

Accommodating Controversial Expressions of First Amendment Rights in National Parks: One Superintendent's Experience

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ANTIETAM NATIONAL BATTLEFIELD IS A FEDERAL AREA located in Washington County, Maryland, about 70 miles northwest of Washington, D.C. The area is rural in nature, but due to a recent building boom there has been some development of farmland and open space into housing developments. The Battle of Antietam (or Sharpsburg) occurred on September 17, 1862, and was the largest battle of the first Confederate invasion of the Union. About 125,000 troops (88,000 Union, 37,000 Confederate) participated in the battle, which lasted 12 hours. At the end of the battle, over 23,000 troops were killed or wounded—the bloodiest one-day battle in American history. This was also the battle that allowed President Lincoln to issue the Emancipation Proclamation, which freed slaves held in rebellious states.

Antietam is a beautiful place, made up of rolling farm fields, woodlots, orchards, and, of course, Antietam Creek. It teems with wildlife, including white-tailed deer, turkey, fox, eagles, hawks, and the ever-present groundhog. Spring wildflowers bloom across meadows and fields, and this bucolic setting belies the carnage which took place here 145 years ago. It is considered to be, along with Shiloh, one of the best, most well-preserved battlefields in the world. By many it is considered sacred ground, and treated with great reverence by those who visit. It is a unique place which maintains its cultural and historic associations and allows nature to flourish as a part of the historic landscape.

I have served as the superintendent of Antietam for 12 years. During that time we have restored historic landscapes and

buildings, and reconfigured farm fields to their 1862 appearance in compliance with our general management plan. Annual visitation at the national battlefield has grown from 121,000 in 1984 to 303,000 in 2006. Our permanent staff consists of 41 full-time employees, and during my tenure we have increased the size of our resource management staff from 3 to 9 permanent employees, of both natural and cultural disciplines. During this same 12-year period, we have issued over 635 special use permits, and 2 First Amendment permits. I am here today to speak to you about one of these First Amendment permits.

In March of 2006 I was approached by the then-Grand Wizard of the World Knights of the Ku Klux Klan to request that his group be allowed to conduct a demonstration at Antietam later in the year. The

Grand Wizard was familiar with his rights, and that previous demonstrations such as the one he was requesting had been held recently at Yorktown Battlefield and at Valley Forge. He was polite, listened well, and was well spoken. I explained to him the process of application and provided him with a copy of the appropriate form. He thanked me and left.

In previous duty assignments I had been exposed to demonstrations by groups such as the KKK and the National Socialists (Nazis), but somehow I had deluded myself into believing that it would never happen at Antietam. Today, I cannot tell you why I felt that way; I just did.

My discussion with the Grand Wizard had been polite, and he was appreciative of the assistance and explanations I provided. He left my office a happy “client.”

I picked up the phone and called my chief ranger, who manages our public use and permit program, and arranged a meeting with him. I called my regional director and left a message that I needed to speak to him as soon as possible. I then printed out from my computer a copy of the U.S. Constitution and its amendments. During the next several months prior to the demonstration, and for months after, this was the first document I saw when I opened my incident binder to work on what became known as the June 10 Permit.

It served as a great reminder as to why I was doing what I was doing, and why I was putting my staff through this. Also I printed a copy of the same document for all my division chiefs and law enforcement officers.

Immediate contact was made with the Department of the Interior Office of the Solicitor and the United States Park Police. The contacts were most beneficial: they

both deal with such demonstrations on a daily basis in Washington D.C., and soon became my subject-matter experts. My staff also began to contact parks where such events had recently occurred (Colonial and Valley Forge national historical parks) to obtain what information we could on how they managed the event. Both of these sites, along with the Northeast Regional Office, were more than helpful and offered all information and guidance that they thought would assist us.

Perhaps you have noticed that, at this point, I had not made the immediate response of “no”—that this event would not take place. From grade-school, high-school, and college-level civics and government classes, I realized the impact of the First Amendment. And after meeting and discussing the permit process with our solicitor, I realized that not only the Constitution required it, but the Supreme Court expected it. Realizing we had no choice in issuing the permit, we began the process of determining how we could best manage the event to protect our visitors and the resource. It was a long, time-consuming process for a park that had no previous experience in such matters. We relied greatly on what other parks had done before, and what guidance and expertise were brought to the table by the solicitor and U.S. Park Police.

This may sound odd, but one of the first things I did was begin an educational process with the entire staff concerning the U.S. Constitution and the First Amendment. This consisted of all-employee meetings, divisional-level meetings, and weekly meetings with my division chiefs and senior staff. If they did not understand why we were doing what we were doing, there is no way we could explain it to the public.

Ah, the public. . . . One of the most dis-

heartening things I found was the lack of knowledge that exists about the Constitution and the First Amendment. Through e-mail and letters, I was called everything but home to dinner. Many offered prayers for me and my family, while other offered places to have my white sheet cleaned, because they were sure I was part of this demonstration.

Some of the messages that most concerned me were from those who represented themselves as civics, history, or government teachers from middle school through the college level. These folks were sure that if I were a “sharp” government employee I could find a way around this and deny the permit. Over 900 e-mails commenting on the issue were received; of them, only 3 were in support of my actions. (An interesting fact was that the vast majority of comments were made by e-mail: we received only 81 phone calls and 2 paper letters.)

My job, along with my staff, was to find a place where this event could occur and have limited impact on our visitors and resources. In this, we were lucky that our compendium of closures had been revised only months before to identify areas off-limits to demonstrations and other activities regulated under special use permits that would impact resources (whether historic, archeological, and natural) and visitors. The development of this updated compendium was a joint effort, with critical input from all park divisions: natural and cultural resources, facility management, and interpretation.

Having this accurate resource information is essential in managing events such as these to provide the utmost protection for both resources and visitors. I cannot emphasize this enough: the total involvement of all park divisions is needed to get

the point across that the compendium of closures is not just a law enforcement tool, it is a valuable resource management and protection tool.

In his permit application, the Grand Wizard of the Klan had stated that his group was in fear for their safety from counter-demonstrators. As a result of this statement, and because of the previous work done on the compendium, on-site resource and visitor safety assessments, and daily operational schedules, a record of decision was developed. In concert with the Department of the Interior Solicitor’s Office and the U.S. Park Police, it was decided that, for reasons of safety and protection of the resource, a small portion of the battlefield would be closed to traffic and have controlled access for those wishing to participate in or view the demonstrations. The area closed to traffic would far less than 1% of the park (5 out of 3,288 acres).

Several options were available and were presented to the Grand Wizard; the location he chose was the Mumma Farm grounds. The Mumma Farm is a 91-acre tract of land that contains farm fields, woodlots, and a combination of contributing and non-contributing buildings. In 1999, the house and barn went through a restoration process and are now being used as the center point of our education program. They are located on a part of the battlefield tour route known as Mumma Lane, approximately 0.3 miles from the visitor center. Use was allowed of the outside area near the barn and house, made up of an area of managed grass, a gravel road, and a small corner of a corn field.

Counter-demonstrations were placed across the tour route, at a safe distance, in another corner of a corn field. For the period of the demonstration, Mumma Lane was

closed to traffic, and anyone who came to the demonstrations had to pass through two police checkpoints and a metal detector. To limit access to weapons or things that could be used as weapons, restrictions were placed on the KKK and counter-demonstrations as to what could be brought into the site. These restrictions included but were not limited to the type/size of wood used to support placards, signs, or banners.

On the day of the demonstration, other park operations went on as scheduled. That weekend was a special interpretive weekend—Artillery Weekend—a living history program. In addition, a walk-a-thon was completed early that morning for a local nonprofit. Over 9,000 attended Artillery Weekend on Saturday and some 450 participated in the walk-a-thon. Also, a special interpretive display was placed in the lobby of the visitor center on the U.S. Constitution and the First Amendment as it deals with free speech.

Prior to the June 10 event, I wrote an editorial piece for our local newspaper, and made myself available for all types of media—from local TV and newspapers to international media. Over 90 interviews were conducted and I did them all. Do I like being on TV that much? No! But as I said, we are a small park, I serve as the public information officer, and my staff was busy doing other work. Besides that, I was the face of the park and the person who made the decision to let this occur.

Numerous meetings were held with federal, state, and local law enforcement and emergency service agencies. In addition, meetings were held with representatives from the Department of Justice and the local U.S. Attorney's office. Incident plans were developed, reviewed, and approved. And on the morning of June 10th, 232

national park rangers, U.S. Park Police officers, and Maryland state troopers held their final briefing. Weather-wise it was a nice day, with warm temperatures in the 60s and a little windy.

Metal detectors were put in place, and, working with the Park Police tactical units, my cultural resource and maintenance staffers were able to figure out that we could mount the detectors on plywood sheets and not have to excavate to level the locations, thereby protecting archeological resources. This may be a little thing, but it's important.

The demonstration areas had been located in places that are managed either as mowed lawns or farm fields. These sites were identified using raised bike racks and police tape. Sound checks were made of speaker systems to ensure they would not affect the interpretive programs being offered near the visitor center. The demonstrators were briefed that during their demonstrations there would be one cycle of cannon fire from our Artillery Weekend demonstrations.

The groups involved were the World Knights of the Ku Klux Klan, who brought along members of the National Socialist Party, or Nazis, for support. These two groups were dressed in the familiar white sheets and hoods, Nazi storm troopers' uniforms, business suits, t-shirts, and jeans.

The counter-demonstrators included members of the Southern Washington County Council of Churches, Women for Peace, 37th Texas Confederate Living History Group, NAACP (National Association for the Advancement of Colored People), and FredPak, an "organized group of anarchists"—kind of an oxymoron there. They were dressed in everything from Confederate Civil War uniforms to one guy who was dressed like a pirate. The Southern Wash-

ington County Council of Churches also held a counter-demonstration about five miles from the battlefield to celebrate the unity of the people against hate.

On the battlefield, a total of about 40 Klansmen and Nazis attended, and approximately 35 counter-demonstrators participated. The permit lasted from 12 noon to 5 p.m. There were no arrests or incidents on the battlefield, although a few of the Nazis got into a fight with a few of the KKK at a local grocery store—go figure.

The total cost to NPS for this event \$128,987. According to our Solicitor's Office, the Supreme Court has said we cannot charge for First Amendment permits. So no costs were recovered, not even the application fee. The incident was funded out of a WASO [NPS Washington Office] emergency law-and-order account, and there has been considerable discussion about whether the cost is too much. What I know is this: during the event, tensions were quite high—lots of shouting and screaming, lots of hate. If one visitor had been hurt or a historic structure or resource damaged, the cost would have been much, much more.

I was present during the entire demonstration, along with the regional solicitor

and representatives from the Justice Department. It was not a pleasant experience; the words used and ideas presented were offensive, as was, in some cases, the reaction of the counter-demonstrators. It was a difficult day emotionally for the law enforcement officers involved, along with the facility management staff who provided support. Our interpretive division bore the brunt of the visitor questions as to "Why would you allow this to happen?" When it was over, I happily can share with you that we experienced no visitor injuries or resource impact—except some temporary damage to our image. But this too shall pass.

We could not have succeeded with the safe and effective management of this incident without the help and cooperation of Colonial National Historical Park and Valley Forge National Historical Park. The staff of these parks provided us with an overwhelming amount of information on what worked and what did not. In turn we passed along our plan and more information to Gettysburg National Military Park and Harpers Ferry National Historical Park, where additional demonstrations were held later in the summer. In this case, the "seamless" network of parks worked very well.

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