personnel will make repairs which are never logged and nothing is available for documentation when the need arises.

In the same light, prompt and thorough reporting of all incidents should be made. Too many reports include the who, what, where, and when of an injury, but omit the most important fact of all—*why*. Injuries are usually documented, but causation is left unstated. In defending a civil action, documented information on any proximate causes is highly important. It can save many months of legal work if liability is obvious, or it can cost the Government entity thousands of dollars if the cause of the injury is unknown.

Safety Messages in Park Brochures Help

Some areas, because of natural environment or historical significance, can never be made completely free of hazards. In some parks, the conditions which present the greatest hazards are the most attractive to the visitor. In areas of this type, management should assure that park brochures and visitor centers include information alerting the public to specific hazardous conditions which they might encounter. Warning signs should also be posted at appropriate locations where caution should be exercised.



Hikers, horseback riders, and hang gliders in a hazardous conflict of activities at a precipitous cliff.

National Park Service



Hazardous tree in visitor use area points up the need for an active identification and removal program.

Richard Powell, NPS

Good Design and Contract Supervision Can Help

In planning for new facilities, the design may overshadow the possibility of built-in hazards. Managers should encourage plan review by appropriate safety personnel to assure compliance with applicable codes. Additionally, maintenance and security personnel should participate in plan review to assure that the facility can be easily maintained and the design is functional without creating hazards which might have been overlooked by the designers.

Although contracts and permits generally contain hold-harmless clauses and require insurance coverage, there is still a potential for civil action that can arise from inadequate supervision of a contractor or a knowledge of unsafe work practices. Managers should verify compliance with applicable codes and insurance requirements, and assure that any construction site which is accessible to visitors is adequately protected by physical barricades and warnings.

Know the Liability Laws Applicable to Your State

Liability for negligence actions varies greatly from state to state.

In some areas, liability is diminished by statutes which allow a lesser duty of care by the landowner to individuals on premises where no fee is charged for usage of the land. In other states, a person must be completely free of any contributory negligence in order to recover for damages. In still other states, the wrongdoings of both parties are taken into consideration and a negligent person can still recover for damages if his or her actions are judged to be less negligent than those of the defendant. Park personnel should become acquainted with the law in their localities and discuss potential areas of liability with their legal advisors.

A Lack of Concern Can Be Costly

This issue of TRENDS will present a wide variety of articles pertaining to subjects directly affecting today's park manager. The articles have been written to educate and inform you on topics which may affect management of your park or site. The subject matter covers areas in which each of you has some involvement—from landowner liability to personal liability for management decisions you make.

It has become all too common that managers believe it is someone else's responsibility to be concerned with liability. Too many managers fail to realize that a lack of concern for safety and law related issues has a direct relationship to the potential for a civil action.

While it will never be possible to completely eliminate every possible source of liability, we must all develop an awareness of the seriousness of the problem and take appropriate action to minimize the exposure by making our recreational areas a safer place to visit.

Lowell V. Sturgill is Associate Regional Director, Operations, for the National Park Service's National Capital Region.

Standards, Liabilities and the Park and Recreation Manager

by Richard L. Wilburn

The Basic Management Issue

Today's manager of a park or recreation area must be concerned about the same basic factors as managers of any other organization in terms of mission achievement. The mission of the park and recreation manager is to protect the resource and provide recreational, educational, scientific, and perhaps other uses of the resource. The manager is judged by how efficiently and effectively use is made of people, materials, equipment, and funds, while maintaining a concern for protecting the environment in realizing organizational goals. The manager must also be proficient in applying basic management functions and concepts, i.e., planning, organizing, staffing, implementing programs, and controlling, while maintaining high quality and reducing liabilities. Failure to adequately address these factors will result in inefficiency, loss of funds and materials, poor public relations, poor employee morale, and poor mission attainment.

It has been shown that maintaining high quality, avoiding liabilities and insuring a safe recreation or work environment are closely related to setting and following proper standards and procedures. A quality product results from always using the right materials, assembled in the proper manner, in accordance with standards and procedures known to produce the desired end product. These standards and procedures are usually developed following studies, tests, "trial and error," or other means of determining the best way to

achieve these goals. Liabilities frequently result when managers fail to comply with consensus or mandated standards, e.g., safety and health codes. An objective for the plaintiff's attorney, in a claim against a government agency, would be to show that the manager knew of, or should have known of, an applicable code or a standard relative to his/her client's injury. It would be the attorney's objective to show that the failure to comply with the code was a proximate cause of the injury.

Develop a Documented Safety Program

One means of improving the management of hazardous conditions and reduce litigation is to develop an in-depth documented safety and health program that establishes standards and procedures. The program should be general enough to cover all anticipated problems and define correct procedures to control them, but it must also be specific to the needs of the local area for which it is written.

The primary loss-producing conditions or activities should be specifically identified for both employees and the visiting public. For each of these sources of loss, an action program should be established to address this specific loss-producing (and potential litigation) source, and to reduce the incidence of accidents.

The program must have input from all affected employees under the general coordination of a trained safety officer. Care must be

taken to insure that all pertinent standards and codes are addressed as indicated by the nature and intended use of the area. Some of these codes include the Office of Safety and Health Administration (OSHA), as applicable, public health, environmental protection, highway safety and National Fire Protection Association codes. Employees should develop their own standards and procedures in activity areas where no code exists, and conform to them to insure that the desired end results are realized.

The use of a hazard analysis is one good means of identifying both potential hazards and appropriate means of reducing the risk to the lowest possible level while getting the job done properly. Managers should gladly accept this approach to reducing risks because it has the important side benefits of improving efficiency, reducing costs, increasing professionalism and assisting in mission attainment. This approach may not totally eliminate the hazard, but it does reduce it to a recognized and controllable factor.

For example, a rescue from the side of a 2,000-foot cliff using ropes and technical climbing gear will be hazardous at best, but the risk is reduced to an acceptable level by using the right equipment, following professional procedures and working as a team for the benefit of all.

The following are brief discussions of some pertinent issues managers should consider in developing and evaluating their programs.

A Need for Standards

Managers should be aware that successful safety and health programs are closely related to the adoption of appropriate standards, and should insure that all activities are conducted in compliance with them. People cannot perform properly unless they understand what is expected from the activity and of them. The key is to perform in a correct, professional manner commensurate with the activity.

Professional athletic organizations have recognized this for years in the detailed operation of pre-season training camps oriented to conditioning, developing and practicing "individual" and "team" skills. Other managers could profit from initiating their own "spring training camps" to insure that all employees are properly prepared for their season.

Supervisors should be held accountable, in some significant way, to insure that employees perform in accordance with proper standards and procedures.

A Growing Demand for Professionalism

Managing potential safety litigation problems in a park and recreation area is largely contingent upon the identification of potential hazards—both natural and man-made. One cannot solve a problem until it has been identified and placed in its proper perspective. The identification of hazards is a complex and demanding function that requires experienced and trained personnel. It is no longer possible to be aware of only the



Defective railing at overlook above precipitous cliff. Standards for location and maintenance are poor.

major and obvious conditions; i.e., a steep cliff or a twisting mountain road. Today's safety professional must be conversant with environmental hazards of a complex and diverse nature ranging from environmental health to industrial safety, highway and traffic safety to playgrounds and trails.

Recommendations made by a staff safety officer may represent the thin line between accepting losses or improving efficiency, between improving visitor safety or continuing exposure to life-threatening hazards, and between meeting accepted standards or exposure to unnecessary liability. This is no position for an amateur. Concerned managers should insist on professional advice from competent safety staff officers.

It is essential that qualified inspectors identify the hazards existent in the area and develop some reasonable and prudent action plan. Also, in consultation with management, inspectors must make needed corrections before an unwanted incident occurs. The goal must be the prevention of losses as opposed to responding to already developed crises. Proper analysis of the identified hazards will isolate those that present the greatest risk so that maximum effort can be placed where it will do

the most good. This is applying International Loss Control Institute President Frank Bird's "Principle of the Critical Few" in which we recognize that a few hazards have the potential for causing a large portion of the losses—if left uncorrected.

It is also important to insure that all plans for new construction or for rehabilitation of existing facilities be reviewed, by a qualified safety officer, to insure compliance with applicable standards. It is far less expensive and disruptive to do the job right the first time than to have to re-do the work if discrepancies are found. Once the facility has been completed in accordance with the appropriate codes, an active and aggressive cyclic maintenance program is essential to control liabilities as well as other costs.

Deteriorated structures and/or equipment and erosion-worn trails create a multitude of hazards to visitors that frequently lead to claims against the agency. The potential losses from claims may far exceed the costs of proper design or maintenance. Standards should be applied in accordance with the activity and intended use of the facility. In some instances where management does not wish to impose some standard related to



Richard L. Wilburn, NPS

Visitors effect risky means of crossing a mountain stream in absence of bridge.

the integrity of the structure, the nature or use of the facility must be modified to insure the public's safety.

For example, it may be undesirable to make a structural change in an historical building to comply with the Life Safety Codes. In such instances the use of the building should be changed, e.g., do not allow visitors into hazardous areas or allow only controlled tour groups.

Waivers are of little value in cases where visitors are allowed to use known hazardous areas. A signed waiver is only binding on the signatories—not their survivors who may file a claim. The primary value of a signed waiver may serve as a record that warning was given.

Public Factor and Hazard Management

Proper consideration must be given to the background and attitudes of the public using park and recreation facilities. A crucial error is often made by evaluating the facility in terms of employee experience and knowledge. The typical visitor, especially in the more remote natural park areas, does not possess the experience or knowledge needed to recognize the

real dangers posed by cold, rapidly running mountain streams. Nor do these urban-oriented visitors recognize that the animals are wild (not Yogi Bear or Gentle Ben), that natural features like a volcanic hot spring are real (not a Hollywood set), and that chances taken in the park may result in real injury.

We have observed young people standing on a large rock above a pool in which there were submerged boulders of which they had been warned. These young men waited for an audience to gather at a nearby overlook before diving into the water with loud shouts. Is the need for attention the basis for such acts? The park and recreation manager must develop an active comprehensive program centered around trained professionals who can identify hazards inherent in the environment but which may not be obvious to the urban visitor. Such hazards should be controlled through adequate design of facilities and visitor overlooks; proper maintenance of structures, roads and trails, etc.; or by effective barriers to preclude exposure.

Perhaps the best form of visitor protection is proper education. True safety can be described as having a full understanding of the hazard and of the possible consequences of unwarranted exposure.

Signs used to provide warnings must identify the specific hazard of concern. Simple "danger" or "trail closed" signs are too general and will not suffice as a warning in many courts. The specific hazard, e.g., submerged rocks, falling rocks, or steep cliff must be clearly identified.

We must all step up our public education programs through personal contacts, public talks, brochures, proper signs, and a host of other means of reaching the potential visitor. The use of public service messages on radio and television is especially effective for local areas where a large number of the park users can be reached.

Uniformity With Neighboring Agencies

Persons tend to develop patterns of use and habits of reaction based on their past experiences. It may be confusing and frustrating to many of these visitors who find different and contradictory procedures and patterns when they travel to unfamiliar areas. This is probably more critical when the differences are found in the way information on regulations, activities, and identification of the various uses of park facilities are accomplished.

Signs of different colors or using different symbols may be misinterpreted or misunderstood. The adoption of standardized traffic control devices, e.g., road striping, regulatory and informative signing, and control of work crews is perhaps the most important. Vehicle operators who are traveling at highway speeds on interstate

routes that use the standards adopted in the manual on Uniform Traffic Control Devices of the U.S. Department of Transportation can be dangerously confused when entering a park area using different standards. It is bad enough that the roads may become narrow and winding. There is little sense in compounding the problem by improper road stripping or the manner in which signs and/or flag persons are placed around construction sites. Uniformity in the use of common standards and procedures is important to the public to insure an understanding of regulations and of local information.

Summary

Visitors to park and recreation areas are much more aware of their right to file a claim in incidents in which they believe the land owner is negligent. The manager of a park and recreation area must become involved in an active program to identify and control the conditions that may pose a hazard to the visiting public. If the hazard cannot be controlled by design or engineering, the visitor must be protected by proper barriers and/or information of the nature of the hazard.

One means of accomplishing the desired results is to devise a documented safety program. The program should identify potential hazards, proper authorities, adequate standards, and procedures for employees and visitors. The most effective programs are devel-



Visitor feeding a ground squirrel. Was adequate warning given about hazards of rabies or plague?

National Park Service



Confusing directions—too many signs with conflicting information.

National Park Service

oped by a competent safety officer who is conversant with the application of modern safety and health concepts and practices.

*Richard L. Wilburn is Chief,
Branch of Safety Management for
the National Park Service.*

Landfeatures, Locality, and Liability in Park Injury Cases

by Janna S. Rankin

Little Jerry Smith screams. His mother rushes over; she finds him lying beside a wooden walkway in Glacier National Park, clutching his leg.

"What happened, Jerry?"

"Board broke. I fell." . . .

The Law and Visitor Safety

Whenever someone has been injured during a recreational activity or in a park setting, there are four basic issues which must be decided in favor of the plaintiff in order for the plaintiff to obtain a judgment. Professor E. Wayne Thode put them in the form of a question in a 1977 Article of the *Utah Law Review*:

(1) *Is there a factual connection between plaintiff's injury and the defendant?* (2) *Does the legal system's protection extend to the interest that plaintiff seeks to vindicate; and if some protection is afforded, what standards of care does the legal system impose on the defendant?* (3) *Was that standard of care breached by the defendant?* (4) *What are the damages?*

Although under the Federal Tort Claims Act (FTCA) and some state statutes modeled on the FTCA, a judge makes factual determinations without a jury; questions of fact are generally determined by a jury and usually take two related forms. First, what actually happened; second, was the injury caused by acts of the defendant? The pure factual questions, using our Glacier Park situation, might include: Was there a broken board? How long had the board



Exploration of abandoned mines with hidden hazards results in many injuries.

Janna S. Rankin

been broken? Did Jerry really fall from the walkway? The answers may turn on the court sorting out evidence, resolving conflicting testimony, determining who is telling the truth.

The causal issues are often much more difficult. If the defendant had repaired the broken board, for example, would the accident have been prevented? Could the presence of a warning sign have deterred the recreation participants who were injured?

The second issue addresses whether the plaintiffs' asserted interests are entitled to legal protection against the defendant's conduct. In a few instances, the appropriate level of visitor safety has been established by the legislative body. Congress, the state legislature, or the local governing body has set forth in the agency mandate the obligations and responsibilities of the agency.

More often, however, the regulations relating to visitor safety flow from the chief executive of-

ficer and his/her staff in the form of regulations and policies. These regulations have the force of law and are generally given a great deal of respect by the courts. One underlying rationale for this deference is that the courts should not be involved in trying to substitute their judgment for that of the professional managers.

The Federal Tort Claims Act was passed in 1946 and mandated that the United States would be held liable for negligent acts of its employees in each state "in the same manner and to the same extent as a private individual under like circumstances." Despite this broad statement which appears to waive immunity from liability, the Act contains a number of exceptions, the most important of which the "discretionary function" exception has given rise to numerous and conflicting judicial arguments and decisions. These are addressed in detail in van der Smissen's article in this issue.

For our purposes, liability in

federal and state recreation cases may often turn on whether the active altering of a site by park officials, or by contrast, the decision to leave a "natural" site untouched, is deemed by the court to be a conscious discretionary or policy determination, or simply one of carelessness and omission.

In addition to the "discretionary function" issues, many cases today turn on the applicability of "Recreational Landowners Liability Acts," a fairly recent development in tort law. Almost every state has enacted some variation of this statute which encourages landowners to open land for recreational uses by limiting their potential tort liability. As noted above, since federal liability under the FTCA is based on state law, federal courts have had to interpret and apply these statutes in federal parks and recreation injury cases. (Landowner liability is the subject of the article by Langdon in this issue of *TRENDS*.) We should simply note that although these statutes vary widely, they will tend to limit liability where there has been free access for recreational visitors to uninspected, unaltered recreational areas.

The Dilemma

In discussing the specific liability consequences of either altering or preserving natural sites, we should bear in mind that visitor safety is not the only, or even always the most significant consideration. The problem—like many facing the stewards of public recreation lands—involves delicate balancing of interests, policy, politics, and even

philosophy. The dilemma, at a deeper level, engages our professionals in a number of issues which are beyond the scope of this article including the "right" of an individual recreationist to encounter risk in the leisure pursuits of his/her choice, the ethics of building handrails, boardwalks, and other visitor safety features in public recreation areas, and the commitment of park and recreation professionals to preserve meaningful opportunities for human fulfillment through the preservation of the integrity of the biotic community.

The Cases

Having brushed quickly past the general aspects of the law and the philosophical problems relating to the proper role of the policy-setters with regard to visitor safety, we should examine some specific instances to see if we can discern a common thread, or a series of threads woven together, which would give us a clue as to the appearance of the final fabric of tort liability in natural areas and the contrasting colors of artificial or man-altered area liability.

To carry the analogy a little further, the reader should be aware that as we unravel individual cases we are focusing on only a portion of the decision. Rarely is there a single strand upon which the case stands or falls. Much more often a case will involve and the court will examine many of the aspects: whether the hazardous condition was created by the agency or is natural; whether the recreationist contributed to his/her own injury; the degree to which the injury was

foreseeable; the ease of warning the visitor, putting up signs, inspecting, or controlling the danger; the applicability of the various exceptions to the FTCA; and finally, the courts' perceptions of the appropriate role of the parks.

Did the agency "create the hazard"?

Some cases turn on the nature of the hazardous condition which specifically caused the accident, and they tend to be resolved against the agency when it is a non-natural hazardous condition which, in one way or another, was created or maintained by the agency. For example, in a lawsuit against a New Jersey county park system, Richard Diodato, a softball game participant, was injured when he threw himself into the river in an effort to catch a high fly ball. He hit a submerged 55-gallon barrel which the park system used for litter and which vandals had tossed into the river.

In defending the park commission the attorneys argued that this was a natural area, basically unimproved, and therefore the county should be exempted from liability under the provisions of the State's landowners' liability act. The plaintiff argued that Cooper River Park was created from what had been tidal swamp lands—a W.P.A. project had dredged, cleared land, bulldozed, and dammed—and that this man-altered quality established the improved character of the premises.

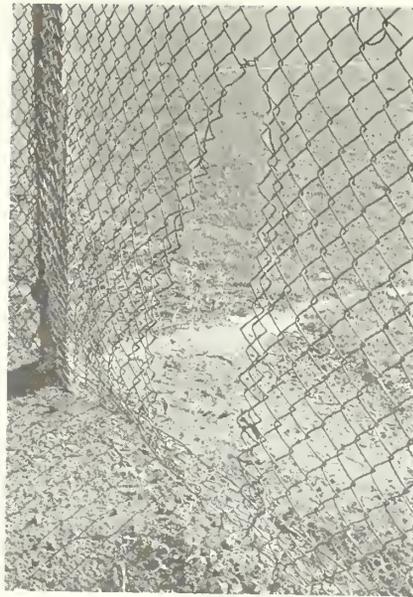
In making their determination the Diodato court based their conclusion on a more narrow reading of "natural." Judge Coruzzi wrote

that it was not the man-made quality of the park, the proximity to urban areas, or even the improvements (which he saw as “merely conveniences . . . incident to the recreational use of the park as part of the true outdoors”), but rather that the specific condition which caused the injury—the trash barrel in the river—was not natural but rather clearly artificial and therefore the provisions of the exclusion to the Tort Claims Act did not protect the Commission. In related dictum the court said: “It is clear that had Diodato been injured as a result of striking the river bed, the immunity of the act would apply.”

Another case which, curiously enough, also involved the use of 55-gallon drums for litter barrels, was *Carlson v. State*. Here the State of Alaska had developed a roadside rest area with a number of trash barrels. Around October 1 each year the State terminated the trash pick-ups. This allowed the trash to accumulate which in turn attracted bears. Julie Carlson was attacked and mauled by a bear when she approached her pick-up truck which was parked near the overflowing litter barrels.

The theory of negligence relied upon by the Carlsons was that the “State created a dangerous situation, that it knew the situation was dangerous, and that it failed either to correct the situation or to warn people of the danger.”

The “creation of the hazard” argument succeeded in the Carlson case because the court found that while the initial decision to maintain highways in winter was a policy determination (and therefore



Janna S. Rankin

Regular inspection of artificial conditions is often critical.

shielded by the discretionary function exception), the subsequent decisions on how that policy was to be carried out were operational and therefore the State had a duty to act with reasonable care.

In one of the more controversial bear management cases, a similar argument by the plaintiffs’ attorneys was unsuccessful. In September, 1970, the Superintendent of Yellowstone National Park hosted a meeting to develop a management plan for the grizzly bear population of Yellowstone. All the experts present at this meeting agreed that the garbage dumps where the bears had been feeding for a number of years had to be closed. There was no consensus, however, about the most appropriate way to accomplish this.

Drs. Frank and John Craighead recommended either phasing out the dumps or replacing the garbage with another food source during the transition period. They expressed concern that the abrupt closing of the dumps would cause a change in the movement and habits of the grizzly bears, and that this would increase the likelihood of grizzly-human contacts. The members of the National Sciences Advisory Committee and the Chief Research Biologist at Yellowstone recommended an

immediate closing of the dumps so the new generations of cubs would not have an opportunity to become accustomed to human food. The Superintendent adopted this latter recommendation and by 1971 the last park dump was closed.

In the summer of 1972 Harry Walker and a friend were camping in an unauthorized campsite in the Old Faithful Geyser area of the park. Here Walker was attacked by a bear and was killed. One of the arguments of the attorneys representing the Walker heirs was that the government had, in effect, created an unreasonable danger by abruptly closing the garbage dumps. Unlike the court in the Carlson case, the 9th Circuit found that the decisions of the Park Service employees were within the protection of the discretionary function rule in that the decision to close the garbage dumps was made at the planning level; therefore there was no liability.

In the Walker case, although the original hazard was “created” by the agency (allowing the bears to feed at garbage dumps for the entertainment of park visitors), the courts allowed the agency to use discretion in determining how to eliminate the danger.

The court adopted a similar rationale in a BLM case focusing on an abandoned mine. The BLM lands in the Southwest are replete with old mine shafts, deserted dwellings, wrecked cars . . . the detritus of abandoned dreams. On one occasion four college students were driving through Nevada when they spotted an abandoned mine opening from the highway.

They explored this A-frame structure on public property and found it deserted and in poor condition. From the mouth of the mine they could see the remains of another mine which they also explored. When they were crawling down the horizontal shaft of the second mine the boy in the lead, Douglas Gard, slipped and fell into a vertical shaft. The impact caused him to become quadriplegic, and he brought an action against the government claiming that the BLM was negligent in not protecting the public from this dangerous mine—a non-natural condition.

As in the Walker case, the court did not base their determination on whether or not the hazard was natural or created by humans, but rather upon whether the agency was statutorily protected from liability. Here they said that the Nevada Recreational Landowners Statute applied to the federal government as well as to private individuals who allowed the use of their property for sightseeing or other recreational purposes; therefore, no liability.

There are a number of cases, however, where the failure to correct a hazardous man-made condition, particularly in an urban park setting, has given rise to liability for the agency. Urban parks are generally not protected by state recreational landowner liability laws. (See the Langdon article in this issue for a more complete analysis of the extent, rationale, and limitations of landowner liability statutes.)

For example, where a ten-year-old boy crawled through a hole in a playground fence and was in-

jured by a train on adjacent railroad tracks, it was held that even though there was no proof of prior accidents, worn paths leading to both sides of the fence openings should have alerted the recreation supervisors to the need for precautionary repairs. In this case both the man-made character of the hazard and the foreseeability of the accident caused the court to rule against the agency.

In another municipal case, *Wamser v. City of St. Petersburg*, a swimmer who had been attacked by a shark at a city-operated beach brought an action. In deciding that the city was not liable the court points out that the beach area was a natural setting, the hazard was not agency-created, and the accident was not foreseeable since no shark attacks had ever occurred at the beach before.

What was the "character of the area"?

Many of the cases involving liability with either natural or altered recreation facilities turn on the nature of the physical setting or environment. For example, one recent case involved a 15-year-old girl who was seriously injured when she went "tubing" with a church group in Olympia National Park. While others in the group stayed in the beginners' ski area, marked "Snow Play Area," Lisa Jones and her friend went to another area on Hurricane Ridge. The lawsuit against the National Park Service was heard in District Court where the judge wrote:

. . . there was no failure to post warnings of any artificial latent condition because the condi-

tions were natural. There had been no change in the property and the snow and ice which accumulated there were a natural accumulation which occur over the winter's time.

The natural cirque was not created by the National Park Service and, in this case, the Service had deliberately chosen not to erect "No Snow Play" signs since that might imply that recreationists might go into any area which was not signed. On appeal the Ninth Circuit affirmed the judgment of the District Court and found in favor of the National Park Service.

Whether the park is located in an urban area or in a rural area may also influence the outcome of the litigation. Andrew Husovsky was driving through Rock Creek Park in the District of Columbia on a quiet, sunny day on his way to his classes at Georgetown University. He was driving past land maintained by the National Park Service when a ten-ton portion of a tulip poplar tree fell on him inflicting severe injuries.

In deciding that the Government was liable, the court considered the character of the land and said:

We do not think it is unreasonable to require the . . . [N.P.S.] with respect to its urban parklands bordering public roadways . . . [to carefully] inspect enormous, overhanging trees . . .

The judge went further to say that "a seldom traveled roadway in a national forest in a rural area would require fewer inspections and a different type of maintenance than would a heavily traveled thoroughfare in an urban area."

In an earlier Yellowstone National Park case a park visitor was



Facunda Morris

Unaltered natural conditions are virtually never factors in liability—even if the site of high risk activities.

killed when a badly decayed tree fell on his tent in a designated campground. In finding the National Park Service liable, the court emphasized both the fact that the visitor was in an authorized campground and the ease with which the Service could have inspected and removed the hazard.

With regard to completely natural backcountry or wilderness recreational areas, one legal scholar who has researched this facet of tort law extensively reports a “virtual absence of reported cases” of successful litigation against public agencies arising from backcountry recreation activities including mountaineering, whitewater river activities, rappelling, and other challenging forms of recreation that take place in *unaltered* natural environments and are not dependent on heavily mechanized equipment.

Was the injury foreseeable?

If there is a new or unusual hazard, and particularly a dangerous situation which is understood by the resource managers but is not readily apparent to the recreation visitor, then the agency is more likely to be liable if they fail to warn the visitor.

One example of this is the case in which William Claypool was at-

tacked by a bear in a national park. Prior to setting up their tent Mr. and Mrs. Claypool had specifically followed the instructions of the brochure which said: “Consult the men in uniform—they are at your service.” The park ranger told them that hundreds of people slept out every night, that they had never had anyone attacked by a bear without provocation, and that bears would not come around unless campers had food.

The reason the National Park Service lost this case was what the ranger failed to tell the Claypools: there had been an unprovoked raid in which a bear attacked and injured several campers as they slept in this campground only three nights before. The court said the danger to which Claypool was exposed was “a concealed one” and one about which the rangers had special knowledge.

We should point out that this is an older case, but that similar results could be expected if park personnel fail to warn visitors or give false reassurances regarding hazardous conditions. A ranger recently assured a mobility-impaired friend of the author that he would have “no problem” negotiating a trail in Yosemite. In fact, two friends had to carry this recreation participant up a steep

mile-long grade to get back to his vehicle.

How easy would it have been to put up warning signs?

In many of the cases the courts will examine the ease with which the hazardous condition could have been eliminated or warning signs could have been erected. In *Hulet v. U.S.* the plaintiffs argued that some sort of “protective roof or canopy” be built from the trailhead to the mouth of the cave at Timpanogos Cave National Monument, a distance of approximately a mile and a half, to protect visitors from the potentially dangerous falling rocks. The court reviewed the economic and practical feasibility of constructing protective barriers and wrote:

To hold that ordinary care required such protection along the entire length of the trail would be tantamount to holding the government an insurer of the public safety. The law does not impose such an extraordinary duty . . .

On the other hand, the court did suggest that the warning signs should be more effective in conveying the danger of falling rocks.

In a recent case in which a water skier was injured when his ski struck the river bottom, the lawsuit claimed the government should be held responsible because the dam-controlled water levels on the Colorado River fluctuated. Again the court took into account the discretionary character of the operation of Parker Dam, the feasibility of issuing warnings each time the water level changed

(sometimes more than once each day), but said that a system of one-time warnings would not be administratively burdensome. The court suggested that signs should be posted which informed the public that "the Government is causing the water level to fluctuate without notice, and that the public should beware of dangers that might be caused thereby."

The movement of the courts to separate the right of the government to exercise discretion in making management decisions from the duty of the government to warn about the hazards created or exacerbated by these decisions is a trend which is of major significance for park and recreation administrators.

Several years ago, for example, the NPS made a determination to leave the thermal activity area near Clear Water Springs in Yellowstone undeveloped. The Smith family, vacationing in the park, pulled off the road onto a paved turnout and followed a worn path leading from the turnout to the meadow. When they reached the area of thermal activity, Cameron, a 14-year-old boy, fell through the thin crust and was severely burned. The Smiths argued that the Service should have erected guardrails and boardwalks as well as warning visitors about the dangers of thermal pools. The court said:

We cannot agree. A policy decision to designate certain areas as "undeveloped" ones may reasonably entail the omission of boardwalks, trails or footpaths and signs marking such ways. However, it does not follow that the

Government, as a landowner, is absolved of all duty under state law to erect . . . signs cautioning about conditions which have been left undisturbed as a policy matter.

The degree to which the hazard is readily apparent may also enter into the decision. In *Stephens v. U.S.* the court said that it was an appropriate exercise of the discretionary authority of the Corps of Engineers to decide to leave six-inch stumps on the bottom of Lake Shelbyville, but that the Government had a subsequent responsibility to warn recreation visitors of this hidden hazard.

In a number of the cases which find the agency liable because of a failure to warn, the courts have done some rudimentary economic balancing. That is to say, they have agreed that the agency does not have to make the expenditures necessary to completely insure the safety of the visitor, but at the same time they have suggested that the cost and administrative burden of erecting warning signs may be minimal when compared to the gravity of injuries suffered by visitors.

What is the courts' perception of the role of the parks?

One of the areas where it would appear that we could influence the future outcome of park injury litigation falls into the realm between public relations and professionalization in the handling of park injuries. Enlightened judges can be proponents who support the goals and objectives of our field, particularly when the facts before them indicate that the front-line

personnel have followed proper procedures.

A recent Yellowstone case best illustrates this point. Elizabeth Henretig was vacationing in Yellowstone with her husband. After they went to a visitor information center at the Norris Geyser Basin they were directed down a pathway to Echinus Geyser which was about to erupt. They joined other visitors and a ranger at Echinus, and after the activity was over Mrs. Henretig asked the ranger if there were other areas of interest nearby. She was directed to a trail leading up a hillside and around behind Echinus. She walked about thirty feet up this trail when she suddenly slipped, twisted her ankle beneath her, and slid down the slope. The injury required orthopedic surgery and lengthy hospitalization.

The Henretigs sued the NPS, contending negligence in failing to properly maintain the trail. Attorneys for the plaintiff argued that the trail was too steep, that it was covered with loose gravel, that the Service should have provided boardwalks, handrails, and warning signs.

In examining the facts of the case the court relied heavily upon the testimony of park rangers with regard to such technical matters as the appropriateness of boardwalks in some areas and inappropriateness in others. They also reviewed the actions of the rangers who handled the incident and found them beyond reproach.

While the opinion was decided on the basis of the discretionary function exception (no liability for the NPS because the decision of

whether to build protective devices was discretionary), the judge took the opportunity to air his opinions regarding the appropriate role of the parks.

To place boardwalks and handrails on every segment of the path would be prohibitively expensive; and all of these measures [regrading to make the trails less steep, paving, signing, and constructing safety devices] would detract from that which draws visitors to our parks—the opportunity to observe scenic wonders and the beauty of nature, unspoiled insofar as possible by the touch of man.

Similarly, in an earlier case, the District Court Judge wrote:

It cannot be over-emphasized that to a very great extent the value and attraction of national parks is their natural and untamed state.

Guidelines

In synthesizing these cases in a search for guidelines a bright park administrator might ask: “Doesn’t it follow that if we’re going to be held responsible for hazards created by the vandals, for litter barrels thrown into the water, for holes cut in the fences, for loose or missing rails on the overlook, and if we’re *not* going to be held liable when we choose not to build protective devices, that we’d be better off if we just ‘went natural’ . . . if we just tore out all of the roads, rails, and paths and left people on their own?”

Clearly, the courts won’t let us off the hook that easily. The decisions which we have capsulized make a clear distinction between

the agency responsibilities vis-a-vis safety in the more traditional urban parklands and in the moderately-developed regional or national parks. Agency responsibility in the true wilderness has not been defined by the courts because the issue has never been heard on appeal.

The question might then arise: “If we are improving an area, don’t we have a responsibility to make it as safe as is humanly possible?” Or, on the other hand, “Must we always be ‘state of the art’ in safety?” A federal district court faced this issue recently in a case where a young man was killed as the result of an auto accident on a road in a Corps-designed recreation area. The parents argued that the design of the road was poor. The court said:

The Corps could have designed a seventy miles-per-hour divided highway with banked curves, but instead exercised its discretion to design a twenty miles-per-hour highway through this recreational, playground and camping area and the claim of negligence in this regard is barred . . .”

With regard to the presence or absence of warning signs it would appear that the courts will require an agency to warn a visitor if there is a significant man-made hazard, if the potentially dangerous condition is adjacent to a well-travelled area, if the hazard is hidden or known only to those in authority, if it is an area where there is an express invitation to visitors, or if signing the location would be effective and not expensive.

All managers should recognize

that the best defense for any personal injury litigation is always the absence of negligence. Meeting recognized professional standards of conduct, conforming to applicable safety codes, and handling each incident appropriately are all indicia of reasonable prudence. We should also bear in mind that the agency is not the absolute insurer of participant safety; we are not required by the law to control the actions of all park visitors at all times.

Despite the oft-repeated myths about grossly negligent and foolhardy visitors recovering vast sums of money, the cases do not generally verify this attitude. The more dangerous and irresponsible the visitor’s behavior, the less likely he or she is to recover a substantial amount—and the more likely to have to bear all or a large portion of the cost of his or her own injuries. The story of the mother who smeared ice cream on her child’s face to attract a bear for a picture, and then recovered from the Government when the child was bitten, may demonstrate the foolishness of visitors and courts—but it never happened.

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The Validity of Inspection Reports

From an interview with Frank E. Bird, Jr., President and Executive Director of the International Loss Control Institute.

Q. How important are planned inspections in the overall park safety program?

A. A recent opinion poll of 150 select safety professionals put this activity in a third-place ranking of importance in a listing of some 20 program elements. By way of interest, only "leadership and administration" and "management training" were deemed more important by this group of experts. While hazards are symptoms of real deficiencies in the management system, they nonetheless must be dealt with promptly and effectively if we are to minimize loss from the many types of exposures in a park environment. The first objective of any park safety management system must be to identify all loss exposures in order to establish the worst possible things that could happen. No other program activity serves a more important purpose in this regard.

Q. What types of inspections should be made?

A. There are basically three types of inspections that should be conducted on an ongoing basis in every park to minimize loss and maintain legal compliance. First, everyone on the staff, whether part-time or full-time employee, vendor, and/or service person must be led to develop an awareness of the importance to observe and report substandard conditions or practices promptly during their routine work activities.

This technique has been referred to as an informal inspection approach. We know from past experience and numerous logical reasons that this method alone is grossly inadequate. It must be supplemented by two other planned inspection activities; the general inspection and the critical parts inspection.

There are hundreds, if not thousands, of items in any park environment that must wear out at some point, whether it is a stair tread in a museum, a cable supporting a trail bridge, a hose, or a chain or pulley in a repair shop or garage. This normal wear and tear brought about by gradual deterioration may be detected before any personal harm, property damage or service interruption occurs.

On the other hand, failure of these items can take place suddenly, and involve circumstances that present harmful exposures to employees, service personnel, the public, as well as violate local or federal safety and health legislation. We also know that in addition to undesired exposures created by these items as they wear out, there is, unfortunately, the ever-present loss potential from those park items that have been damaged or rendered inefficient by vandalism or other abuse and misuse. A planned, general inspection and critical parts inspection program augment any formal inspections to assure that these conditions have been



Frank E. Bird, Jr.

International Loss Control Institute

identified and corrected on a timely basis.

Q. How often should the planned general and critical parts item inspections be made?

A. Two inventories provide the guidelines for the inspection frequency in both of these. An inventory that includes all park areas and structures provides a knowledgeable team with a comprehensive listing for consideration of planned general inspections frequency. Obviously, a risk evaluation of each area and/or structure form the basis of consideration for general inspection frequency. Each area or structure could have a different inspection frequency. The second inventory, to establish critical parts/items inspections, should include every machine, piece of equipment, every structure, area, and material or substance in the park. Initially this sounds like an awesome task, but once conducted, it needs only to be updated regularly with addition or change.

A team of knowledgeable persons establishes the parts of an item that, with wear-out or failure, could cause major loss when compared to the same condition or other parts of the

item. Individual items such as chemical substances, fuel and items in storage, could be considered critical items unto themselves. The dimension of work involved in making this inventory and establishing critical parts/items must be accomplished systematically and with an established time schedule.

Again, a knowledgeable team establishes the inspection program for every critical part/item. A critical parts inspection of a piece of equipment could be prior to every use by the operator, weekly, monthly, or annually on other parts or items.

This most certainly does not discourage the use of highly specialized, external inspection services for certain specific exposures or for an infrequent and unbiased outside opinion as to quality of the internal program.

Q. Who should make these planned inspections?

A. Obviously critical parts/items must be inspected by the most knowledgeable and/or qualified people. This could be the operator of a machine or piece of equipment before use. It could be a park maintenance worker, ranger or other responsible and knowledgeable person. On the other hand, it is strongly urged that the planned general inspection program be shared with all supervisory and staff personnel. This would certainly include sharing this activity with

responsible vendor or concession personnel. All personnel would inspect to identify conditions that are substandard and legal safety requirements.

If all loss exposures are to be identified on an adequate scheduled basis, it is not usually economically feasible or practical to have an outside contractor do this. Even more important, to develop the safety awareness desired by all personnel regularly involved in park operation, it is absolutely essential that we do not isolate them from one of the greatest motivational and learning experiences in this regard.

Q. What inspection documentation should be made, recognizing that such information may be subpoenaed and used to a park's disadvantage?

A. This question is not only relevant to a park system, but to such organizations as insurance companies and consulting groups in particular that offer or provide services to others. Inspection activities could, by record, invite the possibility of litigation by a sin of omission for not identifying an exposure that was obvious to the public or others, or by committing an identified exposure/hazard to written form and then failing to remedy it.

Generally speaking, it is widely accepted that not to record the necessary information to properly manage an effective safety management system is to open the door to a much greater potential for loss.

Saying it another way, there is no better way to control loss from all actual or alleged exposures to accident than a well-managed park safety management system. Of course, that means recording what is necessary to properly manage the system.

Q. What qualifications do most supervisory or staff personnel have to recognize the wide variety of hazards or substandard conditions that could result in loss as well as violate state or federal legislation?

A. The best in the world. They are much more familiar with the overall general park environment than a typical external inspector would be. Most major exposures including legislative violations are easily identified with a reasonable degree of training. Every year of their past experience has given them insight to the kinds of accident exposures that could occur in the environment they are familiar with. Of course, the better the training in hazard recognition, the more effective the results in hazard identification as well as legislative compliance. A great advantage of a variety of training and experience can be obtained by rotating inspection assignments from time to time.

Q. What is the role of the safety professional, the collateral duty safety officer, or the person coordinating the inspection program?

A. The most valuable utilization of this one person would unquestionably be to measure compliance to the park program standards including legal compliance by all responsible persons and to channel the resulting evaluation to key management people for commendation or constructive correction on a timely basis. In effect, the program coordinator, whatever the title, is an auditor of the safety management system. By this application of professional management skills and techniques, he or she multiplies the available human resources to manage park risks many times over.

As related specifically to the inspection program, he or she can provide training, guide upper management in the assignment of inspection responsibilities, measure the effectiveness of inspectors' efforts and communicate results to responsible managers.

Unfortunately, many park safety program coordinators believe their efforts are best spent by trying to do the work that all members of management should be doing—in this specific context—the inspections. The result is a very busy person who needs the help of additional safety inspectors to do an adequate job of inspecting with no time for the many other aspects of a modern park safety program.

Q. How can park management personnel improve their methods of establishing

priorities of items for correction to meet their own and legal standards? Please keep in mind the constraints of time and budget versus the legal implications of potential neglect once these substandards have become a matter of record.

A. There is a variety of risk evaluation systems that can definitely assist management in setting priorities of corrective action. The best system is usually the one that can be most easily understood, retained, and continually utilized by members of management and particularly those involved with inspections. Every substandard condition should be classified as to its hazard classification:

Class "A" Hazard—A condition or practice likely to cause permanent disability, loss of life or body part, and or extensive loss of structure, equipment or material.

Class "B" Hazard—A condition or practice likely to cause serious injury or illness (resulting in temporary disability) or property damage that is disruptive, but less severe than Class "A."

Class "C" Hazard—A condition or practice likely to cause minor (nondisabling) injury or illness or nondisruptive property damage.

Through the use of a risk evaluation system, substandard items that have a high potential for major loss such as resulting from litigation can be grouped into three major cate-

gories such as super critical, highly critical and critical for correction priority.

A MANAGEMENT GUIDE TO RISK DECISION

KEY QUESTIONS

CLASSIFICATION OF HAZARD

1. What is the potential severity of a loss if an incident occurs?
 - A—Major
 - B—Serious
 - C—Minor

PROBABILITY OF OCCURRENCE

2. What is the probability that an incident will occur from this problem or hazard?
 - A—High
 - B—Moderate
 - C—Low

COST OF CONTROL

(Establish dollar amounts for each category)

3. What is the cost of the recommended control?
 - A—High
 - B—Medium
 - C—Low

DEGREE OF CONTROL

4. What degree of control will be achieved by this expenditure?
 - A—Substantial (67-100%)
 - B—Moderate (34-66%)
 - C—Low (1-33%)

ALTERNATIVES

5. What are the alternative controls?

JUSTIFICATION OF CHOICE

6. Why did you choose this control?



National Park Service

All staff should be alert to spot conditions that may lead to accidents.



Richard L. Wilburn, NPS

A thorough inspection would have identified and prevented rock from damaging bench.

bility in the program.

It isn't enough to give verbal support to the program coordinator. The vitality of the program is almost wholly dependent on whether or not people feel the top officials want it. Periodic inspection tours should be announced and made by the upper level of management including the park manager. On these occasions, there should be a clear connection of inspection with the safety program. A brief report on the safety program should be scheduled on all regular management meetings to clearly identify its association with important matters. Attitudes are like waterfalls—they invariably flow downward. Professional management experts refer to this aspect of leadership as modeling.

Q. How can park management improve the quality of inspection in order to fulfill the safety program's mission, as well as to assume moral and legal responsibilities?

A. There are simple, but proven techniques that motivate improved inspections. Some of these would include: adequate training of all personnel involved in inspection techniques that would include legislative requirements, the development and use of inspection guides for each park area and struc-

ture, a system to recognize good inspections and a pre-inspection motivational contact with inspection personnel by a member of upper management.

Q. Are there any other factors important to managing an inspection program that minimize risk and optimize legislative compliance?

A. There are many things that have not been said, but surely the most important aspect of all should be highlighted, and that is upper management visi-

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Discretionary Acts of Managers' Policy Decision-Making

by Betty van der Smissen, J.D.

Discretionary acts of policy decision-making in the federal jurisdiction and in most state jurisdictions, which statutorily make governmental agencies liable and then set forth exceptions, are an exception to liability. However, the distinction of discretionary acts as a basis for determining liability is not new. Though the concept of discretionary acts existed when the Federal Tort Claims Act was enacted in 1946, the impetus came in the decade of the '60s. While the government-proprietary dichotomy was applied in nearly every state in the '60s, a few states, notably California, turned toward a different standard for government tort liability, the distinction between discretionary and ministerial acts.

By around 1970 there were cases in five additional states and by 1975 more than a dozen states referred by statute or case decision to the distinction of discretionary-ministerial duties, with immunity for the first and liability for the second. And, ten years later, the majority of states embraced the concept of discretionary acts.

The rationale for immunity for discretionary acts rests upon the principle that the public decision-maker should be shielded from personal liability or other factors extraneous to a judgment based on best perception of public need, and that choices or decisions should be made without fear of personal liability. Government officials should be permitted the freedom to perform their duties without fear of individual liability. Also, limited liability is essential if competent individuals are to be attracted to positions of public trust.

Whereas the government-proprietary dichotomy is directed

toward the nature of the function of the *services* provided by the governmental *agency*, the discretionary-ministerial distinction focuses on the *acts* of the *official* or *employee*. What is a discretionary act and what is a ministerial act is not clearly defined, and has been left to the courts to determine.

A leading case stated that a discretionary duty includes more than the initiation of programs and activities. It also includes determinations made by administrators in establishing plans, specifications or schedules of operation. There is discretion where there is policy judgment and decision. Discretionary acts are often characterized as those involved in the planning and policy functions.

Ministerial acts usually are considered actions involved in operational elements, such as acts concerning routine, everyday matters not requiring evaluation of broad policy factors. The planning level notion refers to decisions involving questions of policy, that is, the evaluation of factors such as financial, political, economic, and social effects of a given plan or policy. A person performs in a given state of facts in a prescribed manner, without regard to exercise of his/her own judgment upon propriety of act being done.

Determination Tests

A number of states have made efforts to set up "tests" for determining what constitutes a discretionary and a ministerial act, rather than just defining the words. Four questions were for-

mulated by the Washington court as guidelines:

1. Does the challenged act, omission, or decision necessarily involve a basic governmental policy, program, or objective?
2. Is the questioned act, omission, or decision essential to the realization or accomplishment of that policy, program, or objective as opposed to one which would not change the course or direction of the policy, program or objective?
3. Does the act, omission, or decision require the exercise of basic policy evaluation, judgment, and expertise on the part of the governmental agency involved?
4. Does the governmental agency involved possess the requisite constitutional, statutory, or lawful authority and duty to do or make the challenged act, omission, or decision?

Under the "planning-operational" test, decision-making and consideration of basic policy factors evidence discretionary acts, while a ministerial act implements the decision or policy. Some reference this as the "undertaking test." There is no duty to initially perform a function, but once it is "undertaken," then there is liability for doing the function with due care. You choose to do the function at your "discretion" for which you have no liability for choosing or not choosing to do so; but, once you have chosen to perform the function, you are liable for the conduct of the function and your acts are considered ministerial.

For example, deciding to build a pool was deemed a discretionary act, but the operation of the pool

would be ministerial in nature. And, in *Connelly v. State*, the California court held that there was no duty on the part of the State Department of Water Resources to issue flood forecasts, but when it undertook to do so, it was held to a standard of reasonable care.

The discretionary immunity exception to liability not only protects affirmative discretionary acts, it also protects the discretionary decision not to act, such as a decision not to provide police protection. However, failure to act in the face of a known dangerous situation (e.g., vicious dogs) is decision-making at the operational level and is not protected as a discretionary act (*Hansen v. City of St. Paul*). In a seemingly contrary decision, the court held that the government was not liable for failing to exercise its discretion and provide safety features, such as boardwalks and rails on an undeveloped trail, inasmuch as courts have traditionally held that the government's decision to develop or not to develop certain areas within the national parks to be a discretionary activity within 28 USC 2680. However, this case should be distinguished from the preceding *Hansen* case in that it involved a natural area with the conditions perfectly obvious to the user and there was no eminent danger.

With the focus on the acts of the persons, there is a tendency to consider the distinction in terms of the level of the person, whether at the policy-making or the operational level. While it is true that discretionary acts are most often



Richard L. Wilburn, NPS

Swimmers in remote river along a major trail. Failure to post as a hazardous or prohibited swimming area could lead to liability.

found in the upper echelon of the administrative hierarchy and the public officials level, the determining factor should not be the position held, but rather the nature of the act. An administrator can perform both discretionary and ministerial acts; which type of act depends on the type of judgment or discretion is exercised in a given situation. Further, an agent (administrator) acting beyond statutory authority cannot then be protected under discretionary act immunity. In one federal case an agent destroyed horses grazing on lands, although he knew to whom they belonged. Also, there is no protection from liability while performing a discretionary act, if such act involves willful and wanton negligence.

Case Illustrations

Keeping the foregoing principles in mind, what are some of the case illustrations of what the courts determine to be discretionary and ministerial? Most of the recreation and parks cases deal with recreation programming, rather than park development or management.

In a 1982 Florida case it was held that traffic control was a discretionary act. The plaintiff alleged that she was sunbathing on the

beach within the limits of the City and that while so engaged, she was run over by an automobile driven by the co-defendant, suffering injuries. The plaintiff contended that by virtue of a charter provision making the portion of the beach within the city limits a public highway and authorizing the City to regulate traffic thereon, the City had a duty to make the beach reasonably safe for sunbathers invited thereon in the same manner as would private persons owning a place of recreation and amusement. The court held that the City was immune from suit, since whether to allow, restrict or otherwise regulate vehicular traffic on the beach required a decision which involved basic governmental policy, program or objective.

In an early (1965) case (and the state still invoked governmental function, as well as applied the concept of discretionary act), the court held that the placing of barriers around the river, supervising the river area, posting warnings, and erecting railings or safety devices along the banks of the river were discretionary decisions. A 7-year-old had drowned in a river in the city park.

A case about 15 years later reached a similar result, holding

that the act of determining whether to place a warning near the boulder from which the swimmer dove, to guard the area, and to prohibit persons from diving in the area related to a discretionary act for which the Director enjoyed official immunity. The boulder from which the plaintiff dove was near, but not in, an area that was maintained for swimming on the park grounds.

Warnings

Regarding warnings, several cases reached a contrary decision. A 14-year-old visitor to Yellowstone National Park was viewing a superheated thermal pool in an area near Clear Water Springs, when he fell through the thin crust and was severely burned. The court held that to leave the area in an undeveloped state was a discretionary function, but the decision not to post warning signs in the area was not.

The government, as landowner, has a duty under state law to warn about conditions which have been left undisturbed as a policy matter, so the court held. It was stated, further, that the 14-year-old owed a reciprocal duty to exercise ordinary care to avoid injuring himself.

The condition of the terrain also was a factor in a Wisconsin case about the same time. The court held that where the manager knew of the condition of the terrain of a recreation area to which the public was invited, and especially when he was in a position to take action, there was a ministerial duty to either place warning signs or ad-



Sign at Point Reyes National Seashore (CA) provides precise information about the hazards of going in the water at the point of visitor access.

vis his superiors of the dangerous situation which existed.

A Minnesota case, too, held that while it was a discretionary act to put in a boat launching site, it was a ministerial act to operate the site. A duty was owed to maintain the facilities in a safe condition or to warn of hazards. A water skier cut the bottom of his foot severely when he stepped on an object in the lakebed near the city's public boat-launching sites. The defendant sought to have the decision to search or not to search this area as discretionary; however, this was an operational decision for which there is no immunity. The duty to protect the user gave rise to liability for unsafe conditions in the operation of the boat-launching site.

The duty to provide a reasonably safe premise also was held to be a ministerial act in a park playground case. The court stated that the city's decision to establish a park and equip it was a discretionary function of local government, but that it was a ministerial duty to use reasonable care in carrying out that decision. (A 14-year-old fell from a slide.)

The distinction between a discretionary act and a ministerial act also was made in an Oregon case.

A child was permanently injured while attending an "Indian Powwow" within the fairgrounds arena. Immediately adjacent was an area used for boarding of horses. The child saw a horse tied by a rope to a fence adjacent to the arena and went over to it. He took hold of the rope and his fingers were pulled against the fence by the horse, causing the middle three fingers to be severed. The court stated that the selection of the arena as the site for the Powwow was a discretionary function, but once the selection had been made there was a duty to maintain it in a safe condition, a duty of a ministerial nature. (This injury did not occur due to the lack of area or building maintenance.)

However, the selection of site was held not to come under the protection of discretionary act in a New Jersey case. A tenth-grade student was struck in the right eye by a flying hockey puck causing eventual removal of the eye. Plaintiff alleged that there was an excess number of players in a playing area that was too small. The defendant endeavored to bring the selection of the site under discretionary act. The court stated that such decision to play the game with that many participants in that



National Park Service

Insure properly placed and manned lifeguards in designated pools.

size space was not the type of decision the court contemplated as "high policy" discretionary acts.

The decision to provide no supervision in the park at night was held to be a discretionary function in a 1980 Florida case. The plaintiff, a young girl, was injured late at night in a city-owned park. It was alleged that the city knew that minors frequented the area and therefore owed a duty to supervise. However, where there is a special relationship which gives rise to a duty to protect (supervise), then to supervise is considered a ministerial act.

The Florida court, though, has attempted to distinguish inadequacy of supervision and insufficient personnel based upon budgetary and other judgmental criteria; inadequacy being ministerial in nature and insufficiency due to other controlling factors discretionary in nature.

In another Florida case the budgetary considerations, also, were pointed out when it said that whether to provide security guards, parking attendants, security gates, and the numbers thereof are clearly discretionary decisions, partially based upon budgetary limitations controlled by the Legislature. While the foregoing four

cases are all from Florida, they do give some idea of the definition of discretionary and ministerial acts facing all states who have, in the late '70s and early '80s, put in place this dichotomy, replacing the governmental-proprietary function approach to governmental immunity.

Conclusion

In summary, a discretionary act to come under the umbrella of governmental immunity must be an act of broad policy determined by political, economic, and social factors. Therefore, most acts of a policy board would be discretionary acts given immunity, while most acts of employees in their operational tasks would not be, but would be ministerial in nature.

Whether the decisions made by managers are discretionary acts under the immunity provision depends upon the nature of the policy—if it is an operational policy carrying out a function already established, then it is ministerial in nature and is not protected from liability. If it is a broad policy setting the direction of the agency and its activities, then it is discretionary as contemplated by the legislatures or courts

and immunity is given. Although few local government managers would be setting such policies, more state and federal officials would be (but not state and federal managers of areas or facilities).

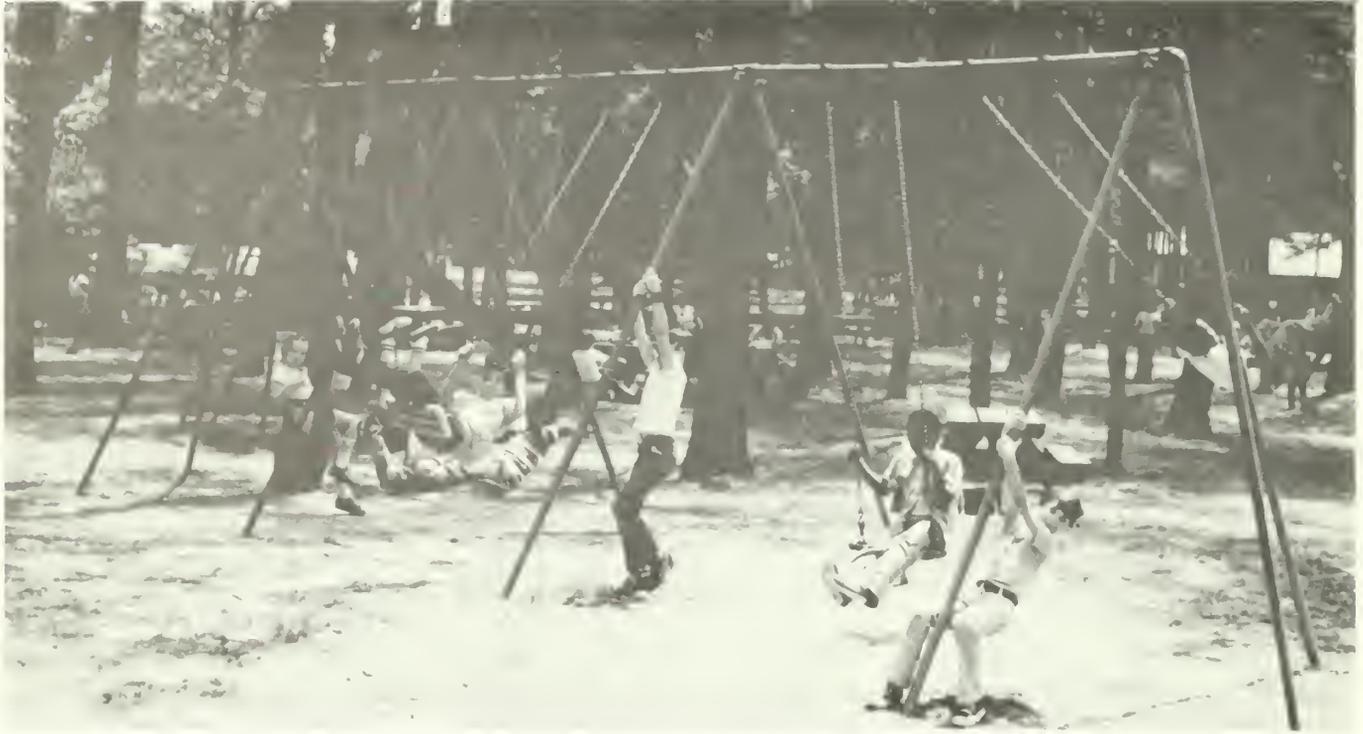
However, a decision made in respect to development of a natural or undeveloped area, which is basically a planning decision, usually is considered a discretionary act.

This article is based upon material in Chapter 4 of the forthcoming book Legal Liability and Risk Management by van der Smissen, published by Anderson Publishing Company, Cincinnati, 1985.

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Landowner Liability

by Jeanne L. Langdon



Even though there is always some risk involved in a common item such as a swing set, that risk is not unreasonable.

Delaware Dept of Natural Resources/ Environmental Control

With large numbers of people enjoying a variety of activities in park and recreation areas, it is inevitable that some accidents will occur. It is equally inevitable that in our litigious society, some of these accidents will result in lawsuits against the park or recreation area's owner. While it is always disturbing to park and recreation managers to discover that they have been named as defendants in this type of suit, a knowledge of the basic principles of law which will determine liability will make lawsuits less intimidating and may help to prevent future suits.

Not every injury will result in liability for the park owner. Before the park owner can be held liable, it must be determined that he or

she was negligent in some way, and that the injured person did not contribute to the injuries through his or her own negligence. Some injuries are caused by unavoidable accidents; they are caused by no one's negligence, and could not have been prevented because they could not have been foreseen.

Many injuries, however, are caused by someone's negligence. It could be the negligence of the injured person, as by not watching where he or she is going, or the negligence of a third person. Or the injury could have been caused by the negligence of the park owner.

In many cases, the governmental entity that owns the park will be found to be immune from suit due

to sovereign immunity. If not, it must next be determined whether the park owners can be held liable. (It is worth noting that only in the most extraordinary circumstances will park personnel be held personally liable. Unless the employee acted outside the scope of his or her employment, the governmental entity will be held liable for the conduct.)

In every lawsuit based on the negligence of a landowner, the plaintiff must establish four elements: 1) the defendant must have been under a duty to conform to a specific standard of conduct for the protection of the plaintiff against an unreasonable risk of injury, 2) the defendant must have breached that duty of care, 3) the breach of

duty must have been the direct cause of the plaintiff's injury, and 4) the plaintiff must have suffered some injury or other damages.

Duty of Care

Generally, the most difficult element for a court to determine is whether or not the defendant breached his or her duty of care. The existence and nature of the duty is fairly clear: owners of park land are required to use reasonable care to keep the property reasonably safe for park visitors. The owner has a duty to make reasonable inspections to discover any concealed, dangerous conditions and make them safe. The difficulty lies in determining when a park owner has failed to act reasonably to protect park visitors and so has breached his or her duty of care.

Taking for example a swing set in a recreation area, it is clear that if the parents of a child who was hit by the swing bring a lawsuit, they will probably not be able to establish that the park owners were negligent. The park operators had a duty to protect the child from unreasonable risks, but few people would argue that the risks of a swing set are not more than outweighed by its utility to children. Even though there is always some risk involved in even such a common item as a swing set, that risk is not unreasonable.

The result might be different, however, if the swing set had not been properly maintained, and had collapsed and injured the child who was playing there. If the parents of the injured child can prove that the deteriorated condi-

tion of the swing would have been discovered by a reasonable inspection, they will have proved that the park owners breached their duty of care.

A person entering a public recreation area or other land owned by the government and maintained for public use has, in effect, been invited into the area by the governmental entity. The landowner's duty to persons invited onto his property to use reasonable care to prevent known or foreseeable dangers is the same regardless of whether a fee is charged for entrance into the recreation area. Visitors to parks have a right to expect that reasonable care has been taken to make the premises safe by undertaking inspections to learn of any hidden dangers, and then by either repairing the defect, taking steps to prevent harm, or warning visitors of the danger.

While this duty usually refers to hidden dangerous conditions of the land or buildings, such as slippery walks and loose guardrails, it can also include the actions of third persons if the landowner could have anticipated and prevented the harm. This would include the situation, for example, where hikers are not warned that hunting is allowed in the area of a marked hiking trail, or where lifeguards are aware of children running and playing boisterously, but do nothing to prevent them from injuring other swimmers.

Warnings

In many cases, a warning will be sufficient to fulfill the duty of

reasonable care. Warnings may be particularly appropriate in recreation areas and parks, where part of the enjoyment of the experience is from the natural, if dangerous, condition of the area. The duty to warn extends only to those dangers which the landowner knows about but which are not open and obvious, so the visitor would not be likely to discover the danger.

The dangers of a wilderness area are generally well known: uneven, unstable or slippery terrain, the possibility of becoming lost in the woods, and wild animals are all risks of which reasonable people are aware when they enter a park or wilderness area. A smoothly paved trail may be safer than a trail covered with rocks concealed by leaves and twigs, but pavement certainly detracts from the wilderness experience.

However, in addition to the usual dangers, there may be dangers present which the reasonable park visitor would have no reason to anticipate. Without a warning, a hiker might not realize that hunting is permitted and there may be traps or hunters in the area, or that a blight the previous year had killed many trees in the area, and the dead trees were becoming rotten and likely to fall on unsuspecting hikers. While it might be prudent to remove the dead trees around a picnic area where the potential danger of injury from falling trees is greater, it is not feasible to remove them throughout a forest, and so a notice to that effect should be posted to warn of the danger.

It should be noted that this duty to correct a dangerous condition arises only with respect to dangerous conditions which the park management knows exist, or which could have been discovered through reasonable inspection. This means that park personnel should take a periodic tour of the area, walking the trails to check that guardrails and signs have not deteriorated or been vandalized, or that new dangers have not developed. The inspection need only be reasonable. There is no duty to inspect every inch of the park, or to imagine every possible type of accident.

Proper Use

The liability of the park owner will also depend on the use for which the land is offered as opposed to the actual use made of it. In order to find the park owner liable, the injured person must show that he or she was using the premises for a purpose contemplated by the invitation. If, for example, a dock is provided in a lake for the purpose of boat access, there would be no liability to someone who injured himself or herself while diving off of the dock for a swim, unless park personnel knew that the dock was being used for swimming and did nothing to stop it or make the area safe for swimming. The person swimming from the dock has exceeded the scope of the invitation.

Similarly, if an area has been roped off and marked for swimming, there has been an invitation to the public to use only the area

within the ropes for swimming. By providing a safe swimming area, the park owner has implied that swimming outside that area is at one's own risk. There may be liability to a person injured by a steep drop-off inside the swimming area, but no liability for the same dangerous condition outside the roped-off area. In this case, the injured person has exceeded the physical scope of the invitation.

The duty to make safe or warn of concealed, dangerous conditions applies to all of the areas of the park which are open to visitors or which visitors could assume are open. Although there are no limits to the ways that people can be injured, a discussion of some of the major trouble spots may be helpful.

Roads and Walkways

Roads and walkways should be kept in a reasonably safe condition and free from defects. The park owner may be liable if dangerous instrumentalities or obstacles are left in the way and cause someone to trip and fall. This becomes especially important after dark, because although a park may officially close at dusk, there may be people still in the park. If park owners are aware that there are regularly people in the park after dark, the walkways they use should be lighted or made safe.

Grassy Areas

Grassy areas should also be kept in a reasonably good condition. While there is no liability for

someone who trips in a small depression in a lawn, there may be liability if, for example, a playing field is established in an area known to be disturbed by burrowing animals.

Ramps and Stairs

Ramps and stairs are a frequent cause of lawsuits. Stairs should be kept in good repair, free of obstructions, and should be designed to withstand the type of use anticipated. Wooden steps which have become rotten should be replaced as soon as reasonable diligence would disclose the defect. If stairs have been designed to accommodate a usual flow of a few people at a time up and down the stairs, they should not be permitted to be used by many people at one time, for example, as a type of bleachers to view some activity below.

Recreation Equipment

Recreation equipment should be kept free of defects attributable to the landowner's negligence. For example, a failure to maintain the equipment could lead to liability if someone is cut by rusted or jagged edges, or if the equipment falls apart during use. If the equipment is in good working condition, there will ordinarily be no liability, unless park personnel have undertaken to supervise children using the equipment, as by running a camp, and have failed to supervise the activity adequately.



In many cases, a warning will be sufficient to fulfill the duty of reasonable care.

Swimming

Drownings and other swimming injuries are an unfortunate but inevitable factor in park management. Some of these incidents must be considered unavoidable accidents, for which the park owner will not be liable, because a landowner is under no obligation to determine the swimming ability of those who wish to use a swimming area. A court in Tennessee has pointed out that if the owner of a swimming pool were held to be negligent in permitting a boy who could not swim to enter the pool, an ordinary city boy could never learn to swim.

A swimming area, however, like any other part of the park, should be free from concealed dangerous defects. A swimming area in a lake or pond should not have unmarked steep drop-offs, or an accumulation of underwater vegetation. Stairs and ladders should not be permitted to become slippery with algae. Diving areas should be deep enough to allow safe diving, and areas that are too shallow for diving should be marked. If a mark on the side of a pool indi-

cates a depth of three feet, adults are expected to know that it is too shallow for diving.

The decision of how many, if any, lifeguards to provide for an area would generally be considered a discretionary function, for which the government is immune from suit. However, if no lifeguard is provided at a swimming area, there should be a sign which either prohibits swimming in the area or warns that swimming is at one's own risk. Because the danger of drowning is obvious and known to all adults, this sign is sufficient to parents that they should closely supervise their children's swimming.

If a lifeguard is provided, parents often think that their duty to supervise their children has been assumed by the lifeguard. Whether or not this is true depends on the circumstances. Although it is the lifeguard's duty to rescue swimmers in trouble, it is the parents' duty to see that their children are not in a position to get into trouble, as by making them stay out of deep water.

Many of the precautions that should be taken by park and

recreation managers are good common sense. In addition, they are good legal sense, because as long as park and recreation managers have exercised reasonable care in protecting park visitors, there can be no finding of liability. In addition to preventing lawsuits, the exercise of reasonable care will also help to prevent future injuries.

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New NRPA Law Reporter to Focus on Recreation Injury Cases

by James C. Kozlowski, J.D.

In 1984, the National Recreation and Park Association (NRPA) began publication of the *Recreation and Parks Law Reporter (RPLR)*. *RPLR* is a quarterly subscription service providing a description of recent court decisions (1977-present) on recreation and park issues. The primary focus of *RPLR* is personal injury suits against recreation and park agencies. Suits involving federal, state, county, municipal, and commercial recreation and park agencies are featured. *RPLR* will also describe recent cases involving other law-related aspects of recreation and park administration such as land use, revenue management, civil rights, etc.

RPLR was developed to complement rather than supplant the information now available in "NRPA Law Review," a monthly legal topics column in NRPA's *Parks & Recreation* magazine. The increased volume of litigation against recreation and park providers made it impossible to adequately report recent court decisions within the limitations of a single monthly magazine column. *RPLR* will, therefore, provide a more comprehensive overview of court decisions impacting the field. Indexed by jurisdiction and topic, *RPLR* should prove to be a valuable resource for administrators, educators, and attorneys in keeping abreast of the law-related developments in recreation and parks.

The expressed purpose of the *Recreation & Parks Law Reporter* is to provide informative background information for administrators, educators, and attorneys.



Judicial decisions presented in *RPLR*, however, cannot possibly predict the outcome of recreation-related litigation in other jurisdictions. On the other hand, these case descriptions do provide valuable insights into the issues, rules of law, and legal analysis which have been applied by courts to resolve recent controversies.

In so doing, material in *RPLR* may raise more questions about the law than it answers. These law-related questions, however, are the first significant step in understanding the law of recreation and parks. Discussion among administrators, attorneys, and educators on the legal issues raised in *RPLR* cases will hopefully remove some of the mystery and misunderstanding which oftentimes surrounds the law. Such law-related education will certainly contribute to the professional development of the individual and the field.

Like the members of a jury, subscribers to *RPLR* benefit from the perfect vision of 20/20 hindsight. In both instances, it is easier to pass judgment after the fact, identifying those precautions which could have avoided legal liability in a given situation. Consequently,

recreation and park professionals can certainly learn from the apparent shortcomings of the defendants in *RPLR* cases.

The issues raised in *RPLR* should also prompt constructive self-examination among recreation and park administrators regarding potential legal liability in their programs. In this way, *RPLR* can provide valuable lessons in recreation administration at far less cost than that borne by the defendants in the reported cases.

To introduce the readership to this new law related publication, this article will excerpt a report from Volume I, Number 1, of the *Recreation and Parks Law Reporter*.

Liability for Injury on Railroad Adjacent to City Park

In the case of *Leone v. City of Utica*, 414 N.Y.S.2d 412, aff'd. 49 N.Y.2d 811, 426 N.Y.S.2d 980, 403 N.E.2d 964 (1979), the eight-year-old plaintiff was injured on railroad tracks adjacent to a municipal park. Although the park contained playground development, the area close to the railway was heavily

wooded and rugged. A ravine traversed the park separating the developed section from the wooded area. A few rope swings and a tree fort were located in the woods along with several footpaths leading to the railroad tracks. As described by the court: "Neither the playground nor the larger park area was enclosed by fencing and thus there were no formidable obstacles or barriers between the playground and the remainder of the park, or between the park and the railroad property."

City personnel were assigned to the playground until August 15. The accident occurred on August 24. Plaintiff and several friends were playing in the ravine when they heard a train whistle. They ran to the tracks to wave to the trainmen. Plaintiff climbed a five foot incline to reach the railway and began running alongside the slowly moving train. Near the end of the train, plaintiff slipped and fell beneath the train. Plaintiff's right leg was amputated as a result of the accident.

According to the court, the issue to be considered concerned "the liability which may befall a municipality for injuries sustained by a child on railroad property located adjacent to a city-owned playground." In determining such liability, the court said, "the degree of care to be imposed upon a municipality in a particular instance is necessarily dependant upon the attendant circumstances and is thus ordinarily a jury question." The city contended that plaintiff "arrived on the railroad property from privately-owned land and not directly from its park



Bill Clark, NPS

Specific warnings about the hazards of crossing dangerous areas should be provided by park management.

the location of the railroad tracks and that pathways in the park lead to those tracks.

In establishing the duty of care owed in a given situation, courts will balance the foreseeable risk of serious injury against the burden of precaution. In this instance, the city failed to offer any evidence that fencing, supervision, or other precautions would have been unreasonable. "While the city might have introduced proof showing that it would have been unduly burdensome to take measures to avoid the risk of harm presented here . . . it did not do so."

land." The city, therefore, argued that it "owed no duty" to plaintiff.

Citing other New York decisions the court stated that the "city owes to those who use its parks a duty of ordinary care against foreseeable danger." Further, "the degree of care to be exercised must take into account the known propensity of children to roam and climb and play." Under the circumstances, the court, therefore, concluded that a jury could reasonably find a lack of ordinary care based upon: the foreseeable danger of serious injury presented by the location of the railroad tracks, the failure of the city to fence its playground or park, and the failure to supervise the use of the park or take some other reasonable precaution to prevent or discourage children from going onto railroad property.

The record sufficiently establishes that young children often played in the wooded area of the park west of the creek and it may be fairly inferred that the city was aware of that activity and made no effort to prevent it. Additionally, the city had knowledge of

The city also argued that "its conduct was not the proximate cause of Anthony's injury." In considering this point on appeal, the court said that it "is bound to assume . . . that the jury adopted that view of the evidence most favorable to the prevailing parties." Based upon this assumption, the court concluded: "The jury properly may have found that the city's breach of duty was a substantial factor in bringing about this foreseeable occurrence."

Since there were no barriers or apparent line of demarcation between the park land and the contiguous property, it could reasonably have been anticipated that an infant, attracted by a train whistle, might take a path leading from the park and across that property to the tracks. The jury permissibly could have found that a fence along the boundary between the park and the private property would have prevented this accident.

This appellate court, therefore, affirmed the judgment in favor of plaintiff. A subsequent appeal to the New York Court of Appeals similarly affirmed the decision of the lower court.

Two of the five judges dissented in this case. The dissenting opinion relied upon testimony which indicated that plaintiff was 250 feet south of the park and approximately 600 feet from the playground when he was injured.

While acknowledging that "a landowner may be liable for injuries that occur on his property or, in some circumstances on nearby property," the dissent stated such liability is "not endless." In other words, a landowner is not "an insurer of all who come upon his property." As described by the dissent, such liability is "limited by basic principles underpinning the fault theory of tort law—reasonable care and proximate cause." In the opinion of the dissent, the majority view in this case ignored these principles and holds "a landowner liable for an accident that occurred on the property of another, a substantial distance from the landowner's property and having only the most tenuous connection with it "

In our view it was not reasonably foreseeable that this eight-year-old child would leave the playground, traverse this much territory and eventually be injured by a train traveling so slowly, i.e., eight miles per hour, that this youngster could successfully chase and catch up with it. Since this accident was not reasonably foreseeable, the



National Park Service

Regularly inspect all equipment to insure there are no loose joints, sharp protrusions, or pinch points.

City owed no duty to protect him from it. To create such a duty, as the majority does, is to require that barriers be built and maintained surrounding every parcel of the land upon which children may come regardless of the remoteness of the risk. To cast a landowner in liability for its failure to undertake these measures is unfairly and unduly burdensome.

According to the dissent, other factors, rather than sufficient legal proof of negligence, prompted the jury's verdict against the city. "In short, one must conclude that this verdict was a product of understandable sympathy from a jury swayed by the exhibition of the plaintiff's very serious injury and the passion-evoking testimony of a doctor who described the terrible and intense pain that this youthful plaintiff suffered."

RPLR subscription rates are \$45/yr. for NRPA members and \$90/yr. for non-members. Make checks payable to "NRPA Law Reporter."

Mail requests to: NRPA Membership, 3101 Park Center Drive, Alexandria, Virginia 22302. For further information on the *Recreation and Parks Law Reporter* contact: Kent J. Blumenthal, RPLR Coordinator, National Recreation and Park Association, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 820-4940.

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Take Your Lawyer To Lunch

by David A. Watts, Esq.

Park managers administer for the use and enjoyment of the public irreplaceable and unique resources, representing great diversity and purpose. The visiting public enjoys the facilities, interpretive programs, wilderness solitude, recreational opportunities, and historical representations that are provided with determination, creativity, and pride. On the basis of various public opinion surveys these programs are considered to be among the most popular, and your agencies are held in high respect by the taxpayers of this country. The visiting public also considers the resources placed under your administration as in public ownership, to be managed under notions of a "trust" responsibility, for the use and enjoyment of future generations.

The public is invited to your facilities to consume the full menu of programs and experiences. They are also encouraged to participate in the planning process, and to offer comments and suggestions. One of the fundamental tenets of well-accepted park programs is public visitation, participation, and involvement. This is the cornerstone of your mission and respect.

Yet, try as you will, there will at one time or another be an accident resulting in a tort claim, a disagreement over a development plan, or public controversy over wildlife management strategies involving the resource or visitor use.

The old adage of President Lincoln is still true: you cannot please all of the people all of the time. Thus, it is ordained that for each park manager there will exist in his or her lifetime at least one citizen



National Park Service

Understanding of the problems existing around unique recreation areas may require special research by attorneys and managers.

who utters, "sue the _____," and who has an attorney with the ancestry to undertake the task.

The propensity of this culture to resolve problems through litigation not only keeps at least the private bar in three-piece suits, but also places additional burdens and considerations on the park manager. Although it has been suggested that the judicial system is not well suited for the resolution of disputes involving park resources, the fact remains that in today's world the courthouse is the stage upon which many of these problems are decided.

Shakespeare may have articulated through the words of a butcher, the answer to any suggestion on the need for park managers to appear on stage in defense of their decisions, let alone entertain attorneys at lunch:

Dick (the butcher): The first thing we do, let's kill all the lawyers.

Cade: Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? That parchment being scribbled o'er, should undo a man? Some say the bee stings; but I say, 'tis the bee's wax, . . .

Shakespeare, Henry VI, Part II, Act IV, Scene II.

Certainly, the words of the butcher have been quoted often to illustrate the frustration with attorneys and the legal process. The issue for the park manager is how to deal effectively with the legal community. Being an effective player in the courtroom is difficult at best, and requires a thorough understanding of the process.



National Park Service

The use of firearms and explosives in public demonstrations may pose serious legal questions that your attorney must address.

Failure results in judicial precedent detrimental to your programs and embarrassing to your agency's mission. Success instills confidence, innovation, and a constructive belief in the system.

This drama has been played before throughout the country. But, the experience is still a mixed blessing. The players are few. Two lawyers, known as YOUR COUNSEL and COUNSEL FOR THE OTHER SIDE (often known in pejorative terms as "HIRED GUNS"); the PLAINTIFF, who has taken exception to one of your decisions or actions; the DEFENDANT, who is the park manager; and the JUDGE.

Enter, stage right, the sheriff.

As you sit quietly in your office planning the budget for the next fiscal year, the Sheriff appears, specifically looking for you. With a smile he presents the parchment called the "summons and complaint." The lawsuit has begun, and your destiny may no longer be in your hands. According to custom, if not necessity, you must now call your attorney, advising

him or her of this latest turn of events. The usual response is, "send me the paper, I'll get back in touch later."

Having been stung by the bee, the park manager is at a crossroads. He either knows his legal counsel as a professional, and is full of confidence and hope that his management decision will be vindicated in the courthouse or, if his confidence is low, the noise at the other end of the phone speaks a foreign version of old Latin, and the park manager reacts in a state of fear. Your reaction to the Sheriff, the parchment, the lawyer, and initiation of litigation is a function of previous experiences with the legal profession. "Anyone for lunch"?

The Worst Case Scenario

The worst case scenario is all too often the real world. You do not know the attorney responsible for the case, let alone his or her ability. The attorney has never seen you, seen the park area, or been educated in the agency's mis-

sion. There is an information void, often a reaction of mass misinformation, or a black hole of silence.

The lawyer requests your administrative record, an explanation of why you did "this" rather than "that," and tells you that your deposition will be taken in three days. Your response is usually, "My deposition, why me?" You are also instructed to pull together all your files, meet with your staff, and try to reconstruct all the facts which led to the litigation. "That's right, all the facts." A formidable task with impossible deadlines.

You curse the system, and quote Shakespeare. A few epitaphs are spoken:

"Old lawyers never die, they just lose their appeal."

"When the lawyers are laughing, the Republic is endangered."

If the script is followed, you will then have the opportunity to meet counsel for the "OTHER SIDE." You will quickly recognize that his or her role is to embarrass you, to challenge your rationality, or at least the rationale for the controverted decisions, and to find logi-



National Park Service

Attorney from a field solicitor's office examines field conditions for familiarization with local managers.

cal inconsistencies in your administrative record or practices. In effect, he or she views the litigation as a 100-meter high hurdles event, forcing you to run the distance full speed without stumbling over any of the hurdles. The task can be arduous, time-consuming, and in your mind, impossible.

Your attorney is also under pressure. He or she needs to pull together, in a short period of time, a credible defense to the litigation—a rationale, some criteria, established agency practice, or application of policy. If that cannot be accomplished, he or she will confess error (i.e., cancel your appearance on stage) or start settlement discussions (i.e., often a significant revision of the script). To have a good defense means your lawyer should understand the park resources, the agency mission, and the balancing act you do on a daily basis.

Difficult decisions are often the result of a careful weighing of competing interests and concerns which require thoughtful professional assessment. Lawyers need to know in detail the process you

undertook in reaching a decision. This is essential because lawsuits are won or lost on the facts, as a general rule, not exotic theories of law or clever performances.

Without a park management and resource background your lawyer is at a disadvantage, and most of the time, following the initiation of the lawsuit, is devoted to getting him or her "up to speed." This leaves little time to get ready for the depositions and trial, or prepare for the final act—that classic defense.

If you have cultivated the legal department for your agency, the litigation process may be enjoyable, as well as intellectually challenging. When the seasoned park manager, the truly experienced actor, has taken the time to get to know the legal actors, a great deal of time and energy is saved, the agency puts on a better case, and you have more winners than losers. Restated, your decisions as a professional are upheld in the courthouse.

Administrative Record

Most cases are decided on the basis of the administrative record. Judges do not like long, involved trials. There is a judicial instinct to decide cases on the basis of the script you have written. If a rationale exists for your decision, judges are reluctant to second guess the resource expert. As the controversy brews over a proposed decision, make a good paper record, written in the King's English rather than scientific jargon. Only by this process can you be assured that the court, when it reviews your decision, will understand why you did "this" rather than "that."

The administrative record must also be kept in a chronological fashion. A disoriented record is an invitation for an extended trial on the merits, a very time-consuming process. By planning ahead and developing your record of decision you control or isolate the issues in controversy and encourage speedy judicial resolution.

Also, you must be comfortable

in placing in the record all sides of an issue: the pros and the cons. By this process you demonstrate to the court that the record was not "adjusted" to make the facts look more favorable. You will demonstrate that all issues, facts, and arguments were fully considered. You are an objective resource professional. When the antagonist in the drama is able to demonstrate that key issues were not considered, or they were adjusted in the record, credibility becomes an issue, not the professional basis of the decision. Disputes that are thoroughly and thoughtfully considered from all perspectives will lead to more victories for you in the courthouse.



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What do you do when the campgrounds are full? Are there potential liabilities from allowing visitors to sleep in unauthorized locations?

Legal Authorities

Understand the legal authorities under which you operate. Do you understand what an authority is based upon and its statutory and constitutional basis? Urge the attorneys to come to your training programs to explain the law and recent court decisions. This process will encourage a dialogue on legal issues and provide the opportunity to understand the nuances of the legislation for your program.

Park programs at both the federal and state level are usually a function of legislative direction. Constitutions for governments seldom recite "parks" as a right of the citizens or purpose of the government. It follows that programs have a legislative basis. This legislative process of itself encourages, to some degree, litigation, since the legislation can never address all issues or concerns which may

arise. This leads to some ambiguity and room for interpretation. Enter the Lawyer.

Joint Training Programs

Joint training programs, while not a substitute for taking your lawyer to lunch, provide an excellent tool to breach the gap between attorneys and park professionals. For example, both the legal and scientific community have vocabularies which are foreign to one another. (How many managers know about orders nunc pro tunc, writs of certiorari, and a fortiori?) In joint training this problem is easily solved, and the participants learn to speak in similar tongues.

The resource manager will also learn to be comfortable in discussing legal authorities and cases

decided by the courts. The National Park Service has been running these programs for several years, with a great deal of success.

The training programs could include a mock court proceedings, which may dispel the fear that comes from the lack of understanding of the judicial process and the theatre of the courtroom. With a little experience at cross examination, deposition taking, and talking to juries, the park manager very quickly becomes a professional actor.

Informal Consultations

Rather than seeking "on the record" legal opinions, written with skill and caution, seek informal advice and guidance. Alternatively, pick up the telephone and have those informal discussions on the

various legal approaches to a difficult problem in your office. Having lawyers go "on the record" with a legal opinion has limited benefits. Joint training fosters informal relationships and permits lawyers to practice preventative law that minimizes courtroom appearances.

Self-Help

Self-help can also improve the dramatic skills of a park manager. Collect copies of the relevant statutes and laws for your park area or program. To be a participant in any play requires a script, otherwise stage fright is inevitable.

Develop a notebook that contains a history of the area and the reasons for its establishment, a summary of past controversies and their resolution, copies of legislation and appropriations, copies of prior litigation affecting the area, and a running diary of potential litigation. Consideration should be given to keeping a deed book for property disputes, and summaries of activities external to the area which may be viewed as a threat to the resources.

If you have the instincts of a historian you can develop a legal history of a park area that will be invaluable to you and your successors in interest. This process will increase your awareness of the legal issues and assist the attorneys dealing with litigation.

Program Control

Truly experienced park

managers also know that litigation may foster loss of program control and decision-making. The folk lore of lawyers running an agency program, under the guise of "winning" a lawsuit, is not uncommon. Lawyers provide counsel, advice, and options. They are not accountable for the success or failure of a park program. A loss in the courthouse is not a license to change a program or decision-making responsibility.

In tort claim litigation involving death or serious injury, there is strong pressure to dramatically change agency policy or practices to avoid future liability. There is a fine balance between public safety, winning tort claims, visitor enjoyment, and adhering to the purposes for which an area was established. The issue is editorial control over the script.

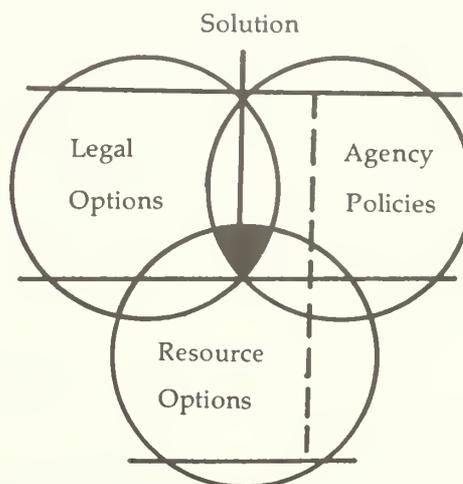
Gray Zone

During the decision-making process or while in the courthouse, try

to get a risk analysis or assessment from your counsel. Some decisions are winners, others losers. Yet, in most situations there is a gray zone. It is important to understand the scope of discretion and its shades of gray. This process also keeps the manager in control of his or her program's destiny, rather than the attorney. Lawyers strongly support program decisions that are winners in the courthouse, but this instinct should not preclude the park manager from selecting an option in the "gray area" of the law.

In resolving a problem or making a decision, think in terms of three subsets: the scope of your legal authorities, agency policies, and resource protection strategies. Where these three subsets overlap is where the solution to the problem lies.

Approach litigation in a philosophical context. Ask yourself are you doing your job well if you have never been sued? Obviously, you are not. Litigation may be in-



Waivers and Releases

by Betty van der Smissen

evitable in areas of controversy. Yet, well considered agency decisions, with a keen eye for legal precedent, and based on sound, professional resource judgment, will in the long run further your agency's mission. Precedent setting litigation may dramatically increase or decrease the scope of agency discretion. A well-planned lawsuit may provide answers to many difficult problems facing an agency.

Conclusion

Whether or not you choose to be a participant on stage, you will nonetheless make a debut. If you have not rehearsed your lines, you may have a dramatic impact on the direction of the programs and activities of the agency. If you do not have the lead role in this drama, who will speak for the protection and preservation of these unique and diverse resources under your stewardship?

The complexity of the issues facing a park manager requires him to be, in effect, a Renaissance Man. Only the eclectic person survives. Lawyers, if "directed" properly, can be a component to your decision-making, broadening your perspective and perception.

Used improperly, a park manager will speak as the butcher spoke in *Henry VI, Part II*. Become familiar with your legal staff, by taking your lawyer to lunch (or fishing!).

David A. Watts is Assistant Solicitor, Parks and Recreation for the U.S. Department of the Interior.



These rafters on the Colorado River signed specially worded waivers covering activities for this trip.

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The term "waivers and releases" is a catch-all term which is imprecise and misleading. There is only one true waiver or release and that is based in contract, not tort. The usual "waiver or release" signed by a participant is not a contract, but is an acknowledgement that there is some inherent "risk" involved in participation and is based in tort as related to assumption of risk. It behooves the recreation and parks profession to use appropriate terminology and distinguish the intent/purpose of the form being signed. There are four types of agreements, and these are set forth in subsequent sections.

The "True" Release, an Exculpatory Agreement

An exculpatory agreement is a contract between two parties, the

provider of the service, activity or facility and the consumer (participant). The contract is signed prior to participation and states that the participant, if injured, will "excuse" or not hold liable the provider regardless of the negligence of the provider; that is, the provider will not be held liable for damages caused by the provider's negligence. Because an exculpatory agreement endeavors to insulate a party from liability for its own negligence, the courts have held that such contracts must be closely scrutinized and strictly construed, as well as meet certain criteria.

In a 1982 Washington case which involved an injury related to mountain climbing, the court held that contracts against liability for negligence are generally valid except (1) where public interest is involved, (2) the negligent act falls greatly below standard established

by law for protection of others against unreasonable risk of harm, (3) the hazard was within contemplation of the release and the release clause was clear, unambiguous, and conspicuous, and (4) the individual (participant) knowingly agreed to terms of the release.

In a skydiving case the court set forth four similar factors: (1) existence of duty to the public, (2) nature of service performed, (3) whether contract was fairly entered into, and (4) whether the intention of the parties is expressed in clear and unambiguous language.

And, in a rental agreement case the court said that for an agreement to be valid and enforceable (1) the exculpatory clause must not contravene policy of law, must relate to individuals in their private dealings, and each party must be a free bargaining agent; and (2) the agreement must be strictly construed against the party asserting it and it must spell out the intent of the parties with particularity.

Expressed in Clear and Unequivocal Terms

Unless the intention of the release is very clear and unequivocal, a negligent party will not be relieved of liability. In a white-water rafting situation, the plaintiff, as well as all participants, was required to sign the release in order to go on the trip. The release set forth the dangerous nature of the trip and representations as to the undersigned's age, condition and state of mind, and included this clause:

The undersigned understands and expressly assumes all the dangers of the trip. The undersigned waives all claims arising out of the trip, whether caused by negligence, breach of contract or otherwise, and whether for bodily injury, property damage or loss or otherwise, which he may ever have against Niagara Gorge River Trips, Inc., its successor and assigns, and its officers, directors, shareholders, employees and agents, and their heirs, executors and administrators.

The court held this statement to be clear and unequivocal, and thus a valid agreement. While the use of the term "negligence of the owner . . ." is not mandatory for the clause to be valid, it is highly desirable that it be used for clarity. Such exculpatory clauses are used primarily with activities generally considered of "higher risk" such as rafting, parachuting, scuba diving. If an intended exculpatory clause is not sufficiently explicit in its language, it may be held to be ineffectual, as a court so held in a camp case when the clause stated:

It is further agreed that reasonable precautions will be taken by Camp to assure the safety and good health of said boy/girl but that Camp is not to be held liable in the event of injury, illness or death of said boy/girl, and the undersigned, does fully release Camp, and all persons concerned therewith, for any such liability.

The enumeration of risks is not sufficient. The court held in a

horseback riding case that the only risks referred to in the agreement were those "inherent in horseback riding," and not specifically the negligence of the defendant. Thus, the document was an agreement to participate based on assumption of risk, not a contract waiving rights against defendant for negligence. A similar decision was reached in a 1983 water skiing incident in Florida. The release executed gave evidence of actual consent to assumption of risk, not a release from liability based in negligence.

Understanding What is Being Signed

The signer of an instrument (contract) is conclusively bound by it and it is immaterial whether it was read or subjectively assented to in the absence of fraud or misrepresentation or that a special relationship existed between the parties which would render the agreement invalid. However, the clause must be conspicuous. The statement of release may be incorporated into the participation process, such as an admission ticket, season pass, entry form, or membership application.

There must, however, be opportunity for a person of average intelligence to observe what is on the ticket. In *Kushner v. McGinnis* the admission ticket was taken 4-5 steps after purchase and torn up, which made the release defective. Further, the plaintiff was unable to read the release. And, on a skiing season pass, the court held that the statement on the pass did not contain express consent on the part of the holder to exonerate the ski area

for negligent conditions. A college student ski jumper alleged that he had not read on the entry form he signed the waiver clause before signing, signing it unwittingly, and thus he should be relieved from the consequences of his act. The court held that the plaintiff was under a duty to inform himself on what he was signing, and the release was conspicuous and valid in the language in which it used.

The exculpatory clause may appear on a membership application form and be held valid, as was the situation in a 1983 New York case, which involved use of a private mountain club's skiing facilities. Similarly, an exculpatory clause may be placed in a rental agreement, such as for use of snow ski equipment or water jet skis. Any disclaimers, of course, must be conspicuous and in writing. Damages may be limited or excluded unless the limitation or exclusion is "unconscionable." Clauses, too, may be placed in leases. However, such clause must meet criteria such as not against policy, retention of control, et. al.

Void as to Minors

Another criterion for a contract to be valid is that the person signing must be of majority age. It is usually for this reason that it is said that the "waiver or release" agreement for participation is not valid since many participants are minors. Exculpatory agreements can be made only with persons of legal majority age.

However, a person below such age who has signed may ratify the agreement upon reaching majority.

This ratification can come either by expressly doing so or by implied ratification. For example, the plaintiff, when 17 years of age, signed a contract with the defendant for use of skydiving facilities. After reaching majority, the plaintiff used the facilities and the court held that by his acts he in fact ratified the contract upon reaching majority. The disaffirming of an agreement related to a mountain climb could be done even by the administrator of a child's estate (the 15-year-old was fatally injured in a fall) by commencing an action.

Public Policy

Another reason why exculpatory agreements are frequently considered not valid as related to recreation and parks is because of the public service nature of recreation and parks when provided by governmental agencies and charitable organizations. Seldom is this issue raised in private enterprise recreational activity, although a business which has a public service character would be found not to have an enforceable exculpatory agreement. In a private riding academy case the court commented, in saying that in this instance there was not a service of public character, likened such public character to outdoor recreation, sports, and recreational events.

In *Hewitt v. Miller* it was held that instruction in scuba was not a public service, but a private contract between the parties. Exculpatory agreements related to auto racing, as a general rule, are held

by the courts not to be contrary to public policy.

In respect to being against public policy, one of the concerns is that if an individual has contracted not to be held liable, then such individual may use less care for the protection of the participant. The courts have held that an exculpatory agreement is valid only if the act does not fall greatly below the standard established by law for the protection of others against unreasonable risk of harm. The standard of care can be set by statute or by precedence.

Also, a special relationship may exist which requires one party to have greater responsibility than that of the ordinary person, particularly as related to children. The court so held regarding protection of children in camp. However, no special relationship was found between student and instructor in parachute jumping.

It also is considered against public policy if one party clearly dominates or there is an "adhesion contract," that is, one drafted unilaterally by business enterprise and forced upon an unwilling and often unknowing public for services that cannot readily be obtained elsewhere. It may be imposed on the public for a necessary service on a "take-it-or-leave-it" basis. In an early camp case, the agreement was held to have two parties of unequal bargaining power, where the plaintiff was a family of low-income. But, in a skydiving agreement, it was held not to be an adhesion contract in that it was not established that the services provided could not have been obtained elsewhere.

An exculpatory contract is against public policy if it provides a shield against claims for willful and wanton negligence or a malicious act. It is against public policy to permit a defendant to exonerate himself from liability for an intentional tort. Also, where there is a fundamental breach of an implied covenant to transport safely, this breach would nullify an exculpatory clause.

Agreements to Participate

An agreement to participate should be distinguished from a waiver which is an exculpatory contract. An agreement to participate is not a contract at all, but is related to unintentional tort based in negligence through the concept of assumption of risk—a valid defense in most jurisdictions. In an exculpatory agreement, the negligence of the defendant is “waived or released”; whereas, in an agreement to participate under the concept of assumption of risk, there is no negligence involved on the part of either the defendant or the plaintiff. The plaintiff does not assume any risks of activity occasioned by the negligence of the defendant, and the plaintiff is not contributorily negligent. The plaintiff is assuming those risks which are inherent in the activity and from which injury occurs but due to no negligence on the part of either party.

Agreements to participate are for both minors and persons of majority age. The signature of the parent on such agreement by a minor carries no legal force. An agreement to participate can be a useful document in that it provides



Prior to conducting ski class the instructor asks for signed waivers which include the need to follow instructions and to stay within specified activity limits.

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one written evidence of an effort to gain understanding and appreciation by the participant regarding the inherent risks of the activity.

In order to do so, it is recommended that an agreement to participate have two primary elements embodied within it. First should be a section on the nature of the activity. This description should be fairly detailed, so that indeed the participant is aware of expectations. If it is, for example, a rafting trip, then the type of group, degree of difficulty of the river, supervision being given, etc., should be set forth. *ALSO*, the fact that the individual will get wet in cold water, perhaps be sleeping overnight on the river bank, may need to exert considerable physical energy and be tired, etc. The unpleasurable aspects must be identified, so the participant cannot later say “If I had known . . . I would not have gone.”

Second, there should be a pointed and un glossed-over section as to possible consequences of going on the trip in terms of injury, including possible death, in the case of a rafting trip. After having a \$6+ million judgment against them in a football case, the Seattle Public Schools drafted this paragraph for students to sign:

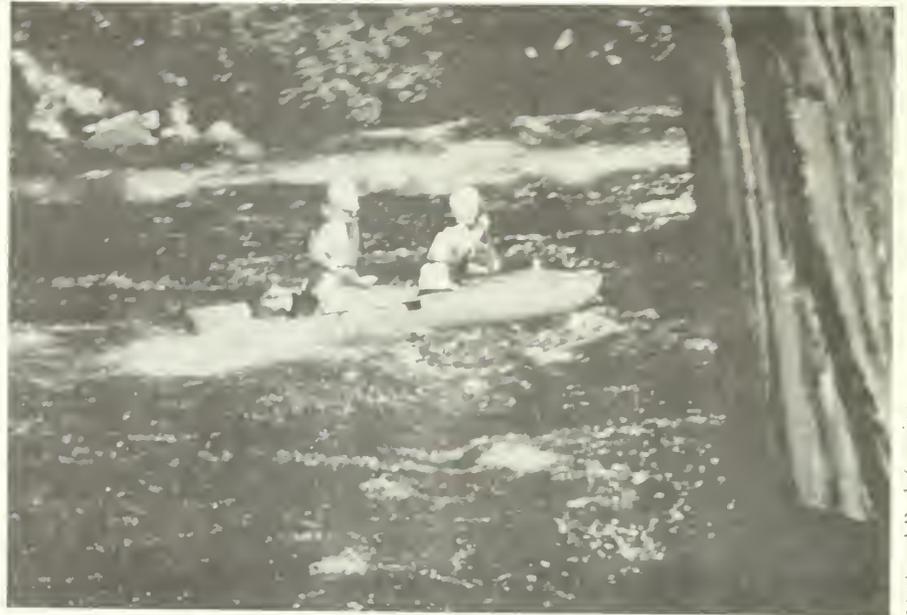
I am aware that playing or practicing to play/participate in any sport can be a dangerous activity involving MANY RISKS OF INJURY. I understand that the dangers and risks of playing or practicing to play/participate in the above sport include, but are not limited to, death, serious neck and spinal injuries which may result in complete or partial paralysis, brain damage, serious injury to virtually all internal organs, serious injury to virtually all bones, joints, ligaments, muscles, tendons, and other aspects of the muscular skeletal system, and serious injury or impairment to other aspects of my body, general health and well-being. I understand that the dangers and risks of playing or practicing to play/participate in the above sport may result not only in serious injury, but in a serious impairment of my future abilities to earn a living, to engage in other business, social and recreational activities, and generally to enjoy life.

While this may seem a bit extreme, such a statement does not seem to restrict persons from participating. However, the statement

should be appropriate to the activity in which the participant will be engaged. The last sentence was included because in computing compensatory damages for an injury, such are calculated—future earnings, inability to participate in certain activities, and general life disability and enjoyment.

It is recommended that in addition to the foregoing two sections that a third be included in which the participant agrees to follow the rules and regulations and obey the leader or supervisor of the trip or activity. If there are some special safety rules and regulations, it might be well to have them printed right on the reverse side of the agreement form or have some indication that the participant has received and read them. This section finds its rationale for inclusion in the legal concept of contributory negligence. While in a majority of the states contributory negligence is no longer a bar to recover, it does impact greatly upon the size of the award in those states which embrace the doctrine of comparative negligence. An award under comparative negligence is reduced in accord with the plaintiff's contributing negligence; failure to follow rules and regulations or the leadership could be construed as an act contributing toward one's own injury.

Depending upon the activity, a fourth section may be highly desirable in the agreement to participate. It has to do with the condition of the participant. If certain physical condition or skill competency is prerequisite to a safe experience, then there should be some affirmation by the partici-



Businesses renting equipment for use in potentially hazardous activities may require users to sign waivers.

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pant that these conditions or competencies have been met. Or, if there are certain conditions which are very desirable to be known by the leadership in order to more adequately protect the participant, then such should be asked about, such as epilepsy, allergies (such as bee stings for outdoor activities), temporary physical illness, or disability. To withhold pertinent information can be considered misrepresentation and fraudulent on the part of the participant. To not know and therefore not be able to be aware of possible needs would be taken into consideration when determining foreseeability of the injury and the reasonableness of the care given to the participant on the part of the leaders.

Parental Permissions

Often the parental permission and the agreement to participate are embodied in the same form. If such is the case, both the participant, although a minor, and parents must sign. It is desirable to have a special statement above the parents' signature indicating that permission is given for the child to participate in the aforescribed activity. The agreement to participate, in the detail described in the foregoing section, provides an

excellent information document, and also is good public relations.

In addition to the permission statement, it may be desirable to have an exculpatory clause for the parents, since parents can sue for damages occasioned by injury to the child in their own behalf.

Parents cannot, however, sign away the rights of the child. A child normally has the right to sue in his own behalf until the statute of limitations has run after reaching the age of majority for that state, whether it be age 18 or 21. Normally the statute of limitations for negligence (injury caused by) is two or three years.

A permission statement also can be helpful in identifying conditions about which a leader/supervisor should be aware. For example, in a Louisiana case a 17-year-old drowned in a hotel pool while on a band trip. Even though the young man was afraid of the water and could not swim, so the plaintiff alleged, the parent had signed a written permission form that the son could use the pool. If the permission was intended to be conditional, then such should have been indicated by the parent. The school was found not to be negligent.



Richard L. Wilburn, NPS

Allowing activities not appropriate for the location or the conditions would not be excused by a waiver.

Indemnification Clauses or "Hold Harmless" Agreements

While indemnification or "hold harmless" clauses are becoming quite commonplace in agreements to use facilities or areas, or to conduct certain activities, this section discusses only an indemnification clause as related to an individual participant, the focus of the preceding three approaches to limiting liability. An indemnification clause shifts the responsibility for the payment of damages to someone other than the negligent party (defendant), and in this context the shift is back to the injured or plaintiff.

An indemnification clause and an exculpatory clause are technically distinguished in that the exculpatory clause denies the injured party the right to recover. However, they both have the same result in regard to the injured—the injured cannot recover against the negligent defendant. Because there is similar purpose, both are generally construed by the same principles of law. However, indemnification clauses usually are not held contrary to public policy and are construed a bit more liberally, essentially because insurance is usually employed to cover such in-

demnification clauses. Nevertheless, the clause must clearly provide for indemnitee's own negligence; it cannot be inferred since some courts have held that one who is actively negligent has no right to indemnification.

A procedure that is questioned as not being either sound fiscally or public relations-wise is that of including an indemnification clause in either a membership application or a rental agreement. However, if the indemnification clause is sufficiently clear, it will be held valid. As a participant one must very carefully read an indemnification clause. Frequently such clauses are extended not only to the individual signing but also to damages sustained by other individuals and actions brought against the sponsor of the activity or owner of the facility. In essence these clauses endeavor to have the parents of the participants or the adult members become the "insuring entity," rather than the organization taking out insurance from a company. It should be noted that an indemnification clause becomes operable only after the person being indemnified has suffered loss, that is, a judgment has been made against such person or organization. That is why an indemnification clause

sometimes is referenced as a "hold harmless" clause.

State Statutes

It is deemed not appropriate to discuss specific state legislation. However, it is noted that some states have general legislation directed toward exculpatory agreements, while others may have legislation specific to a particular activity or service. Legislation, also, may focus on assumption of risk, comparative negligence, and consumer protection. Check your state's laws.

This article is based upon material in Chapter 16 of the forthcoming book by van der Smissen, Legal Liability and Risk Management, Anderson Publishing Company, Cincinnati, 1985. See chapter for further discussion.

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Federal Tort Liability: Reform in the Wind

by John Lodge Euler and
John J. Farley, III

Historical Background

In 1959, a suit against a federal official in his individual (as opposed to official) capacity failed in the case of *Barr v. Matteo, et al.* In *Barr*, the Acting Director of the Office of Rent Stabilization was sued for libel by two of his subordinates for issuing a press release in which he announced their suspension and criticized their conduct. The Supreme Court, in a four-four-one decision, held that the defendant was absolutely immune from a personal suit for a tort committed within the "outer perimeter" of his line of duty. The rationale of the plurality was that the greater public good was better served by federal officials being free to exercise their judgment and carry out their duties without the threat of harassment, intimidation, or personal financial ruin inherent in the litigation of tort suits brought by those who disagreed with the federal action. Thus, it appeared established that federal officials could not be personally or individually sued for actions taken within the scope of employment and that the only tort remedy, if any, available for those aggrieved by some federal action was a suit under the Federal Tort Claims Act (FTCA) against the United States.

From the perspective of the federal official, this was a fairly salutary state of the law. However, it was all to change in 1971 when the Supreme Court decided a case filed by Webster Bivens. Alleging that his rights guaranteed by the Fourth Amendments had been violated by six agents of the Federal Bureau of



Youth diving into a shallow stream in area clearly posted which identifies submerged rocks. Management's duty seems to be fulfilled in properly posting the area.

Richard L. Wilburn, NPS

Narcotics, Bivens sought money damages from the federal officers individually. The district court dismissed the action for want of jurisdiction, noting both the absence of a precedent for an action for damages directly and solely premised upon the Constitution and the immunity of the federal agents. The Second Circuit affirmed the dismissal, holding that the Fourth Amendment did not create a private right of action for damages. The Supreme Court disagreed. Reasoning that damages historically have been regarded as the ordinary remedy for an invasion of personal interests in liberty, the Court held that the suit stated a cause of action. In concurring, Mr. Justice Harlan noted that sovereign immunity would have barred such a suit against the United States, *i.e.*, no such cause

of action is recognized under the Federal Tort Claims Act. Accordingly, "for people in Bivens' shoes, it is damages or nothing." Since the Second Circuit had not addressed the question of immunity, the case was remanded for consideration of that issue.

On remand, the Second Circuit held that the individual federal defendants were not entitled to the absolute immunity set forth in *Barr v. Matteo*, but could only claim the "qualified immunity" that was available to state law enforcement agents sued under the authority of the federal civil rights statutes. This was not really an "immunity" but an affirmative defense which enabled the defendant to demonstrate that he or she was acting in good faith and upon the reasonable belief that the subject actions were lawful.



Richard L. Wilburn, NPS

Controlling and adequately posting recognized dangerous areas are obligations of management.

In 1978, the Supreme Court confirmed that ruling in the case of *Butz, et al. v. Economou, et al.* There, a commodity futures dealer sued the Secretary of Agriculture and other officials for allegedly violating his Fourth and Fifth Amendment rights in the course of a proceeding to revoke or suspend the registration of his company. The Supreme Court held that a *Bivens* cause of action could be stated under the Fifth Amendment due process clause and that, as a general rule, absolute immunity was not available to federal officials in suits alleging constitutional violations. The high level official exercising discretionary or policy judgment was only entitled to the qualified immunity defense in cases alleging constitutional violations.

This general rule had exceptions, however. Absolute immunity

would be available, the Court ruled, to judges, prosecutors, and their "agency equivalents." In addition, the Court left open the possibility of a grant of absolute immunity for other officials if it could be demonstrated that immunity in their case was "essential for the conduct of the public business." The Court reaffirmed the continued availability of *Barr v. Matteo* absolute immunity for all federal defendants in *common law*, as opposed to *constitutional*, tort cases. Finally, the Court counselled the lower federal courts that summary judgment should be readily utilized in *Bivens* cases to prevent harassment of federal officials by frivolous law suits.

In tandem, the *Bivens* and *Butz* cases established the framework of federal tort liability for individual federal defendants that pertains,

with some modifications, to this day. It can be summarized as follows: The United States can be sued in tort only under the Federal Tort Claims Act, which does not embrace *Bivens* or constitutional torts. Most federal officials are absolutely immune for common law (or non-*Bivens* type) torts committed within the outer perimeter of their authority. Most federal officials are, however, individually amenable to suit for alleged constitutional torts and are only entitled to the defense of qualified immunity. Some federal officials are absolutely immune for both common law and constitutional torts if they were carrying out the functional duties of their office. These include judges, prosecutors, and their agency equivalents.

Recent Supreme Court Decisions

Subsequent Supreme Court cases have served to adjust or expand this basic scheme in a positive or negative way depending upon one's point of view. From the perspective of the federal employee, the situation continued to deteriorate after *Butz* as defensive theories were generally limited and causes of action were expanded in the *Bivens* area. In 1979, in *Davis v. Passman*, the Supreme Court confirmed that a *Bivens* cause of action could be stated under the Fifth Amendment by permitting a suit against a Congressman by his former employee whom he had terminated for alleged sexually discriminatory reasons.

In 1980, the Court ruled in *Carlson v. Green* that a cause of

action for violation of Fifth Amendment due process and equal protection rights and for the Eighth Amendment's proscription of cruel and unusual punishment could be stated in a case involving the death of a federal prisoner from medical malpractice so allegedly serious that it rose to the level of "deliberate indifference." In that case, the Court also held that the existence of another tort remedy under the Federal Tort Claims Act did not preclude the implication of a *Bivens* action. The Court construed Congress' intent to be that the FTCA and a *Bivens* cause of action were parallel and complementary.

The Court stated that Congress could explicitly declare another remedy to be exclusive and thereby preclude a *Bivens* action but it had not done so with the Federal Tort Claims Act except in the case of a few types of employees, primarily federal drivers of motor vehicles. Absent an explicit declaration from the Congress, the Court would only preclude implication of a *Bivens* suit if there were "special factors counselling hesitation" in doing so. The Court found none in *Carlson*.

Thus, within a decade following the original *Bivens* decision, federal officials were exposed to potential personal liability on a multitude of theories arising out of almost every one of the first thirteen amendments to the Constitution, even when an existing alternative remedy such as the FTCA was available in the particular case.

The only positive development from the perspective of the federal

official over this period was the fact that the Attorney General of the United States authorized and implemented a program to provide Department of Justice legal representation to employees who were personally sued. So long as the conduct giving rise to the suit occurred within the scope of employment and representation was determined to be in the interest of the United States, federal defendants could secure representation by a Department of Justice attorney even though sued in an individual capacity.

Current Trends in the Court

In 1981, the Supreme Court seemed to turn a corner. First, the Court decided, in the case of *Nixon v. Fitzgerald*, that the President of the United States was absolutely immune from suit premised upon allegations of either constitutional or common law torts committed within the outer perimeter of his office. Of greater significance for federal employees as a whole, however, was the companion decision of *Harlow v. Fitzgerald*, where the Court modified the tests for qualified immunity, admonished the lower federal courts to dispose of *Bivens* cases on motions for summary judgment (even prior to allowing discovery) and, for the first time, seemed to demonstrate serious concern over the effect that such suits may be having on effective government:

. . . it cannot be disputed seriously that claims frequently run against the innocent as well as the guilty—at a cost not only to the defendant of-

officials, but to the society as a whole. [Footnote omitted.] These social costs include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will "dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties."
Gregoire v. Biddle, 177 F.2d 579, 581 (2d Cir. 1949), cert. denied, 339 U.S. 949 (1950).

With respect to the qualified immunity defense, the Court removed one of the major impediments to summary judgment by eliminating the subjective or "good faith" prong of the test. The new description of the defense was stated to be solely objective: that the conduct of the government official did not violate "clearly established" statutory or constitutional rights of which a reasonable person would have known. The discerning reader will note that the new, objective "reasonableness" standard was articulated by the Court in terms of clearly established rights; that is, in terms of a reasonable legal analysis.

The question comes to mind as to how to treat a case involving a strictly factual decision or one in which there is a dispute as to the facts which led to the decision. Clearly the language and the intent of the Court seems to embrace factual as well as legal reasonableness as worthy of protection under the

Traffic on poorly designed and/or maintained roads must be properly controlled to prevent accidents.



Richard L. Wilburn, NPS

doctrine of qualified immunity. Time and the litigative process will tell.

In the two subsequent cases of recent decision, the Court continued to infer a new direction with respect to personal liability of federal officials. In *Wallace v. Chappell*, the Court held that principles of intramilitary immunity, otherwise known as the *Feres* doctrine, and the "special relationships that define military life" precluded suit by Navy enlisted men against their superior officers for alleged racial discrimination even when couched in Constitutional terms. Similarly, in *Bush v. Lucas*, the Court found "special factors counseling hesitation" in the federal personnel context and refused to permit a *Bivens* suit by one federal employee against another for alleged wrongful, retaliatory personnel action because of the existence of an exhaustive system of administrative remedies under the civil service regulations.

Thus it can be argued that the Court is becoming concerned about the price being paid for exposing federal public servants to personal liability and may be looking for ways to cut back upon or, even, rethink the liability imposed with the *Bivens* case some twelve years ago.

Legislative Reform

While the courts have been struggling to fashion a fair and workable liability scheme founded upon tort law principles, the legislative branch has also turned its attention to the problem. In the last several Congresses, serious

legislative efforts have been made at reform and have been progressed through the subcommittee level. However, opposition has traditionally been strong from civil liberties organizations, primarily the American Civil Liberties Union, and this has had the effect of dragging out consideration of the various proposals until time expired in each Congress.

In the 98th Congress, however, interest in legislative reform may have finally reached critical mass. Several bills have been introduced and all parties seem now to agree that reform is necessary. In the House, Congressman Sam Hall of Texas introduced H.R. 595 which has proceeded through subcommittee mark-up and now awaits full Judiciary Committee action. In the Senate, Senator Charles Grassley of Iowa has championed the cause with S. 633 and S. 775 whose provisions also appear in Title 13 of S. 829, the President's Comprehensive Crime Control Act of 1983.

As in the past, the legislative proposals have in common two fundamental changes in federal tort law. First, sovereign immunity would be waived and the United States would consent to be sued for *Bivens* or constitutional torts. Under current law, it is clear that the United States cannot now be sued for such a tort. The result would be that an aggrieved plaintiff would, for the first time, have a viable, financially responsible defendant against whom to press his grievances. Second, the United States would become the exclusive defendant for all torts committed by employees within the scope of their employment. In other words,

the "social costs" referred to by the Supreme Court in *Harlow* would be eliminated because individual federal employees could no longer be sued for either constitutional or common law torts. All tort actions would be placed under the mantle of the Federal Tort Claims Act and litigated pursuant to its provisions.

Beyond those two fundamental similarities, the House and Senate bills diverge. In the House, the bill as reported out of subcommittee (H.R. 3142) contains provisions for attorneys fees, jury trials when constitutional violations are alleged, an award of additional damages in cases of malicious conduct and, most importantly, precludes the United States from asserting the qualified immunity defense to which its employees would have been entitled. In the Senate, that defense is preserved. Moreover, although there is a provision for liquidated damages in the absence of proof of real injury, there are no provisions for attorneys fees, additional damages or jury trials.

The issue over which the legislation will rise or fall is that of the qualified immunity defense. While now supporting the concept of the legislation, civil liberties groups are adamant that the defense should be precluded. The administration is just as firm that elimination of the defense would be inimical both to the public interest and the interest of federal employees and that legislation which forces its elimination should not go forward.

Proponents of elimination of the defense argue that it was designed by the courts to protect individual defendants from unfair findings of liability when they acted reason-

ably and in good faith. Since the United States would become the defendant under the proposed legislation, there is no reason for it to have the same protection that was designed for individual defendants. If it is retained, they argue, some persons injured by government action will have no recovery.

Those who would keep the defense respond that it reflects the fundamental element of tort law that unreasonable action resulting in harm is the trigger of liability. If government officers act as reasonable persons in a given situation, either factually or legally, it makes little sense for the citizens of the United States to be held liable for damages. Moreover, the argument goes, there is a public interest and an interest of the individual employee in retaining the defense so that the reasonableness or validity of the conduct is relevant and at issue in court. Otherwise, the employee will not be able to defend his or her conduct in the public forum and the United States will be found liable without a similar opportunity to defend its action and without all the facts implicit in determining reasonableness coming to light.

Finally, there is the argument that the legislative proposals represent a bold, new concession to suit by the sovereign (United States) involving a venture into uncharted waters of liability and damages. Should the defense be waived, the government could well be placed in a situation of virtual strict liability in the constitutional tort area and subjected to unreasonable, and even intolerable, losses in readily

foreseeable situations.

As of this writing (November 14, 1983) efforts are being made to find a means of compromising the two points of view. In the Senate, the full Judiciary Committee favorably passed upon Senator Grassley's proposal subject to a resolution of the outstanding issues satisfactory to Senator Grassley, Senator Joseph Biden of Delaware and the Department of Justice. Since all sides agree on the need for legislation, there is some hope that a way can be found.

Upon reviewing the testimony submitted in both houses of Congress during committee consideration, it becomes apparent that the case for reform is strong indeed. There are approximately 2400 pending cases filed against individual federal employees, 75% of which involve multiple defendants. Therefore, several thousand federal public servants are currently threatened with personal financial catastrophe for attempting to carry out the duties assigned to them by the Congress and the President.

Currently, there is no provision for federal indemnification or insurance for these employees. No other identifiable group of persons or professionals in the country is left in such a naked, unprotected position. Many of the suits filed are of a vindictive or hectoring nature, or filed for such questionable purposes as attempting to intimidate otherwise legitimate federal action or obtain discovery with respect to a related criminal or enforcement proceeding.

Evidence was presented in Congress of the personal trauma visited upon conscientious employ-

ees by these suits, the prodigal diversion of resources required for their defense and the overall chilling effect on legitimate government action. Truly, the "social costs" documented by the Supreme Court in *Harlow* are high and continuing to rise. From the other perspective, out of approximately 10,000 cases which have been filed since 1971, only 17 have proceeded to judgment against individual defendants and only 5 are known to have resulted in ultimate satisfaction or payment of the judgment. Clearly then a plaintiff who proceeds with a *Bivens* lawsuit has almost no chance of recovering money.

It is thus apparent that no one—defendant, government, citizenry or plaintiff—receives benefit from the current system of tort liability against individual federal officers. It now appears that this is being widely recognized and that both the Supreme Court and the Congress are troubled by the extent of the problem. There is ground for hope that meaningful reform is in the wind.

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The views presented in this article are solely those of the authors and do not necessarily reflect any official position of the U.S. Department of Justice.

This article is reprinted from the January 1984, (Vol. 31 No. 1) issue of the Federal Bar News & Journal.

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