

## ARTnews

# Standing Up to the Smugglers

*Almost weekly, police seize pre-Columbian objects that were spirited out of their native countries. Now Latin American governments are developing new strategies to protect their patrimony* • BY ROGER ATWOOD

**O**n a desert hill littered with ancient ceramic shards and remnants of woven cloth and sun-bleached human bone fragments, Rigoberto grasps a bamboo pole and drives it about five feet into the sandy ground.

"Nothing," he says. He pulls out the pole and drives it in again a few feet away. Again, nothing, and again and again.

Finally, the bamboo makes a dull thump. He has hit something—perhaps a rock but more likely an adobe brick or ceramic pot marking the upper reaches of a tomb built by the culture that flourished on Peru's central coast about a thousand years ago. He leaves a stick in the ground to show where he

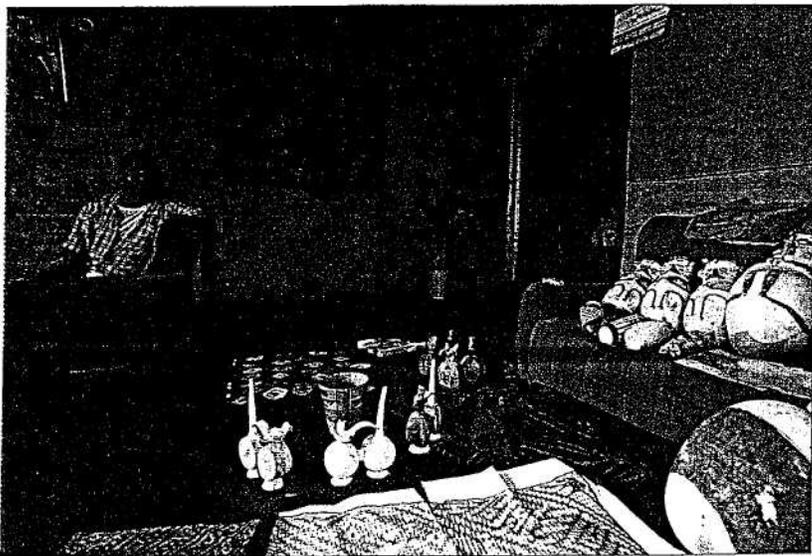
his dusty village north of Lima, Rigoberto is a *huaquero*, a looter. There, looting is about the only work to be had, and although it's illegal in Peru to desecrate tombs, Rigoberto says the police can always be bought off with a freshly dug-up pot or two. Sometimes a middleman comes and pays the diggers even before they've excavated a tomb, on the condition that the buyer gets everything in the tomb, no matter how valuable. So many *huaqueros* have raked through this desolate hill over the years that pickings are getting slim.

"My father used to find the weavings they wrapped the mummies in—good stuff," says Rigoberto. "Five more years, and I don't think there will be anything left."

But no matter. Rigoberto and the thousands of Peruvian *huaqueros* like him can find plenty of other sites. A long succession of Indian cultures left their mark here in tons of buried art and architecture, until the last of them, the Incas, were vanquished by the Spaniards in the 16th century.

The *huaqueros* may not know it yet, but on the other end of their supply line, the trade in what they unearth is coming under new constraints as Latin American authorities take serious steps to control the outflow of Indian "cultural assets." Many governments are moving to stop airport smuggling while working with police in buyer countries to pounce on illegal collectors. Most have signed international treaties restricting the outflow of art and artifacts. As international standards become more stringent, calls for U.S. museums to stop buying looted treasures are growing louder. "The public needs to demand accountability from museums—and demand that they state exactly where these objects are from and how they got them," says Boston University archeologist Ricardo Elia. "There's more and more awareness that museums that acquire undocumented artifacts are not only beneficiaries of looting but are really acting as its agents."

To Latin American officials, what's at stake is more than the law. It's national identity and pride, they say, as well as the prestige of gleaming new museums built across the continent in the last few decades. "What do I feel when I see Peruvian artifacts in New York or Minneapolis? A mix of love and pain. Love for the pieces, yet pain for that part of our cultural heritage that has been ripped away from us," says Luis



Rigoberto, a looter, at his home north of Lima, with objects he has excavated from tombs left by a succession of Indian cultures.

has made the find. His colleagues will come at night to dig in search of pottery and textiles that may eventually find their way onto the shelves of American and European collectors.

"Sometimes you get some good merchandise, sometimes you get nothing. We can go for weeks digging, and still my ancestors won't give us anything," says Rigoberto, who does not want his last name used. His body is small and powerfully built, well suited to wiggling its way into half-excavated tombs.

Like his father and grandfather, and like almost all the men in

Repetto, head of the Peruvian government's National Culture Institute, based in Lima.

"Lately we've seen some incredibly beautiful polychromatic pottery from the Bagua region of northern Peru being sold in Europe," says Walter Alva, director of the Bruning Museum in Lambayeque, Peru, which has a strong collection of Mochica artifacts. "We've never seen anything like it before. There's nothing like it in any Peruvian museum, and it's turning up in Germany and Switzerland! It's as if I went to Europe and stole their royal families' jewels and brought them back to Peru to sell."

Latin America is not alone in stepping up efforts to reclaim its patrimony. In March, Chinese officials spotted a tenth-century marble sculpture, believed to have been stolen from an ancient tomb, in a catalogue for a Christie's auction and asked U.S. Customs officials to help them retrieve it. Customs moved to seize the sculpture, and Christie's withdrew it from the sale. In April, at the first Africa-Europe summit, African states demanded that European nations repatriate cultural property.

But the problem has become particularly severe in Latin America, where the ancient past is very much a part of the present. It pops up in the most inconvenient places. In Mexico City, workers stumble on buried Aztec sites as they build subway lines. In El Salvador, home builders outside the capital have turned up so many Mayan figurines that some people have set up their own living-room museums. In Belize, road builders have been known to dig into Mayan burial mounds and pull out the masonry to use as paving stones. Ditchdiggers in northern Chile found mummies in 1983 dating from 5,000 B.C., among the oldest mummies ever discovered anywhere.

In Peru, about 135 archeological sites have been at least partly excavated, and unexcavated sites are believed to number in the thousands. The city of Lima has no fewer than 41 major pre-Hispanic burial mounds, known as *huacas*. One of them was partly obliterated by the construction in the 1980s of the National Museum, where Repetto has his office and which now houses a large pre-Columbian collection. Pre-Columbian pots, once shunned by Peru's European-blood elite as trinkets of backward Indians, now adorn hotel lobbies, restaurants, and bourgeois homes all over Peru. "We Peruvians associated them with poverty, with the Indians," says Manuel Mendieta, a Lima engineer and collector. "No one wanted these things until the 1960s."

Now everyone wants them, including big American museums, which are increasingly in competition with one another for the



**This limestone figure from northern Veracruz, dating from A.D. 900 to 1200, was the top seller at a pre-Columbian auction at Sotheby's New York last November, going for \$57,500. Like most of the items in the auction, it had no provenance listed.**

best objects. But most pieces offered on the market, archeologists note, are not furnished with information as to their origin or prior ownership—an indication they were probably looted. Alva wants to make buying archeological items with no provenance as unacceptable as wearing fur. "My slogan would be 'People who love culture don't buy antiquities.'"

Almost weekly, police make a major ancient Latin American art bust. As with drug trafficking, the places where the objects show up reflect the constant shift in routes that art smugglers use. Europe and, to a lesser extent, Canada are said to have become important channels for pieces that are often bound for the United States. In March, Costa Rican police confiscated 43 pre-Columbian artifacts dating from about 300 B.C. and bound for Europe, and they arrested a man alleged to be the local contact for a European smuggling ring. Four days earlier in Milan, Italian police turned over seven ancient Peruvian pieces to officials from Peru. In Vancouver in April, authorities turned over to Peruvian authorities the last 54 pottery pieces of two big pre-Columbian art hauls seized in the Canadian city in the 1980s. They also returned five confiscated modern replicas that were of such good quality that they could instruct Peruvian authorities how to spot the real ones, said Kathryn Zedde of the Department of Canadian Heritage in Ottawa.

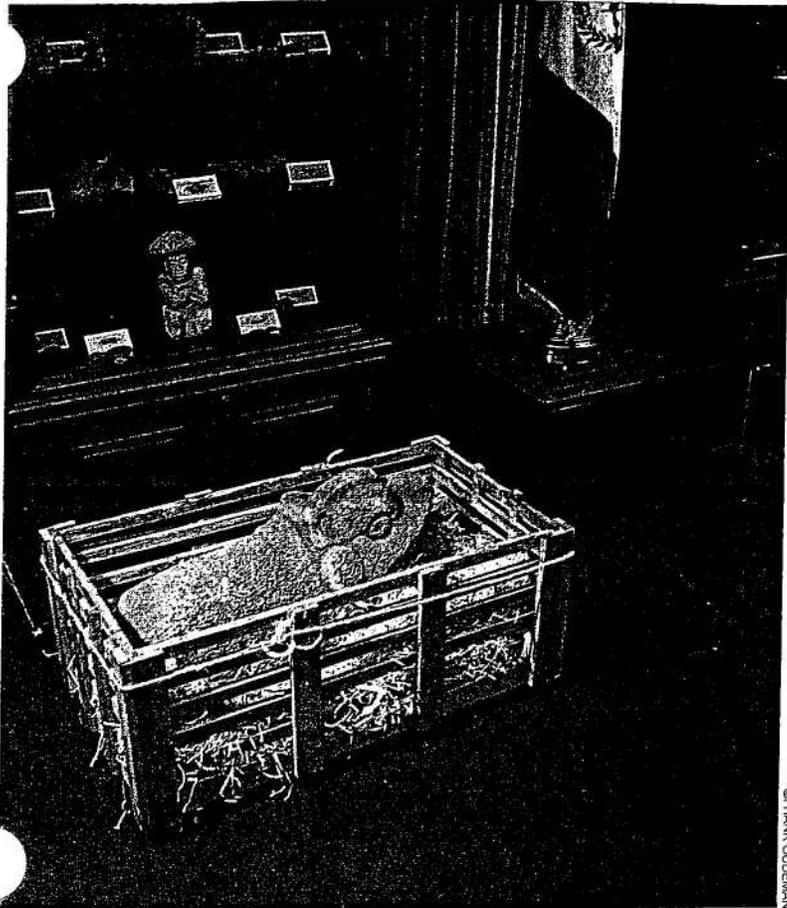
"We're not able to help source countries control this if they don't have adequate export controls," she says. "We need them to help and to work together." Police in Canadian ports, meanwhile, have been trained in how to recognize looted archeological goods, said a spokeswoman for the Royal Canadian Mounted Police. Last year, acting on a tip, New York City police seized from a garage in Queens a huge stone sculpture depicting a man emerging from the maw of a jaguar that had been stripped from a Mayan site in northern Guatemala. The piece is now at the Guatemalan consulate, awaiting a flight home.

Archeologists working in Latin America speak with sadness and desperation about the constant pressure from thieves, urban sprawl, and agriculture. "The looters are getting more and more vicious, they're often armed, and you can't scare them anymore by just showing up," says Steve Bourget, an archeologist at England's East Anglia University. His dig near the Peruvian city of Trujillo is under 24-hour armed guard.

Thomas Killion, an archeologist at the Smithsonian Institution's National Museum of Natural History in Washington, has seen evidence in Belize that looters use bulldozers, backhoes, and chain saws. In one case, they stripped off the carved front of a Mayan limestone stele with a chain saw, leaving the rest of the stone intact—

presumably because it would have been too heavy to haul out.

"They know enough about archeology and enough about an-



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**A stone sculpture depicting a man emerging from the maw of a jaguar sits in the Guatemalan consulate in New York, awaiting a flight home. It was seized by New York City police last year from a garage in Queens.**

cient customs to identify the potentially rich deposits, and then they crack into them," says Killion. He's working now at an Olmec site in an area of Mexico's Veracruz state that has been picked through by looters for years. "There's a hot little market going for small, portable Olmec objects," he says, with some resignation. The mere presence of archeologists can make the place more attractive to ransackers, he adds.

By the time they reach New York or London, Latin American ceramics carry price tags ranging from \$1,500 to hundreds of thousands of dollars. Metalwork and jewelry command similarly high prices. Experienced looters can be extremely sensitive to market demands. Textiles have become another hot collecting area throughout the world, and wood objects are also now in vogue. Nevertheless, in certain areas demand has slackened for ceramics after a glut in the 1980s and '90s, say authorities in various countries. And so Peruvian plunderers are turning away from the ceramic-rich sites in the north and hacking their way into tombs in southern Peru and Bolivia to strip off intricate Paracas and Inca weavings from corpses.

Rigoberto had a red tie-dyed weaving from the Paracas culture of southern Peru, about the size of an opened newspaper and apparently cut from a larger cloth. His price: \$150. He has about 20 regular buyers, five of whom are not Peruvians but Italians, Americans, and Chileans. He believes they ship the objects regularly out of the country. "They come, they buy, and I never see the pieces again. Everybody happy," he says. The most he has ever made from a piece he dug up was

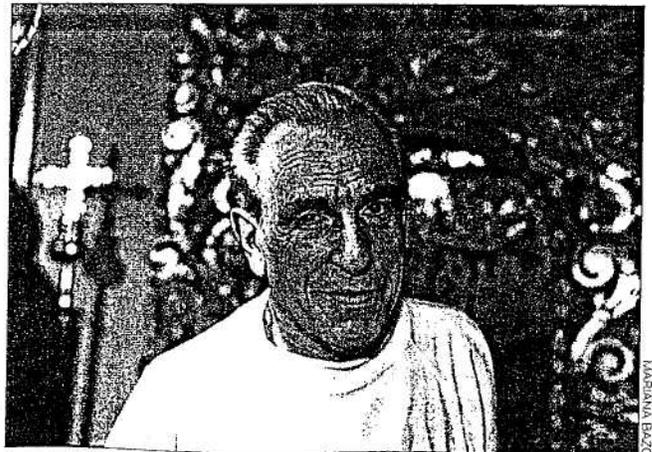
\$500, for a perfectly preserved ceramic vessel showing a dog giving birth.

Most looted pieces are shipped out of the country with phony documents by oceangoing freighters and are often mixed in with other, legal exports. Sometimes they go by land to neighboring countries, where police aren't well trained enough to spot the goods, and from there to port. Guatemalan stolen art often goes through El Salvador, and Peruvian art often gets trucked through Bolivia and Argentina, officials say. In some countries, according to experts, drug traffickers dabble in smuggling pre-Columbian art.

Boston University's Ricardo Elia says his survey of Sotheby's and Christie's late-1999 antiquities catalogues found that two-thirds of the pieces had no provenance listed at all, raising suspicions that they were illegally exported. He wrote recently in the *Boston Globe* that he had examined the published records of eight notable U.S. collections of pre-Columbian antiquities, comprising more than 2,300 objects. He found that not a single one had been verifiably obtained through legal archeological excavations.

At an auction at Sotheby's in New York of nearly 400 pre-Columbian pieces last November, an Inca textile with no provenance listed, estimated at \$8,000 to \$12,000, sold for \$14,950. An exquisite limestone figure from northern Vera-cruz, Mexico, depicting dual images of life and death, sold for \$57,500 at the same auction—again, without any provenance. One of the stars of the catalogue was a Huari shirt from southern Peru dating from about A.D. 900 and valued at up to \$275,000. Its provenance was given as "an American private collection," but it was withdrawn from the auction at the last minute because of "questions of title and ownership," said Sotheby's later.

Sotheby's vigorously denies that it knowingly trades in looted items and says that the fact that no provenance is given for most items does not mean they were taken illegally. "People see these things in the catalogue and assume that they came last month from Turkey or Italy or Peru or wherever, and that's just not the case," says Sotheby's antiquities specialist Stacy Goodman. "There was a lot of material collected early on, and they were perfectly legal collections, so to speak,



JARINNA BAZO

**Collector Enrico Poli, whose Lima home contains a huge assortment of ancient Peruvian ceramics, textiles, and metalwork. He acquired some objects directly from professional looters.**

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and those pieces get recirculated.”

Sotheby's official Rena Mouloupoulos, who is in charge of making sure the goods are being sold legally, says the auction house takes great care with its offerings. "People come to us and say, 'I just came back from Peru with this object, and can you sell it?' And the answer is, obviously, no. We don't want to encourage looting in any way."

But there are signs that Sotheby's is beginning to find the market more trouble than it's worth. (Christie's says it has never sold pre-Columbian antiquities.) Sotheby's in London pulled out of the pre-Columbian art market in the late 1990s because of "sensitivities in the marketplace," according to press officer Chris Proudlove. Asked whether that meant there were questions about the legality of some pieces, he replied, "Yes."

U.S. museums are now starting to feel pressure to repatriate plundered objects. Guatemala has been demanding that Boston's Museum of Fine Arts relinquish 25 Mayan artifacts, including a set of painted vases considered among the finest examples of classical Mayan art. A collector brought them from Guatemala to the U.S., and they were bought for the museum by one of its trustees, Landon Clay. Almost as soon as they went on exhibit in December 1997, Guatemalan officials claimed they had been illegally exported. Guatemala's consul general in New York at the time, Fabiola Fuentes Orellana, and the country's deputy minister of culture, Carlos Flores, met with museum director Malcolm Rogers and another museum official in January 1998 to formally request the pieces' return.

"And they said, 'How much will you pay us for them?' They were actually asking us to buy back something that was stolen from us," Fuentes Orellana says. Through a spokeswoman, Rogers denies that the museum asked for money for the artifacts. The museum says the objects were legally imported, "are legally held, and should remain here," according to Katherine Getchell, the deputy director for curatorial administration.

In 1998 the Denver Art Museum elected to return an elabo-



COURTESY DENVER ART MUSEUM

**A Mayan lintel that was ripped from the doorway of the El Zotz archeological site in Guatemala and donated to the Denver Art Museum in 1973. The museum returned it two years ago. "There is pretty much an ethical consensus that architectural objects should not be acquired or kept," a curator explains.**



BEVERLY SCHAEFER/REUTERS

**FBI agent Wayne P. Comer (left) and Ricardo Luna, then the Peruvian ambassador to the United States, look on as Walter Alva, director of Peru's Brujuno Archeological Museum, inspects a gold Peruvian artifact known as a "backflap." Once worn by warrior-priests from the ancient Moche civilization, the object was recovered by the FBI from black-market smugglers during a sting operation in 1998 and returned to Peru.**

ately carved Mayan lintel that had been ripped from a doorway of a temple in Guatemala and donated to the museum in 1973. Unlike the Boston vases, the lintel was an architectural artifact, "and there is pretty much an ethical consensus that architectural objects should not be acquired or kept," says the Denver museum's curator for pre-Columbian art, Margaret Young-Sánchez. "Certainly, we're not interested in returning objects on a wholesale basis. We deal with repatriation requests on a case-by-case basis," she adds.

Meanwhile, in Santa Fe, New Mexico, Peruvian museum director Alva has been in a long-standing battle with the Museum of New Mexico over a gold breastplate that Peruvian officials maintain was stolen from the Lord of Sipán tomb. Discovered in 1987, the tomb in northern Peru contains a stash of 600-year-old gold and pottery that is considered one of the biggest archeological finds since Tutankhamen's tomb. Some of its contents fell to looters and have since turned up in private collections around the world. But most of the tomb was excavated by Peruvian and U.S. archeologists under Alva's direction, leading to a show at the American Museum of Natural History in New York in 1994.

In September 1998, the FBI seized the breastplate and two other objects—a gold monkey pendant and a pair of gold ear spools with turquoise inlay—from the Santa Fe museum on suspicion they had been stolen from Sipán. With the help of art historians, the museum convinced U.S. authorities that the objects had been legally acquired and may not even have been from Sipán. They were returned a year later to the museum.

Since then, Peruvian officials and the museum have been in a standoff. Both sides have art historians to back up their claims. The case highlights the growing ill will between museums and the source countries that have supplied their antiquities. "If the objects came from Sipán, we would return them, but they did not. If Alva is still insisting they are from Sipán, then he is wrong," says Thomas Chavez, director of the Museum of New Mexico's Palace of Governors, where the objects are displayed. "This museum has led the nation in returning artifacts. We've returned effigies and pottery to Indian groups in the United States. Repatriation is part of our policy, and we've been doing it for years."

"That piece was stolen and they know it, and eventually it will be returned," says Peru's Repetto. The institute he leads has begun an ambitious program to build small museums around Peru and would like some top-notch objects to showcase in them.

Stolen pieces from Sipán are still turning up. FBI agents found part of a garment made of gold, silver, and copper alloy in the parking lot of a Philadelphia hotel in 1997. The next year, a stash of about 200 Peruvian artifacts, including a 2,200-year-old mummy and Sipán items, turned up at Miami International Airport in a crate headed for Switzerland and labeled "Peruvian handicrafts."

One of the biggest caches of plundered artifacts anywhere is with private collector Enrico Poli, a legendary figure in the world of Peruvian treasure trafficking, whose ordinary-looking house in



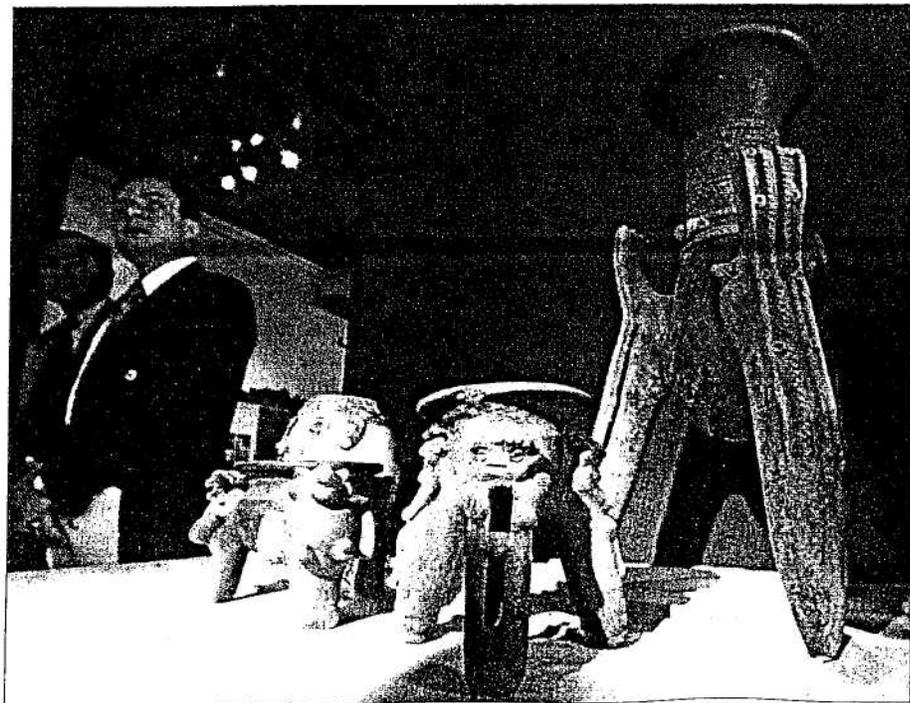
HERIBERTO RODRIGUEZ/REUTERS

**Cristina Sánchez, chief of the anthropology museum in the state of Guerrero in southern Mexico, with dozens of stolen pre-Columbian artifacts recovered in Acapulco in 1998.**

a Lima suburb contains a huge and fabulously rich assortment of ancient Peruvian ceramic, textiles, and metalwork. He personally shows the collection on appointment-only tours, which have attracted a stream of visiting diplomats and celebrities. He boasts to visitors that his huaqueros are the best in Peru and that they bring him their choicest pieces because he doesn't haggle; these include the first to have emerged from the Sipán trove in 1987.

The outside world got a taste of Poli's collection in 1988, when he allowed the Grand Palais in Paris to exhibit 359 of his objects as part of an exhibition called "Gold and Its Myths." In a four-hour interview, Poli, 75, told *ARTnews* he was seeking a buyer for his collection—but with a few strings attached. By law, the collection would have to be kept in Peru. Poli insists that it be sold in one block, "because I have declared it indivisible. If this collection is lost, the loser will not be me, but all of humanity." He has been arrested three times over the years for receiving looted goods but never convicted because, he says, the authorities could never prove the objects were stolen.

A top supplier to private collectors is Torkom Demirjian, whose Madison Avenue gallery receives antiquities from all over the world. Among his recent sales is a collection of 200 gold objects from Colombia, Panama, and Peru, sold separately for a total of \$3.5 million. "I don't care about where an object came from. It's like a baby—it's out there, and someone has to take care of it," he says. "These objects have somehow come onto the market, they're valuable, and people want them. The archeological elite is trying to make people feel guilty about collecting. But once an object has been unearthed, who is more qualified to take care of it? A collector who has an interest in taking care of



REUTERS/NEW MEDIA INC./CORBIS

**Costa Rican officials stand near archeological pieces seized from international traffickers last March at San José's airport. The objects, with a combined black-market value of \$1 million, were bound for Europe.**

it, or these stupid countries' archeological institutes?"

One way archeologists hope to get collectors involved is by persuading them to join sponsor-a-site programs, whereby pieces would be excavated slowly and carefully, Sipán-style, with enough sold to support the research. There are also proposals for some kind of moratorium on antiquities buying.

Another initiative is to stem the trafficking of pre-Columbian pieces at airports and borders, where they are spirited out in suitcases and ordinary boxes marked "handicrafts" or "personal effects." Repetto now rotates a Peruvian archeologist and an art historian at Lima's international airport 24 hours a day to work with customs officers to identify and seize objects being smuggled out of the country. At 2 A.M. recently, the two specialists were indeed there. A few hours earlier, they said, they had confiscated an 800-year-old Chimú pot from a departing tourist who said he had no idea it was real.

"The first time, you get a warning. But we take your name, and if you get caught again, you may get fined," says the on-duty art historian, Juan Carlos Rodríguez. In its first two weeks, starting in late January, the service seized 13 pre-Columbian objects—just a drop in the bucket, but it could amount to hundreds of objects over a year, says Repetto.

"We may be catching only a small fraction of what's leaving the country, but before, we didn't stop anything. Collectors used to ship whole containers full of ancient objects to Europe. They have to be more secretive about it now, and so we have to work harder to find it and stop it."

Diplomats have long been accused of having a hand in trafficking, in part because their belongings cannot ordinarily be inspected by police. Last February, Swedish television reported that Sweden's former ambassador to Peru and Guatemala, Ulf Lewin, had been smuggling pre-Columbian objects to Sweden for years and giving them to museums or selling them. The report sparked an international scandal. The Peruvian government, acting after breathless Lima media reports denounced the "looter-ambassador," said in a statement in early March that it was investigating Lewin. A spokeswoman for the Swedish Foreign Ministry in Stockholm said that Lewin was traveling and not available for comment.

A 1970 international UNESCO convention put the issue of stolen cultural property on the map as a global law-enforcement issue. The United States has signed and ratified the 1970 UNESCO treaty and backed it up, first with enabling legislation and then bilateral cooperation and enforcement agreements with various source countries, including Peru. That treaty, signed by 91 countries to date, including Canada and several in Europe, was the first that allowed states whose cultural patrimony was being pillaged to call on other states to control trade in looted items. But it made no provision for compensation for good-faith purchases of looted goods, and so negotiators drew up the 1995 UNIDROIT treaty to appeal to countries, mostly in Europe, that said they wanted provisions for compensation. It was

widely seen as a successful compromise.

But so far, few have signed. France, Switzerland, and Portugal have signed but not ratified the 1995 treaty, and only about a dozen countries worldwide have ratified it, most of them source countries, including Italy, China, and Peru. Many European countries with big antiquities collections are holding out against either treaty. Among them are Germany, nearly all of Scandinavia, and the holder of the Elgin Marbles, Britain.

Peruvian authorities, meanwhile, have turned in the past year to one of the tactics they used so effectively in fighting the leftist guerrillas in the 1980s. They have enlisted repen-



AP PHOTO/PATRICIA MCDONNELL

**Some of the Mayan artifacts, among them painted vases, owned by Boston's Museum of Fine Arts and claimed by Guatemala on the grounds that they were illegally exported. The museum has declined to return them, saying they were acquired legally.**

tant looters to form citizens' patrols and spy networks to protect sites around Sipán, says Alva. They're having some success, he claims.

Of course, such plans aim to put the world's professional grave robbers out of business. But Rigoberto is not concerned. "The old folks left lots of things in the ground for us," he says, the desert sun beating down on his face. "Once this area is finished, we'll find another. There is no end to what is in the ground." ■

*Roger Atwood, a Washington-based journalist, last wrote for ARTnews about the Cuban artist Tomás Sánchez, in the October 1999 issue.*

# FOSSIL PROTECTION LINKS

Version 1.2.5 (February 6, 2001)

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Department of Mines and Energy

Geological Survey Division

Regional Geology Section

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- Commercial Fossil Dealers (Yahoo)
- Descriptions of Natural World Heritage Properties
- Dig It
- Disappearing worlds
- F is for fake: Only an X-ray will stamp your fossil bargain as authentic
- Flying Fossil Find Up for Auction: Impending sale of scientific treasure in S.F. angers paleontologists
- Fossil Legislation and Ethics
- International Palaeontological Association (IPA)

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## Jonathan Sazonoff

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  - New Threats to Old Bones: The Theft of Fossil Vertebrates from Museum Collections - Adobe Acrobat Reader File
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## **Paleontology in the 21st Century Workshop (Paleo21 - Frankfurt, 1997: An International Senckenberg Conference)**

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- [Sustainable Tourism](#)
  - [Winged dinosaur auction stirs natural history flap](#)
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## **Argentina**

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### **Protection of Palaeontological Heritage in Argentina**

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Argentina has a set of national and provincial laws, all of which forbid the commercialization of fossils from our country. Nevertheless, we know that material from Argentina does reach illegally a number of fossil dealers at home and abroad. Everybody should be aware that all fossil material from Argentina on sale abroad has been somehow illegally smuggled out of the country. We are greatly concerned about the increase in such practice, which is openly carried out mainly in countries which have a legal trade of their own fossils. This encourages criminal practices involving illegal collecting, marketing, theft, smuggling and eventually permanent loss of a significant part of our national fossil heritage. We welcome any cooperation from those countries to stop such practices, which are also beginning to

damage local scientific and educational interests in many ways.

The Argentine Palaeontological Association (APA) is a learned society founded 45 years ago by professional palaeontologists. Most of the efforts of this society are dedicated to the editing and publishing of the quarterly journal Ameghiniana, yet the matter of fossil protection has long been among its objectives.

From the scientific point of view, the APA has issued a set of Ethical Rules to be followed by foreign institutions and scientists carrying out studies in our country (or on Argentinian material).

The APA has been recently involved in several issues connected to fossil protection. Two are important enough to deserve international attention:

1. The Triassic continental site of Potrerillos in Mendoza Province (known worldwide by its mammal-like reptiles, besides other vertebrates, plants and invertebrates) was seriously threatened by the building of a new road. The APA and other palaeontological institutions proposed the study of an alternative route to save the site. For the first time in Argentina the protection of the palaeontological heritage has been taken into account by all parties concerned, and we hope most of the site will be preserved.  
Un nuevo tramo de ruta destruirá yacimientos únicos de fósiles: Arrasará con fósiles de 240 millones de años en la precordillera de los Andes · También se perderá parte del patrimonio arqueológico · La construcción del dique Potrerillos obliga a desviar la ruta que conduce a Chile
2. An important palaeontological and archaeological collection stored and offered for sale has been recently seized by police action in Buenos Aires.  
Argentine sting nets 12,000 archeological pieces  
Secuestraron quince mil piezas arqueológicas: Encontraron vasijas, cerámicas, puntas de flecha, fósiles y textiles · Algunos objetos son peruanos

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## Australia

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### Commonwealth

- Australian Fossil Mammal Sites (Riversleigh/Naracoorte): Select Bibliography
  - FOSSIL MAMMAL SITES, AUSTRALIAN WORLD HERITAGE NARACOORTE/RIVERSLEIGH
  - Fossil Thefts
  - Have a Captain Cook at these gems - for a price
  - Natural Heritage Places Handbook
  - Operation Bud
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### State

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- GUIDE TO QUEENSLAND FOSSICKING LEGISLATION

## South Australia

- Ancient fossil to be returned to SA
- Black marketers sell off prized fossils
- Stolen Fossils
- Stolen fossils to return to Flinders Ranges
- "Wonambi Fossil Centre": A World Heritage Site, Naracoorte, South Australia

## Victoria

- The Fossil Hunter's Guide to Victorian Fossil Localities - Can I keep the fossils I find?

## Western Australia

- Australians Recapture Stolen Dino Print
- Big feet
- Fossil thief gets two years jail
- Stegosaur footprints stolen
- Stolen Dinosaur Footprints
- Thieves walk off with sacred dinosaur footprints

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## Belgium

- Een Erecode voor Amateur-geologen en Verzamelaars van Mineralen, Gesteenten en Fossielen

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## Brazil

- Fossil hunters invade Araripe

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## Canada

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### Federal

- Canadian Cultural Property Export Review Board / Commission canadienne d'examen des exportations de biens culturels

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### Parks Canada / Parcs Canada

- Bill C - 27 (1999-2000)
  - Bill C - 27: An Act respecting the national parks of Canada / Projet de loi C - 27: Loi

- concerna nt les parcs nationaux du Canada
  - ENFORCEMENT / APPLICATION DE LA LOI
  - OFFENCES AND PUNISHMENT / INFRACTIONS ET PEINES
  - REGULATIONS / RÈGLEMENTS
  - SCHEDULE 1: NATIONAL PARKS OF CANADA / ANNEXE 1: PARCS NATIONAUX DU CANADA
  - SCHEDULE 2: NATIONAL PARK RESERVES OF CANADA / ANNEXE 2: RÉSERVES DE PARCS NATIONAUX DU CANADA
- Grasslands National Park: Management Plan / Parc national des Prairies: Pla n directeur
  - Gros Morne National Park / Parc national du Gros-Morne
    - Descriptions of Natural World Heritage Properties
    - Natural Resources Research in Parks / Recherche en ressources naturelles dans les parcs
  - Guiding Principles and Operational Policies / Principes directeurs et politiques de gestion
  - National Parks Act (1998)
    - NATIONAL PARKS ACT, OFFICE CONSOLIDATION AND OTHER LEGISLATION GOVERNING THE NATIONAL PARKS OF CANADA / LOI SUR LES PARCS NATIONAUX, CODIFICATION ADMINISTRATIVE ET AUTRE LÉGISLATION QUI RÉGIT LES PARCS NATIONAUX DU CANADA
    - NATIONAL PARKS AND NATIONAL PARK RESERVES OF CANADA / PARCS NATIONAUX ET RÉSERVES DE PARC NATIONAL DU CANADA
    - Offences, Punishment and Procedure / Peines et procédure
    - PROPOSED NATIONAL PARKS AND NATIONAL PARK RESERVES / PARCS NATIONAUX PROPOSÉS ET RÉSERVES DE PARC NATIONAL PROPOSÉS
    - Regulations / Règlements

- Removal of fossils from Canada

## **Gem and Mineral Federation of Canada**

- Code of Conduct for Canadian Collectors Respecting the Earth Sciences

## **Provincial/Territorial**

### **Alberta**

- Alberta Historical Resources Act
  - Acquiring fossils from the Royal Tyrrell Museum or other public institutions in Alberta
  - Alberta Regulation 77/82: Palaeontological Resources Regulation
  - Collection of fossils in Alberta
  - Ownership of fossils collected in Alberta
  - Removal of fossils from Alberta
- An Informed Burglary: As Valued Artifacts Vanish In An Edmonton Break-In, Police Conclude These Weren't Local Boys

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- **Dinosaur Provincial Park**

- Descriptions of Natural World Heritage Properties
- Dinosaur Provincial Park. Alberta, Canada: A Place Like Nowhere Else On Earth!
- Dinosaur Provincial Park: Natural Preserve
- Dinosaur Provincial Park / parc provincial Dinosaur

- Finding Fossils In Alberta
- Freedom of Information and Protection of Privacy: Section 27 - Disclosure harmful to the conservation of heritage sites, etc.

### British Columbia

- Enforcement of the Heritage Conservation Act
- Heritage Conservation: A Community Guide
- Policy and Procedures Manual, The Freedom of Information and Protection of Privacy Act. C.4.9: Section 18 - Disclosure Harmful to the Conservation of Heritage Sites, etc.

### New Brunswick

- Heritage Policy / La Politique sur le Patrimoine

### Newfoundland and Labrador

- **Fortune Head Ecological Reserve**

- FORTUNE HEAD ECOLOGICAL RESERVE (Fortune)
- Fortune Head Ecological Reserve (Lake Academy, Fortune, Newfoundland)
- Fortune Head Ecological Reserve (Town of Fortune Community Profile)
- Global Stratotype Section and Point (GSSP) of the Proterozoic-Cambrian boundary at Fortune Head, Southeastern Newfoundland. The cliff exposes the lower part of the Chapel Island Formation. Copyright (C) G. Geyer, 1997
- GSSP of the Proterozoic-Cambrian boundary at Fortune Head, SE Newfoundland. Dr. G. M. Narbonne points to the earliest occurrence of *Trichophycus pedum* (formerly termed "*Phycodes pedum*"), now the Golden Spike site. Copyright (C) G. Geyer, 1997

- Fossils in Newfoundland and Labrador
- Fossils of Newfoundland and Labrador
- Legislation (Government of Newfoundland and Labrador)

- **Mistaken Point Ecological Reserve**

- Localities of the Vendian: Mistaken Point, Newfoundland
- Puzzling fossils in Newfoundland
- Mistaken Point Ecological Reserve (Encyclopedia of Newfoundland and Labrador)
- Mistaken Point Ecological Reserve (Irish Loop)
- Mistaken Point Ecological Reserve (Town of Trepassey)
- Mistaken Point Fauna: The Discovery
- Mistaken Point, Newfoundland: Vendobionta
- The Mistaken Point Fossil Assemblage: Newfoundland, Canada

- Newfoundland's Ecological Reserves, Part I
- Newfoundland's Ecological Reserves, Part II
- Parks and Natural Areas Division (Government of Newfoundland and Labrador)
- Premier and minister announce a new permanent ecological reserve at Burnt Cape
- Protected Fossils in Newfoundland and Labrador (Canada). SPNHC Newsletter, Volume 13,

Number 2 (August, 1999), page 15 (Adobe Acrobat Reader File).

- Wilderness And Ecological Reserves Program (Government of Newfoundland and Labrador)

## Nova Scotia

- Laws Concerning Fossil Collecting in Nova Scotia
- Nova Scotia Museum
  - Fossils of Nova Scotia: Heritage Research Permits
  - Fossils of Nova Scotia: Special Places
  - Protected Sites
  - PROTECTING ARCHAEOLOGICAL AND HISTORICAL SITES AND ARTIFACTS
  - Protecting the Past: Common questions answered
  - Special Places Protection Act
  - The Joggins Fossil Cliffs
    - Geologists honour Keeper of the Cliffs
    - Joggins Fossil Cliffs Facilities and Management Plan
  - The Parrsboro Fossil Site
  - Towards a Learning Culture...The Vision for Fossil Resource Management in Nova Scotia

## Nunavut

- American scientists are digging up a priceless Canadian heritage site
- A Question of Intellectual Sovereignty
- Arctic Fossil Forests
- Arctic fossil forest sparks U.S.-Canada research war: Canadian researchers say a team of U.S. scientists may be destroying a priceless heritage site on Axel Heiberg Island
- Arctic Ice Blues
- Arctic trees last 45 million years
- Argonne in the Arctic
- Axel Heiberg Island Exploration
- Axel Heiberg Island fossil forest site
- Axel Heiberg Island fossil forest site
- CANADA'S NORTH: OUT OF SIGHT, OUT OF MIND
- Canadian Scientists Glower as U.S. Scientists Play in Frozen North
- Changing Models for Science in Northern Canada
- Comments on University of Pennsylvania Research in the Fossil Forest of Axel Heiberg Island
- Composition, structure, dynamics, biomass and climate of Eocene fossil forests, Canadian High Arctic
- Composition, Structure, Dynamics, Productivity and Climate of Eocene Forests of the Canadian High Arctic: Comparing Reconstructions from Field Measurements and Nearest Living Relatives
- Damage feared to fossil forest
- ENV100Y Environment - Notes on the Video: Search for a Tropical Arctic
- Forests and Trees: How the north was won
- Fossil Forest
- Fossil forest a national treasure: Conservationists are demanding protection for a deserted Arctic island. Ed Struzik finds out why.
- Fossil forest fray: Director says U.S. project misrepresented by media
- Fossil Forest of Axel Heiberg Island Backpack, Nunavut Territory, Canada
- Fossil Forests of Axel Heiberg Island
- Frozen out of the Arctic: THE BIG CHILL /Lack of federal cash for Northern research has become too big a burden for scientist James Basinger, world-known for his work on a 45-million-year-old fossil forest
- GN agency does face-saving tour of Axel Heiberg: Nunavut government officials are to prepare a report on what to do with the Axel Heiberg fossil forest
- Inspectors look at ways to protect fossil forest from American workers

- [Kite Aerial Photography of the Axel Heiberg Island Fossil Forest](#)
- [Looking north for Canadian unity](#)
- [Minister to inspect endangered fossil forest](#)
- [Minister to inspect endangered fossil forest](#)
- [North to Prehistoric Forest](#)
- [Nunavut: FAST FACTS](#)
- [Nunavut set to approve fossil forest dig's second year: The Nunavut Research Institute has informally told a group of U.S. researchers that they will get permission to continue excavating at a unique fossil forest on Axel Heiberg Island](#)
- [Ottawa: Nunavut is responsible for Axel Heiberg forest - Heritage Minister Sheila Copps says it's up to Nunavut to protect sites like the Axel Heiberg fossil forest](#)
- [OTTO FIORD: ELLESMERE ISLAND, NWT](#)
- [PENN Fossil Forest Project](#)
- [Research institute gave licence to controversial U.S. project: The Nunavut Research Institute handed out a research licence to a team of U.S. scientists who may be violating Canadian conservation guidelines for a unique site on Axel Heiberg Island](#)
- [Scientists battle over turf in Arctic land that time forgot: Magnificently preserved forest may help scientists solve the riddle of climate changes](#)
- [SCIENTISTS EXPLORE THE ANCIENT TROPICAL FOREST OF THE HIGH ARCTIC: Scientist Jim Basinger is continuing research at the site of 45-million-year-old forest in the Canadian Arctic](#)
- [Secrets of an Ancient Forest](#)
- [Structure and biomass of a polar-latitude Eocene forest from the Canadian Arctic](#)
- [SUSTAINABILITY: A GLACIAL PERSPECTIVE - Lessons of a Forty Million Year Old Forest](#)
- [The Farthest North Fossils](#)
- [The forest of the past: Jane George on Axel Heiberg Island](#)
- [The Oldest Wood in the World](#)
- [Tourists also inflict damage on fossil forest](#)
- [U of S scientist gives cold shoulder to American research project](#)
- [U.S. scientists excavating fossil forest](#)
- [Wood Can Last for 40 Million Years](#)

## Ontario

- [Fossils \(Heritage Values\)](#)
- [MINISTRY OF NATURAL RESOURCES APPLICATION TO CONDUCT RESEARCH IN ONTARIO PROVINCIAL PARKS](#)
- [ONTARIO PARKS Research and Information Strategy](#)
- [Research Policy For Ontario Provincial Parks](#)

## Quebec

- [Miguasha Provincial Park](#)
  - [Descriptions of Natural World Heritage Properties \(Miguasha Provincial Park\)](#)
  - [Miguasha Park](#)
  - [Miguasha Park: Nouvelle, Quebec Canada](#)
  - [PLAQUE UNVEILING TO RECOGNIZE THE DESIGNATION OF MIGUASHA PARK AS A UNESCO WORLD HERITAGE SITE / DEVOILEMENT D'UNE PLAQUE SOULIGNANT LA DÉSIGNATION DU PARC DE MIGUASHA COMME SITE DU PATRIMOINE MONDIAL DE L'UNESCO](#)
  - [Protected Areas Programme: Natural World Heritage \(Miguasha Provincial Park\)](#)
  - [What makes a Fossil Site a World Heritage Fossil Site?](#)
  - [World Heritage List Grows](#)

## Saskatchewan

- [Ancient Echoes Interpretive Centre - Herschel, Saskatchewan, Canada](#)
- [Frequently Asked Questions -- Culture and Recreation, Heritage](#)

## China

### *Archaeoraptor liaoningensis*

#### Original Articles

- [Comparing Modern Birds with The Missing Link Fossils](#)
- [Dinosaur Bird!](#)
- [Dinosaurs Are Not Extinct: Their Descendants Fill the Sky](#)
- [Dinosaurs Raise a Flap](#)
- [FEATHERED CREATURES FROM CHINA BOOST DINOSAUR-BIRD CONNECTION](#)
- [Flying dinosaur was mean, graceless: Fiercesome bird may have been first flying feathered animal to evolve](#)
- [Fossils from China Link Birds With Dinosaurs](#)
- [Fossils of flying dinosaur discovered](#)
- [Fossils of Flying Dinosaur Found](#)
- [From Dinosaur to Bird: May Be Link Between Lizards and Birds](#)
- [HATCH PRAISES RETURN OF FOSSIL TO CHINA](#)
- [MISSING LINK BETWEEN DINOSAURS AND BIRDS FOUND IN CHINA: Dino Land Has the Full Story of Dinosaur-Bird Evolution and the Latest Exciting Development!](#)
- [New Birdlike Dinosaurs from China Are True Missing Links](#)
- [NEW BIRDLIKE DINOSAURS ON VIEW: COULD \*T. REX\* HAVE HAD FEATHERS / \*T. Rex\* mit Federn](#)
- [Researchers find fossils of primitive flying dinosaur](#)
- [Think of it as a 120 million-year-old turkey: \*Archaeoraptor liaoningensis\* may be missing link between ground-based dinosaurs and birds](#)

#### Subsequent Information

- [A farmer in Liaoxi cheated scientists both at home and abroad](#)
- [A Frenzy Over Feathers](#)
- [All mixed up over birds and dinosaurs](#)
- [All mixed up over birds and dinosaurs + Feathers fly over Chinese fossil bird's legality and authenticity](#)
- [Archaeoraptor](#)
- [Archaeoraptor A Composite, Panel Of Scientists Determines](#)
- [ARCHAEORAPTOR \*liaoningensis\* \[Nomen Nudum\]](#)
- ["Archaeoraptor" really two animals](#)
- [ARCHAEORAPTOR STATEMENT](#)
- [Bird-Dinosaur Fossil Mistake Confirmed](#)
- [China Recovers Smuggled Fossil](#)
- [Chinês contesta 'elo' entre aves e dinossauros](#)
- [Chinese Scientist Spots Mistake in Feathered Dinosaur Research](#)
- [Despite the great birdosaur fiasco, birds are still dinosaurs](#)
- [Dino-Bird Fossil Controversy](#)
- [Dino-bird link disputed: Turkey-sized fossil a mix of creatures](#)
- [Dinosaur-bird link smashed in fossil flap](#)
- [Dinosaure volant ou casse-tête chinois?](#)
- [Dinosaurio - el Eslabón del Pájaro Quebró en Ala flexible del Fósil](#)

- [Dino-Vogel gefälscht?](#)
- [DISPUTED MONSTER](#)
- [Earliest Flying Dinosaur Not Found: \*Archaeoraptor liaoningensis\*](#)
- [El \*Archaeoraptor\*: un falso eslabon perdido entre los dinosaurios y las aves - Verás que todo es mentira](#)
- [\*Archaeoraptor liaoningensis\* es un error](#)
- [El fósil de un dinosaurio alado que revolucionó la ciencia es falso: <<\*National Geographic\*>>, que publicó el 'hallazgo' en portada, pide disculpas](#)
- [El fraude del "pajarosaurio"](#)
- [End of the \*Archaeoraptor\* tale](#)
- [Falso dinossauro foi montado por traficantes](#)
- [FEATHERED DINO-FORGERIES... A storm in a glass of water?](#)
- [Feathered dinosaur mistake confirmed](#)
- [Feathered fossil no dino - Canadian unveils National Geographic mistake](#)
- [Fossil faux pas](#)
- [Fossil find 'the greatest mistake' of scientist's life: 'Missing link' brings plenty of bad ink for Alberta's leading dinosaur hunter](#)
- [Fossil Hoax: A Plus for Science - Another Minus for Creationism](#)
- [Fossil that 'linked' birds with dinosaurs really didn't](#)
- [FOWL PLAY](#)
- [Geographic: we goofed. 'New' feathered dinosaur really a fossil composite](#)
- [High-flying dinosaur's wings clipped](#)
- [Le dinosaure - le Lien de l'Oiseau a Cassé dans Battement du Fossile](#)
- ['Missing link' between dinosaurs, birds disputed](#)
- ['Missing link' brings bad ink for Alberta's top dinosaur hunter](#)
- [National Geographic confirms dinosaur discovery a composite of two different animals](#)
- [National Geographic confirms mistake](#)
- [National Geographic confirms mistake in description of feathered dinosaur](#)
- [National Geographic confirms mistake in dinosaur description](#)
- [National Geographic Confirms Mistake With Feathered Dinosaur Description](#)
- [National Geographic revela trama del falso eslabón perdido](#)
- [No more apologies: dinosaurs soar with the eagles](#)
- [O falso dinossauro](#)
- [Piltdown bird](#)
- [Scientist Disputes China Fossil \(eXoNews\)](#)
- [Scientist Disputes China Fossil \(Shady Pines\)](#)
- [Scientist disputes China fossil \(The Times of India\)](#)
- [Scientist disputes fossil finding](#)
- [Scientist disputes fossil is "missing link" between dinosaurs](#)
- [Scientist disputes fossil is 'missing link' between dinosaurs, birds](#)
- [Scientist: Fossil not 'link' between dinosaurs, birds](#)
- [Scientists Confirm Mistake: 'New' Dinosaur a Combination of 2 Mismatched Fossils](#)
- [The Jigsaw Fossil: Part dinosaur, part bird? All wishful thinking. Remains dubbed \*Archaeoraptor liaoningensis\* are a hoax.](#)
- [The Piltdown chicken: Scientists eat crow over so-called missing link](#)

### Commentary from Creationist Sites

- [Adventist Scientist Comments on Retraction of Evolutionary "Missing Link" Claim](#)
- [And now: Feathered Dinosaur Link](#)
- [Another Blow at Darwin's Theory](#)
- [Another Evolution Fraud: Dinosaur-bird link smashed in fossil flap](#)
- [Another Fossil Flub](#)
- [Another 'Missing Link' Takes Flight](#)
- [Another "OOOPS" For Science](#)
- [\*Archaeoraptor\*: Feathered Dinosaur from National Geographic Doesn't Fly](#)
- [\*Archaeoraptor\* Flight Aborted](#)

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- [Archaeoraptor hoax update - National Geographic recants!](#)
- [Archaeoraptor - Phony 'feathered' fossil](#)
- [Archaeoraptor: Some interesting points about this particular hoax](#)
- [Científicos Unen Restos de Dinosaurios Con Restos de Aves Para Crear Eslabón Perdido](#)
- [Cientista Adventista comenta a retratação dos evolucionistas sobre o "Elo Perdido"](#)
- [Crying Fowl: Tale of 'Missing Link' Embarrasses Scientists](#)
- ['Dragon' fossils seized](#)
- [EVOLUTION COVER-UP](#)
- [Fake Fossils Fool National Geographic Scientists: The 'missing link' that wasn't](#)
- ["Feathered Dinosaur" Claim Apparently a Fake](#)
- [Flying dinosaurs? Dinosaurs became birds?](#)
- [National Geographic blunders met 'missing link'](#)
- [National Geographic backs down - sort of!](#)
- [National Geographic Eats Crow \(Oops... I Mean Dino-Bird\)](#)
- [National Geographic Gets a Black Eye](#)
- [National Geographic retracts boast of dinosaur-to-bird 'missing link'](#)
- [Open Letter: Smithsonian decries National Geographic's 'editorial propagandizing' of dinosaur-to-bird 'evolution'](#)
- [Peittykö valhe väärenöksellä?](#)
- [Secularism](#)
- ["... sensationalistic, unsubstantiated, tabloid journalism.": Smithsonian critiques National Geographic Society's claims about dinosaur to bird evolution in an open letter](#)
- [The Archaeoraptor Fraud \(Cornerstone Church\)](#)
- [The Archaeoraptor Fraud \(The Armour Observer\)](#)
- [The Archaeoraptor Fraud: This Bird Will Never Fly](#)
- [THE FOSSIL IS A FAKE!](#)
- [The Latest Fraud!](#)
- [The Missing Link that Wasn't: National Geographic's 'Bird Dinosaur' Flew Against the Facts](#)
- [Well, Folks... It Happened Again!](#)

**Note:** The links immediately above are included *only* for the sake of completeness. See [Arguments against Creationism](#), ["Creationism Is Not Science"](#), [EVOLUTION AND CREATIONISM](#) and [On Evolution: A statement by The Society of Vertebrate Paleontology](#).

- [Chasing the dragons](#)
- [Conservation of Dinosaur Egg Fossils in Xixia, Henan Province and Research on Global Paleoenvironment Evolution](#)
- [Dinosaur Fossil Dealers Sentenced to Imprisonment](#)
- [Dinosaur Fossil Protection Zone](#)
- [Fossil protection spurs hot debate](#)
- [Illegal fossil trade in China - specimens seized](#)
- [On the Trail of Peking Man](#)
- [Politics of the Chinese Fossil Trade ... The Unofficial officials](#)
- [Re: illegal fossil sales?](#)
- [Re: illegal fossil sales](#)
- [Re: illegal fossil sales lead to pseudoseptums](#)
- [Shanghai Customs Seizes Smuggled Dinosaur Egg Fossils](#)
- [THE CONFUCIUSORNIS SANCTUS: AN EXAMINATION OF CHINESE CULTURAL PROPERTY LAW AND POLICY IN ACTION](#)
- [What did China do on the Return of Displaced Cultural Properties during World War II?](#)

**Egypt**

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- A whale of a time
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## **Estonia**

- Law on Protected Natural Objects
  - LAW ON PROTECTED NATURAL OBJECTS of the REPUBLIC OF ESTONIA
  - REPUBLIC OF ESTONIA LAW ON PROTECTED NATURAL OBJECTS
- 

## **France**

- French Natural Geological Reserves
  - Les Gisements Paleontologiques, un Patrimoine Menace
- 

## **Greece**

- Natural History Museum of the Lesvos Petrified Forest
- 

## **India**

- Antique dealers and undercover agents make a killing at Gujarat's historic Jurassic site: Want a dinosaur egg? Con tribals, Pay Rs 2,000
  - Jurassic Bagh: A theme park could protect dino remains from vandals
- 

## **Indonesia**

- Archaeology on Land - 3: Hominid Fossil Says Plenty
  - Fossil find among the curios
  - Hominid Fossil Says Plenty: Rediscovered Fossil Rustles Family Tree
  - The Homo erectus from New York
- 

## **Italy**

- U.S. CUSTOMS RECOVERS PREHISTORIC ITALIAN BONES SOLD ON AN INTERNET SITE, RETURNS TO ITALIAN GOVERNMENT
- 

## **Japan**

- Japanese museums' purchases create controversy
- Move to stop "illegal" fossil acquisitions in Japan

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## Namibia

- APPLICATION TO EXCAVATE, REMOVE OR DESTROY METEORITES, PALAEOONTOLOGICAL, OR ARCHAEOLOGICAL MATERIAL
- Petrified Forest

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## Phillipines

- Dinosaur eggs stolen from Malate antique shop

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## Portugal

- Portugal Tries to Save Its Dinosaur Fossils

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## Republic of Ireland

- A survey on the state and status of geological collections in museums and private collections in the Republic of Ireland

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## Russia

- Catalogue of the trilobites figured in Friedrich Schmidt's "Revision der ostbaltischen silurischen Trilobiten" (1881-1907)
- Dinosaur skulls stolen from Paleontological Institute, Moscow
- Going Once, Going Twice-Mammoth Remains Will Sell to Highest Online Bidder
- Someone's swiping dinosaur parts from Russian institute: An inside job by the 'bone mafia'?
- Stolen Dinosaur Fossils
- Stolen Dinosaur Fossils

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## Slovakia

- ACT OF THE NATIONAL COUNCIL OF THE SLOVAK REPUBLIC dated August 23, 1994 On the Preservation of Nature and Landscape
- National Ecological Network (NECONET) - Slovakia

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## South Africa

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## Federal

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## **THE NATIONAL MONUMENTS COUNCIL**

- Fossils and the Law in South Africa
- THE NEW LEGISLATION
  
- **CONSERVATION CATEGORIES**
  - EXPORT CONTROL OF MOVABLE CULTURAL OBJECTS
  - FOSSILS AND THE NATIONAL MONUMENTS ACT
  
- CONSERVATION PRINCIPLES
- MILESTONES IN HERITAGE CONSERVATION

### **West Coast National Park**

- Bid to Move Ancient Footprints
  - "EVE'S FOOTPRINTS" TO BE AIRLIFTED TO SAFETY OF MUSEUM
  - Footprints of our Forefathers at Risk
  - Human Footprints from Langebaan Lagoon in the West Coast National Park: Archaeologists and Palaeo-anthropologists use many scientific techniques to help them understand human developme  
nt
- 

- Gondwana Gardens and Fossil Beds
- 

## **Spain**

- Paleontological site conservation in Spain
- 

## **Sweden**

- Swedish Federation of Amateur Geologists. CODE OF ETHICS
- 

## **Switzerland**

### **Swiss Association of Crystal-searchers, Collectors of Minerals and Fossils (SACMF)**

- Code of honor
  - Permits and Restrictions
- 

## **United Kingdom**

### **England**

- Blaze's Den: Dinosaurs

- Bolton Museums, Art Gallery & Aquarium: CRITERIA GOVERNING FUTURE COLLECTING POLICY, INCLUDING THE SUBJECTS OR THEMES FOR COLLECTING
- Death of a Fossil Site
- THESE FOSSILS WERE STOLEN

## Scotland

- Regulations and Guidelines concerning fossil collecting in Scotland
- Stolen fossils sold to Germany

## United States of America

### American Geological Institute - Government Affairs Program

- Agency Action Alert: Public Comment Period on Draft Fossil Management Report (Posted: 11-5-99)
- Fossils and Public Lands Update (10-6-98)
- Fossils and Public Lands Update (6-28-00)
- PUBLIC COMMENT ON DRAFT FOSSIL MANAGEMENT REPORT
- Public Comment Period on Draft Fossil Management Report
- Summary of Public Forum on Federal Palaeontology Policy (6-21-99)
- Text of H.R. 2943 (as introduced in the House of Representatives)

- American Lands Access Association (ALAA)
- Analysis of the SAFE poll on fossil collecting
- By-Law on Ethics (The Society of Vertebrate Paleontology)
- Code of Ethics for collecting in the field (MINERALS AND FOSSILS)
- Collecting laws and regulations
- COLLECTING THE NATURAL WORLD - Legal Requirements and Personal Liability for Collecting Plants, Animals, Rocks, Minerals and Fossils
- Dinosaur Research Expeditions 2001 - Dinosaur Eggs and Embryos: FOSSIL COLLECTING REGULATIONS AND ETIQUETTE

## Federal

### Bureau of Land Management (BLM)

- AMATEUR FOSSIL COLLECTOR IS SNARED IN U.S. STING: POWHATAN RESIDENT GETS PROBATION, FINE
- A summary of BLM Wilderness Laws
- BLM fines business for illegal dinosaur dig
- BLM Montana/Dakotas - Fossils and Artifacts on Public Land
- BLM Montana/Dakotas - Rockhounding on Public Lands
- FOSSIL COLLECTING & ARTIFACT HUNTING in Alaska
- Fossil Collecting and Artifact Hunting (Colorado)
- Fossil Collection on Public Lands (New Mexico)
- Fossil Collecting on Public Lands (Wyoming) - Adobe Acrobat Reader File
- Fossils On America's Public Lands

- Government Official-Bureau of Land Management
- Management for the Big Cedar Ridge Fossil Plant Area in the Bureau of Land Management's Worland District, Bighorn Basin Resource Area, Washakie County, Wyoming [microform] : environmental assessment WY-015-EA5-37 / prepared by the U.S. Department of the Interior, Bureau of Land Management, Worland District, Bighorn Basin Resource Area
- Manual for Paleontological Resource Use
- Mill Canyon Dinosaur Fossils
- Natural Resource Alternative Dispute Resolution - Case Studies (Bureau Wide - Collection of Fossils)
- Paleontological Resources (Alaska)
- PALEONTOLOGICAL RESOURCES (California)
- Paleontological Resources (New Mexico)
- PALEONTOLOGICAL RESOURCES OF THE NPR-A PLANNING AREA: AN OVERVIEW
- Paleontological Resources Use Permit Application
- Paleontology in BLM and Collecting Policies
- Press Release - March 1999 - U.S. Attorney, Eastern District of Virginia
- PUBLIC LANDS ADVISORY COMMITTEE SEMI-ANNUAL REPORT TO THE OFFICERS AND DIRECTORS OF THE California Federation of Mineralogical Societies November 14, 1998
- Rock Hounding on Public Lands (Wyoming)
- Rules and Regulations (Trilobite Wilderness Area, Marble Mountains, California)
- The National BLM Wilderness Campaign
- Volunteers needed to assist at Red Gulch Dinosaur Tracksite

### **Court of Appeals, Tenth Circuit**

- UNITED STATES OF AMERICA, Plaintiff-Appellant, v. LANCE PECK and BELINDA PECK, Defendants-Appellees

### **Department of the Interior (DOI)**

- Background Paper, May 1999: "Collection, Storage, Preservation and Scientific Study of Fossils from Federal and Indian Lands" - Adobe Acrobat Reader File
- Draft Fossil Report, October 1999: "Assessment of Fossil Management on Federal and Indian Lands" - Adobe Acrobat Reader File
- Draft Fossil Report, October 1999: "Assessment of Fossil Management on Federal and Indian Lands" - HTML File
- FOSSILS ON FEDERAL AND INDIAN LANDS: Report of the Secretary of the Interior, May 2000 - Adobe Acrobat Reader File
- FOSSILS ON FEDERAL AND INDIAN LANDS: Report of the Secretary of the Interior, May 2000 - HTML File
- Paleontology Regulations and Legislation
- REMAINS OF ANCIENT LIFE NEED BETTER PROTECTION: New Technologies Can Make Federal Fossil Collections More Accessible for Research and Education

### **Forest Service**

- COMMITMENT TO COOPERATIVELY MANAGE PALEONTOLOGICAL RESOURCES ON UNITED STATES FOREST SERVICE ADMINISTERED LANDS IN NORTH DAKOTA REAFFIRMED BY THE NDGS AND USFS
- FOREST SERVICE PALEONTOLOGY ADVISORY GROUP CHARTER
- U.S.D.A. Forest Service Minerals and Geology Management - Paleontology

### **Fossil Preservation Act of 1996 (HR 2943)**

- ASMD Speaks Out Against H.R. 2943
- Bill Summary & Status for the 104th Congress

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- [Fossil Destruction Bill](#)
- [Fossil Preservation Act of 1996](#)
- [More Foolish Lockups of Public Lands -- GREENS, MUSEUMS TRY TO BAN FOSSIL COLLECTING \(The Angry Environmentalist Speaks Out\)](#)
- [OPPORTUNITIES FOR FEDERALLY-ASSOCIATED COLLECTIONS](#)
- [Pending Legislation Threatens Fossil Collecting](#)
- [Poling and the FPA \(Fossil Protection Act\) - Des Maxwell](#)
- [Poling and the FPA \(Fossil Protection Act\) - Jeff Poling's Reply](#)
- [Public Lands, Public Fossils \(Geotimes, Political Scene, August 1996\)](#)
- [Public Lands, Public Fossils \(New Mexico Friends of Paleontology Newsletter, January-February 1996 \)](#)
- [Update on H.R. 2943: The Fossil Preservation Act of 1996](#)
- [US bill could give fossil hunters a field day](#)

## National Park Service (NPS)

- **Badlands National Park**
  - [Badlands National Park - Critical Park Issues: Paleontology](#)
  - [Paleontological Theft At Badlands NP](#)
- **Big Bend National Park**
  - [Bones of contention: Should dinosaur remains be a tourist mecca?](#)
  - [Fossil feuding: Large dinosaur's discovery in Texas pits scientists against tourist-boosting locals](#)
- [Death Valley National Park - Rules, Regulations and Precautions](#)
- [Dinosaur Cop On Lookout for Fossil Thieves](#)
- **Dinosaur National Monument**
  - [County residents fight expansion: \*Petition filed to protest enlargement of Dinosaur National Monument\*](#)
  - [Dinosaur National Monument \(AreaParks.com\)](#)
  - [Dinosaur National Monument \(COLORADO Guide.com\)](#)
  - [Dinosaur National Monument \(DesertUSA\)](#)
  - [Dinosaur National Monument \(GORP\)](#)
  - [Dinosaur National Monument \(Go Utah\)](#)
  - [Dinosaur National Monument \(The American Southwest\)](#)
  - [Dinosaur National Monument \(Utah.com\)](#)
  - [Dinosaur National Monument, Colorado \(BACKPACKER.com\)](#)
  - [Dinosaur National Monument, Colorado - Printer Friendly Format \(BACKPACKER.com\)](#)
  - [Dinosaur National Monument: Dinosaur, CO U.S.A.](#)
  - [Dinosaur National Monument: Located near Vernal, Utah and Dinosaur, Colorado](#)
  - [Dinosaurs and Dinosaur National Monument](#)
  - [geology fieldnotes: Dinosaur National Monument, Colorado / Utah](#)
  - [Google Search: "Dinosaur National Monument"](#)
  - [PROPOSED DINOSAUR NATIONAL PARK](#)
  - [The Quarry at Dinosaur National Monument](#)
  - [Welcome to Dinosaur National Monument](#)
- [Grand Canyon National Park: Mystery of the LOST Trilobite Exhibits](#)
- [John Day Fossil Beds National Monument General Management Plan \(October 1992\)](#)
- [Hagerman Fossil Beds National Monument](#)
- [Meet The Dinosaur Cop: Pistol-Packing Paleontologist Guards Fossil Treasures](#)
- [National Park Service Paleontology Program](#)

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- [Natural Formations accessible, vulnerable](#)
- [New approach to paleontological surveys having success](#)
- [NPS Morning Report - Wednesday, December 8, 1999](#)
- [NPS Paleontology Research Abstract Volume](#)
- [Paleontological Resource Management](#)
- [Paleontological Resources in National Park System Units \(updated\)](#)
- [Paleontology and Dinosaurs](#)
- [Paleontology of Theodore Roosevelt National Park](#)
- **Petrified Forest National Park**
  - [Out-Manned Rangers Fight Losing Battle Against Criminals Stealing Petrified Forest National Park](#)
  - [Park Visitors Swipe Petrified Wood From National Park](#)
  - [PETRIFIED FOREST NATIONAL PARK](#)
  - [Petrified wood stolen from park](#)
  - [Tourists Pocketing Wood: Park Visitors Swiping Chunks of Petrified Forest](#)
  - [Visitors swipe petrified wood from national park](#)
- [Pistol Packing Paleontologist: Pitt grad fights crime to save precious fossils](#)
- [Teaching Paleontology in National Parks, Monuments, and Public Lands](#)
- [THEFTS UP 46% AT CIVIL WAR AND OTHER NPS PARKS](#)
- [Thieves stripping resources, artifacts from national parks: Thefts of fossils, Native American pottery, civil war relics, and even animals have become common in nation's parks](#)
- [Yellowstone Paleo Survey: Paleontological Resource Management](#)

### **Vertebrate Paleontological Resources Protection Act**

- [Fossil Legislation](#)
- [Vertebrate Paleontological Resources Protection Act \("Baucus Bill"\)](#)

- [Fossil Facts](#)
- [Fossils \(Alliance for America - Issues and Information\)](#)
- [Fossils and the Law FAQs \(The Natural Canvas\)](#)
- [Fossils becoming bones of contention; Agencies try to balance access, protection from theft](#)
- [Frequently Asked Questions about Paleontology - What regulations govern fossil collecting?](#)

### **Geotimes**

- [INVESTIGATIVE REPORT: The Trouble with Fossil Thieves](#)
- [Where am I now, and can I take this fossil with me?](#)

### **High Country News**

#### **Public domain or collector's item? The fight over valuable fossils on public lands**

- ["Dinosaur bones have really increased in price. It wouldn't matter to me if they were not worth anything. I'd sure love to go find more of them." - Lin Ottinger](#)
- ["Fossils are being destroyed by people who are loving them to death, people who are making a profit." - Bruce Louthan](#)
- ["I was a sheep rancher in western Wyoming. One day a gun trader came riding by and I traded a](#)

bunch of fossils for a rifle." - Rick Hebdon

- People respond to owning a piece of the earth's crust
- Who owns these bones?

- JUST THE FACTS: ABOUT PUBLIC LANDS AND FOSSILS
- Keep Public Access to Dinosaurs' Treasures
- PALEONTOLOGICAL SOCIETY CODE OF FOSSIL COLLECTING
- Paleontology - Collecting Fossils and the Law (Nearctica.com)
- PaleoWars
- Preserving Vertebrate Fossils: Notes From The Laboratory

## State

### Arizona

- Southwest Paleontological Society Mesa Southwest Museum Code of Ethics

### Arkansas

- Fossil Collecting In Arkansas

### California

- Cultural and Historic Resources Preservation Ordinance
- Cultural and Paleontological Resources (Lawrence Livermore National Laboratory)
- Missing *T. rex* fossil returned to UC Berkeley by FBI agents following overseas search
- SAN JOAQUIN HILLS: FERTILE GROUND FOR FOSSILS
- TCA Archeology and Paleontology Efforts: Preserving and Understanding the Past
- The Fossils of the San Joaquin Hills Corridor Now on Display

### Colorado

- Displayed fossils stolen
- Friends of Dinosaur Ridge

### Florida

- Florida Fossil Permit
- RULES OF DEPARTMENT OF EDUCATION, DIVISION OF UNIVERSITIES, UNIVERSITY OF FLORIDA

### Illinois

- ARCHAEOLOGICAL & PALEONTOLOGICAL RESOURCES PROTECTION ACT
- Illinois Compiled Statutes, Executive Branch: Archaeological and Paleontological Resources Protection Act 20 ILCS 3435/
- Specimen theft

### Kentucky

- Collecting in Kentucky

### Michigan

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- [Ancient Rhino Ruins Stolen](#)
- [Missing: 25,000,000-year-old rhino](#)
- [Rare rhino fossils stolen from museum](#)
- [Update on theft of fossil specimens](#)

## Minnesota

- [Help disseminating news of a theft](#)

## Montana

- [Dig may have uncovered biggest \*T-rex\* on record](#)
- [Dino-vandals ruin fossil find](#)
- [T. rex raiders](#)

## New York

- [Discoverer plans to sell mammoth skeletons over Internet](#)

## North Dakota

- [Digging is fun, but fossil hunter relishes lab time, too](#)
- [Fossil hunter relishes lab time](#)
- [Regulatory Responsibilities of the North Dakota Geological Survey](#)
- [The fossil hunter in winter: He's indoors - Digging's fun, but lab time is critical, too](#)

## Ohio

- [Fossil Remains Halt Construction](#)

## South Dakota

- [Fossil traffickers face prison sentences](#)
- Sue
  - [A \*Tyrannosaurus rex\* named Sue](#)
  - [Chicago Tribune](#)
    - [Festival gives Field visitors chance to bone up on dinosaurs](#)
    - [Field Museum shows off \*T. rex\*](#)
    - [Here's looking at Sue: T. rex greets the world](#)
    - [No bones about it: For one-thousandth of a second, Sue takes Field Museum visitors back in time](#)
    - [Powerful skull scans help paleontologists bone up on Sue](#)
    - [Reconstructing Sue](#)
    - [Sue brought torment with triumph](#)
    - [Sue fits Field Museum to a T](#)
    - [The Sue who discovered 'Sue' gets her due from UIC](#)
    - [T. rex issue settled -- once a Sue always a Sue](#)
  - CNN
    - [It's not easy rebuilding Sue](#)
    - [Scientists growling over \*T-Rex\* auction](#)
    - ['Sue,' the biggest \*T. rex\*, makes her public debut](#)
    - [T-Rex named 'Sue' auctioned for \\$8.4 million](#)

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- T. rex named Sue taking shape in Chicago
- 'Tyrannosaurus Sue' uncovers passions and controversies of paleontology
- Dino fever grips Chicago
- Dinosauria On-Line
  - Bones of disputed dinosaur to be auctioned off
  - Forever "Sue"
  - For the Sake of Sue: What will happen to the world's best T. rex ?
  - High Court Lets Stand Dinosaur Fossil Ruling
  - Peter Larsen Goes To Jail
  - Peter Larson released to half-way house
  - Prepared Testimony Of Dr. Edward L. Hudgins Director Of Regulatory Studies Cato Institute Before The House Committee On The Judiciary Subcommittee On Commercial And Administrative Law
  - Reserving "Sue"
  - "Sue" auction date announced
  - "Sue" Auction Update
  - "Sue" ownership court opinion
  - "Sue" sale results
  - "Sue" to lose name
  - U.S. Dealt Setback in Effort to Curb Dinosaur Fossil Hunters
- Excerpt from Tyrannosaurus Sue : The Extraordinary Saga of the Largest, Most Fought over T-Rex Ever Found
- King of the beastly (legal) battles
- NOVA #2408: Curse of T. rex
- Psst... Wanna Buy a T. rex?: Paleontologists fret about dinosaur sales
- Selling Fossils: "Sue" the T-Rex and the debate over purchasing pieces of paleontology
- Sue at The Field Museum: The largest, most complete, best preserved T. rex
- "Sue," South Dakota's Controversial T-Rex, Ends Up In Chicago
- The Seizure of Sue
- The Seizure of Sue the T. rex
- Tyrannosaurus Rex Fossil Sold for \$7.6 Million
- What am I bid for this T. rex?
- World's Most Famous T. Rex Debuts in Chicago

## Tennessee

- Fossils Found at Road Construction Site
- GOVERNOR ANNOUNCES GRAY FOSSIL SITE TO BE PROTECTED
- GRAY FOSSILS DATED MUCH OLDER THAN ESTIMATED

## Utah

- Full Text for H.R.1745: Utah Public Lands Management Act of 1995 (Introduced in the House)
- Mineral, Rock, and Fossil Collecting Rules of Utah
- Paleontological Landmarks
- UTAH PUBLIC LANDS MANAGEMENT ACT. SEC. 2004. CULTURAL, ARCHAEOLOGICAL, AND PALEONTOLOGICAL RESOURCES

## Wyoming

- 1998 State of Wyoming 98LSO-0307.E1 ENGROSSED HOUSE BILL NO. HB0154: Fossil protection act-study
- 1999 State of Wyoming 99LSO-0321.E1 ENGROSSED HOUSE BILL NO. HB0085: Fossil protection act-study.
- 1999 State of Wyoming 99LSO-0321, HOUSE BILL NO. HB0085: Fossil protection act-study
- Dinosaur Cops: Channel Four - Press Release

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- [Dinosaur Cops - Images](#)
- [Flying Cop Protects West's Fossil Heritage](#)
- [Fossils Being Plundered by Thieves](#)
- [Fossils Plundered, Destroyed: In Vast, Arid West, Thieves Loot Ancient Bones](#)
- [Fossil thieves plundering the West - Black market: As sales flourish, the looters move in](#)
- [H.B. No. 0154: Fossil protection act-study](#)
- [H.B. No. 0085: Fossil protection act-study](#)
- [In vast, arid West, fossils being plundered, destroyed by thieves](#)
- [Operation Rockfish](#)
- [Senate considers taxing fossils sent out of state](#)
- [Skeletons in Their Closet: The feds had a bone to pick with this fossil-hunting family](#)
- [The Bust Was a Bust](#)
- [Thieves plundering \(f\)ossils in vast, arid West: As protection efforts stall, growing black market fueling demand](#)

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### **The Society of Vertebrate Paleontology**

- [Paleontological Resources on U.S. Public Lands: A joint statement by the Paleontological Society and SVP](#)
- [Statement regarding the sale of vertebrate fossils online](#)

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- [United States vs. Alan VanArsdale et. al. News Release by Daniel VanArsdale: SKELETONS HAUNT CALIFORNIA MUSEUMS - Public Relations Nightmares Out of the Closet Again](#)

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**ROADMAP  
TO  
FEDERAL FORFEITURE**

**SEPTEMBER 24, 1996**

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**DEDICATED TO  
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THE ORIGINAL CARTOGRAPHER**

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ROADMAP  
TO  
FEDERAL FORFEITURE

DEFINITION

FORFEITURE IS THE DIVESTITURE OF PROPERTY WITHOUT COMPENSATION WHEN THE PROPERTY IS USED IN A MANNER CONTRARY TO THE LAWS OF THE SOVEREIGN.

STATUTORY BASIS

- There must be a federal statute authorizing forfeiture of the property. For example, drug forfeitures: 21 U.S.C. § 881 (civil) and § 853 (criminal); money laundering forfeitures: 18 U.S.C. § 981 (civil) and § 982 (criminal).
- The property must have been involved in a federal criminal offense. For example, drug forfeitures: a transporting vehicle, real property in which a federal felony drug offense occurs, money and other things of value exchanged for drugs in violation of federal law; money laundering forfeitures: the proceeds laundered, the fees for doing so, and any real or personal property involved in the laundering.
- The two common types of forfeited property are:

**PROCEEDS** - property acquired by unlawful activity or property traced to property acquired by unlawful activity, and

**FACILITATING PROPERTY** - property used or intended to be used in unlawful activity.

**Important concept:** Property "traceable to" forfeitable property often is forfeitable under the statute, e.g., property traceable to currency exchanged for drugs and property traceable to property involved in money laundering is forfeitable.

GOALS OF FORFEITURE

**PRIMARY:** Law Enforcement. To deter crime by taking away the proceeds and instrumentalities of illegal conduct by stripping criminals and their organizations of property involved in criminal activity.

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ANCILLARY: Improved Intergovernmental Cooperation. To enhance cooperation among federal, state, and local law enforcement agencies through the equitable sharing of federal forfeiture proceeds.

#### CIVIL VERSUS CRIMINAL FORFEITURE

- Civil forfeiture is an in rem action against the property itself; a civil forfeiture statute authorizes the forfeiture of property which has been used in conduct that would violate federal law, even if no person is convicted of violating that federal law. The legal fiction is that the property itself violated the law. The property is named in an administrative or judicial forfeiture action. Civil forfeiture can occur even if a person is acquitted of a federal or state offense, or is never charged with a federal or state offense. Civil forfeiture can occur even if the person who used the property in violation of the law is dead or is a fugitive or is otherwise unavailable.
- Criminal forfeiture is an in personam action, against the person; a criminal forfeiture statute authorizes the forfeiture of property if a person is convicted of violating a federal law. The property is named in the indictment or information which charges a person with a violation of federal law. No criminal forfeiture can occur unless a person is convicted of a federal offense; if the defendant dies or remains a fugitive before conviction, the criminal forfeiture cannot go forward.
- Civil forfeiture statutes require the government initially to show probable cause to believe that the property has violated a federal law. Hearsay evidence may be used to establish probable cause. The standard of proof needed to initiate a civil forfeiture action is the same standard of proof needed to get a search warrant, an arrest warrant, an indictment: "less than prima facie proof, but more than mere suspicion." Once the government meets its initial burden of showing probable cause, the burden shifts to the claimant to establish that the property is not forfeitable or that there is a valid interest that must be recognized as not forfeitable. If the forfeitability of the property or the validity of any person's interest in the property is contested, the government can prevail on the contested issue only if a preponderance of the evidence is in its favor.
- Criminal forfeiture statutes require the government to prove beyond a reasonable doubt that a person violated a federal law and (generally) by a preponderance that the property was involved in the violation. Hearsay evidence is not usable to accomplish criminal forfeiture.

- Criminal forfeiture statutes permit the substitution of a defendant's legitimate assets for forfeited assets that the defendant has placed beyond government reach or commingled with legitimate assets.
- Criminal drug forfeiture statute provides a rebuttable presumption that a defendant's asset is forfeitable if there is proof by a preponderance that the asset was acquired reasonably near the time of the offense and there is no other likely source for the asset but the offense.

#### RELATION BACK

- Forfeiture occurs by operation of law at the time of the act giving rise to the forfeiture, that is, at the time the property was used in violation of federal law. This is the "relation back" doctrine. Title to forfeited property passes to the government as of the time of the act giving rise to the forfeiture at the time the forfeiture is confirmed by decree.
- After the act giving rise to the forfeiture causes title to pass to the government, the "owner" of the property cannot transfer or encumber the property because the government has become the owner. This is true even if the government is not yet aware of the property's illegal use. However, see below for the relationship between "relation back" and statutory "innocent owner" provisions.
- The fact that title to forfeited property has passed to the government is confirmed by an administrative or judicial decree of forfeiture after the government brings a forfeiture action to confirm the forfeiture of the property.

#### ADMINISTRATIVE VERSUS JUDICIAL FORFEITURE ACTIONS

- All personal property appraised at \$500,000 or less as well as all transporting conveyances and all monetary instruments (cash and negotiable instruments but not bank account contents) of any value may be administratively forfeited by the federal agency that has seized it. The seizing agency may decree the property forfeited to the United States if the forfeiture is uncontested, that is, if no claim and cost bond (or in forma pauperis petition) are filed after notice of intent to forfeit has been given. All administrative forfeiture is civil forfeiture.
- Administrative forfeiture begins with the federal agency seizing the property based on probable cause to believe that the property is forfeitable under the statute. The federal

agency must use a seizure warrant unless the agency has authority to make a warrantless seizure (e.g., incident to an arrest or execution of a search warrant, seizure of a conveyance on public property.)

- All personal property for which a claim and cost bond (or in forma pauperis petition) are filed in an administrative forfeiture action must be referred to the U.S. Attorney to bring a judicial forfeiture action against the property. The filing of a claim and cost bond (or in forma pauperis petition) causes the forfeiture to be contested.
- All real property must be judicially forfeited.

#### PROTECTIONS

- Forfeiture statutes contain legal protections for persons with innocent interests in forfeited property. These are "innocent owner" protections. Generally, an owner is innocent if the owner had no knowledge of the illegal activity giving rise to the forfeiture and/or did not consent to the illegal activity. Some courts require the owner to have taken all reasonable steps to prevent the illegal activity in order to be an innocent owner. The innocence of one who acquires an interest in property after it is involved in illegal conduct is measured by knowledge at the time the interest is acquired.

Once a claimant has established a statutory innocent interest, the innocent interest will either defeat the forfeiture or the innocent interest will be paid after forfeiture is confirmed. For example, an innocent lienholder's right to principal and interest will be paid at the time the decree of forfeiture is entered (expedited) or after the property has been sold; real property owned solely by an innocent spouse will not be forfeited although the non-innocent spouse used the property in violation of a federal statute; a vehicle now owned by an innocent bona fide purchaser for value will not be forfeited although the prior owner used the vehicle in violation of a federal statute.

The party who claims an innocent interest must establish that innocent interest by a preponderance of evidence. The claimant must use non-hearsay evidence to establish the validity and innocence of that interest; the government must use non-hearsay evidence to rebut the claim. A claimant to property seized on land is entitled, upon demand, to a jury trial in a civil forfeiture action.

The "relation back" doctrine does not overcome an innocent ownership interest obtained after the act giving rise to the forfeiture if that innocent ownership interest is recognized by the forfeiture statute.

- Forfeiture statutes and related regulations contain equitable protection for a person with an innocent interest in forfeited property. This is the "petition for remission/mitigation" procedure in which a petitioner admits the forfeitability of the property but requests equitable relief. For example, an innocent owner of forfeited property who has failed to make a legal claim to the property in a forfeiture action may obtain equitable relief from the Attorney General (judicial forfeiture action) or from the head of the federal seizing agency (administrative forfeiture action).
- The Supreme Court has held that the Due Process Clause of the Fifth Amendment does not protect an innocent owner's interest against forfeiture by the government.
- **Expedited release** procedures are available for conveyances seized for involvement in drug offenses. The United States Attorney must file a complaint for forfeiture against a conveyance seized for a drug-related offense within 60 days after a claim has been filed or the court shall order return of the conveyance.
- Department of Justice **expedited settlement** and payment procedures are available to an innocent lienholder in real or personal property.
- The Supreme Court has held that, unless there are exigent circumstances, Due Process requires that the United States give notice and an opportunity to be heard to an owner of real property before seizing that property in a civil forfeiture action.
- The Supreme Court has held that in parallel civil forfeitures/prosecutions, the Fifth Amendment Double Jeopardy Clause is not a bar: 1. to prosecution for the same conduct where the defendant has consented to civil forfeiture of property that facilitated that conduct, and/or 2. to forfeiture of the proceeds of conduct to which the defendant has plead guilty. Ursery
- Department of Justice policy provides extra protection for innocent interests in real property. Policy requires a neutral magistrate to determine probable cause for arrest or seizure and requires judicial forfeiture of real property. Administrative forfeiture may not be used for real property.

**Remember:** real property can be forfeited as facilitating property in a drug offense only if the offense is a felony. There is no federal forfeiture of real property for misdemeanor possession of drugs in the real property. (Note: a statute that provides for forfeiture of real property used to facilitate a crime does not authorize forfeiture of furnishings. Furnishings may be forfeited as personal property if a statute authorizes their forfeiture; for example, they were purchased with proceeds of a crime or are traceable thereto, they were involved in money laundering, they were containers for drugs.)

- **Attorney fee forfeitures** are reviewed at the Department of Justice in Washington before they are pursued by U.S. Attorneys.
- In a **personal property forfeiture**, Department of Justice policy recommends that, if possible, a determination of probable cause to forfeit be obtained from a neutral magistrate before the property is seized.
- **Statute of limitations** - five years after discovery of the offense for civil forfeiture, five years after the act giving rise to the forfeiture for criminal forfeiture.
- **Excessive fines:** the Supreme Court has held that civil drug forfeitures under 21 U.S.C. § 881(a)(4) (conveyances) and § 881(a)(7) (real property) are subject to review by courts under the Eighth Amendment prohibition against excessive fines. The Supreme Court, however, did not indicate what factors courts should use in determining whether a forfeiture constitutes an excessive fine.
- Department of Justice policy requires that notice must be given to owners and lienholders promptly, but not later than 60 days following seizure.
- The Department of Justice National Code of Professional Responsibility for Asset Forfeiture obligates all participants in the federal asset forfeiture program, including state/local sharing agencies, to act responsibly in carrying out seizure and forfeiture.

#### ADOPTION

- A federal seizing agency (e.g., FBI, DEA, INS, Postal Inspection Service, Customs, IRS, Secret Service, ATF) can adopt a state/local seizure and thereafter pursue federal civil forfeiture if the property is forfeitable under federal law for conduct that would constitute a violation of federal law.

THE 30 DAY RULE - A STATE/LOCAL AGENCY MUST REQUEST THE FEDERAL SEIZING AGENCY TO ADOPT ITS SEIZURE WITHIN 30 CALENDAR DAYS OF THE STATE/LOCAL SEIZURE. MINIMUM EQUITY REQUIREMENTS FOR ADOPTIVE SEIZURES:

VEHICLES	\$ 5,000
AIRCRAFT	\$10,000
VESSELS	\$10,000
REAL PROPERTY	\$20,000 or 20% of appraised value (whichever is greater)
ALL OTHER	\$ 5,000 (firearms without regard to value)

For vehicles and cash, the monetary threshold is \$1,000 if the person from whom it was seized is being prosecuted for activity related to it.

A United States Attorney may institute a higher monetary threshold for judicial forfeiture cases. In some circumstances (including the fact that the owner/possessor of the asset has been arrested or will be criminally prosecuted), an overriding law enforcement benefit may justify the seizure of an asset that does not meet the monetary threshold.

- Federal adoption of a state/local seizure can occur even if no person is ever charged with a violation of federal law, even if no person is charged with a violation of state law, and even if a person is acquitted of a state charge.
- Once a seizure has been adopted by a federal seizing agency, the date of seizure for federal purposes relates back to the original date of the state/local seizure.
- **The Race to the Courthouse.** Once a state/local court obtains in rem jurisdiction over property, the U.S. is foreclosed from instituting a federal in rem forfeiture action against the property until the state/local court divests itself of jurisdiction. For example, after a state seizure of an automobile as evidence, the defendant in the criminal case files a replevin action against the automobile in state court. When the replevin action is filed, the state court obtains in rem jurisdiction over the automobile. At this point the U.S. is foreclosed from instituting a federal forfeiture action against the automobile. Similarly, once the U.S. obtains in rem jurisdiction over property, no other sovereign can obtain jurisdiction over the property. For example, once a federal seizing agency adopts a state/local seizure and institutes an administrative forfeiture action against the property, the state/local court cannot obtain in rem jurisdiction over the property.

### CUSTODY PENDING CONFIRMATION OF FORFEITURE

- The U.S. Marshals Service is responsible for managing seized property until confirmation of forfeiture occurs either administratively or judicially in Department of Justice forfeitures. It may authorize the federal, state, or local agency to retain custody of non-cash personal property pending confirmation of federal forfeiture. Treasury forfeitures are managed by the Department of the Treasury and its agencies.

**SEIZED PROPERTY MAY NOT BE PUT INTO OFFICIAL USE BY ANY FEDERAL, STATE, OR LOCAL AGENCY UNTIL CONFIRMATION OF FORFEITURE AND APPROVAL OF OFFICIAL USE OCCUR.**

**SEIZED CASH MUST BE DEPOSITED INTO THE JUSTICE OR OTHER SEIZED ASSET DEPOSIT FUND WITHIN 60 DAYS OF SEIZURE OR TEN DAYS OF INDICTMENT UNTIL CONFIRMATION OF FORFEITURE.**

### WHAT HAPPENS TO FEDERALLY FORFEITED PROPERTY UPON CONFIRMATION OF FORFEITURE?

- Forfeited cash is deposited into the Justice or other asset forfeiture fund after confirmation of forfeiture either by order of a U.S. District Court or by decree of a federal seizing agency. (Postal Inspection Service deposits proceeds of its forfeitures into the Postal Service Fund; Customs, Secret Service, IRS, and ATF deposit proceeds of their forfeitures into the Treasury Forfeiture Fund.)
- Non-cash forfeited property that is not sold can be put into official use by federal, state, or local law enforcement agencies. Most frequently, vehicles are the property that is put into official use.
- The proceeds of non-cash forfeited property that is sold are, after payment of innocent interests and deduction of expenses, deposited to the Justice or other asset forfeiture fund.

### WHAT USES ARE MADE OF THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND?

- Asset Management Expenses (for example, appraisal, maintenance, and storage costs)
- Case Related Expenses (for example, advertising and litigation costs)
- Payment of Qualified Third Party Interests (for example, costs

of satisfying liens)

- **Equitable Sharing Payments** - to state and local agencies for law enforcement purposes and to foreign governments, based on the degree of direct participation in the law enforcement effort resulting in the forfeiture.

**SHARING PERCENTAGES -**

**FOR ADOPTIVE SEIZURES, THE U.S. RETAINS 20 % OF THE NET PROCEEDS OF FORFEITED PROPERTY.**

**FOR JOINT INVESTIGATION SEIZURES, EACH AGENCY SHARES ACCORDING TO ITS DIRECT PARTICIPATION IN THE LAW ENFORCEMENT EFFORT RESULTING IN THE FORFEITURE, BUT IN NO CASE IS THE U.S. SHARE LESS THAN 20%.**

- **Program Management Expenses of Federal Agencies** (for example, data processing equipment and contract services, printing, training, investigative expenses including awards for information, costs of equipping conveyances for drug law enforcement, purchase of drug evidence, BUT NOT personnel expenses)

## THE STEPS IN FORFEITURE

### Civil Administrative Forfeiture

(Averages 80 to 150 days from adoption to disposition if uncontested)

1. **Preseizure:** the agency investigates probable cause and potential innocent claims, determines equity and law enforcement purpose, obtains appraisal and title search.
2. **Seizure:** the federal seizing agency seizes the property on probable cause with or without a warrant, or adopts a state/local agency seizure.
3. **Custody and Appraisement:** the U.S. Marshals Service or other property manager maintains custody or designates a substitute custodian. The federal seizing agency reviews the sufficiency of probable cause. The agency determines the appraised value of the property.
4. **Quick or Expedited Release:** the federal seizing agency may quick release property when a decision is made not to seek forfeiture (for example, because of insufficient equity). The federal seizing agency must give timely notice to potential claimants that expedited release of a conveyance seized for a drug-related offense may be available. The agency head must rule on the petition within 20 days of receipt of the petition or release the conveyance.
5. **Notice:** the federal seizing agency publishes notice, of its intent to forfeit and of the procedures for claiming an interest in the property and for petitioning for remission/mitigation, for three successive weeks in a newspaper of general circulation in the district where the property was seized. The agency also gives personal notice to known potential claimants.
6. **Decree of Forfeiture:** if no claim and cost bond (or in forma pauperis petition) is filed within 20 days of the last date on which published notice occurs, the forfeiture is uncontested and the federal seizing agency head issues a decree of forfeiture against the property. (The cost bond is cash, check, or surety in the amount of \$5,000 or ten percent of the value of the property, whichever is lower, but not less than \$250.)
7. **Remission or Mitigation:** if a petition is submitted, the federal seizing agency head may provide equitable relief to an innocent petitioner by granting the petition (remission) or by granting the petition subject to the payment of a penalty (mitigation).

8. Disposition: upon confirmation of forfeiture, cash is moved from the agency's holding fund to the agency's forfeiture fund. The federal seizing agency puts non-cash property into official use by itself or permits a state/local agency to do so, or the U.S. Marshal or other property manager sells the property and deposits the net proceeds into the agency's forfeiture fund. Equitable sharing can follow deposit.

#### Civil Judicial Forfeiture

(May take several years if it must be tried)

1. Preseizure: the U.S. Attorney obtains title search and appraisal, determines equity and law enforcement purpose, reviews probable cause, evaluates potential innocent owner claims.

2. Seizure/Arrest:

the federal seizing agency executes a federal seizure warrant issued by the U.S. District Court in the district in which the property is located, or

the U.S. Attorney files a civil complaint against the property, and the United States Marshal arrests the property pursuant to a warrant of arrest issued by the U.S. District Court in which the civil forfeiture action has been brought.

Note: a civil forfeiture action may be brought in the district in which any of the acts or omissions giving rise to the forfeiture occurred, in the district in which the property is located, and in the district in which the person who owns the property is under indictment if 18 U.S.C. § 981(h) or § 881(j) apply.

3. Custody and Appraisalment: the U.S. Marshal takes the property into custody or, in the case of real property, only posts the notice of arrest on the real property, or, after a Good hearing or finding of exigent circumstances, takes custody. The Marshal may designate a substitute custodian for the property. The Marshal determines the appraised value of the property.
4. Quick or Expedited Release: the U.S. Attorney may quick release property if a decision is made not to proceed with the forfeiture action (for example, because of innocent owner claims that cannot be overcome). A claimant must file a request for expedited release of a conveyance within 20 days of first publication of notice of intent to forfeit. The U.S. Attorney must decide within 20 days of receipt of the request.

5. Notice: the U.S. Attorney publishes notice, of intent to forfeit and of the procedures for claiming an interest in the property and for petitioning for remission/mitigation, for three successive weeks in a newspaper of general circulation in the district where the property was seized. The U.S. Attorney also gives personal notice to known potential claimants.
6. Judgment of Forfeiture:
  - Default Judgment - if no claimant files both a claim within 10 days of receiving notice and an answer to the complaint within 20 days of the claim, the U.S. Attorney obtains a default judgment of forfeiture against the property and against all potential claimants.
  - Summary Judgment - if a claimant cannot establish that a genuine issue of material fact exists regarding the claim, the U.S. Attorney obtains a summary judgment of forfeiture against the property and against that claimant.
  - Judgment - if the claim cannot be resolved without a trial, the civil case proceeds through discovery and pretrial motions to trial, where the U.S. Attorney obtains a jury verdict or a judicial decision followed by a judgment of forfeiture.
7. Remission or Mitigation: if a petition is submitted, the U.S. Attorney General may provide equitable relief to an innocent petitioner by granting the petition (remission) or by granting the petition subject to the payment of a penalty (mitigation).
8. Disposition: upon confirmation of forfeiture, cash is moved from the holding fund to the federal seizing agency's forfeiture fund. The federal seizing agency puts non-cash property into official use by itself or permits a state/local agency to do so, or the U.S. Marshal or other property manager sells the property and deposits the net proceeds into the forfeiture fund. Equitable sharing can follow deposit.

### Criminal Judicial Forfeiture

(Governed by Speedy Trial Act, which requires trial to commence within 70 days of the defendant's first appearance on the charge in the district, less excludable time)

1. Preindictment: the U.S. Attorney obtains title search and appraisal, determines equity and law enforcement purpose, reviews forfeitability, and evaluates potential innocent owner claims regarding the property.
2. Indictment: the federal grand jury returns an indictment that charges a defendant with a federal criminal offense and names the property that is sought to be forfeited.  
  
Preindictment and post-indictment restraining and seizure orders may be obtained to preserve property subject to forfeiture and to preserve substitute assets.
3. Special Verdict: if the trial jury convicts the defendant of the criminal offense, it then returns a special verdict that finds the property has been forfeited.
4. Preliminary Order of Forfeiture: the U.S. District Court issues an order in the criminal case directing the U.S. Marshal to seize the property.
5. Seizure: the U.S. Marshal seizes the property.
6. Custody and Appraisal: The U.S. Marshal maintains custody of the property or designates a substitute custodian. The U.S. Attorney gives personal and published notice that forfeiture will be ordered and that a petition to assert an interest in the property may be made in the criminal case. A petition to assert an interest must be filed within 30 days of receiving notice. The government may conduct discovery.
7. Ancillary Hearing: the U.S. District Court, without a jury, hears the petitioner's evidence in support of the petition and the U.S. Attorney's evidence in opposition to the petition.
8. Final Order of Forfeiture: the U.S. District Court issues a final order of forfeiture, recognizing any valid interest. If substitute assets have been sought to satisfy any forfeiture judgment, the final order of forfeiture directs the acquisition and sale of those substitute assets.
9. Remission or Mitigation: if a petition is submitted, the U.S. Attorney General may provide equitable relief to an innocent petitioner by unconditionally returning all or part of the property (remission) or by agreeing to return all or part of the property on condition that the claimant pays a penalty.

(mitigation).

10. Disposition: upon confirmation of forfeiture, cash is moved from the holding fund to the federal seizing agency's forfeiture fund. The seizing agency puts non-cash property into official use by itself or permits a state/local agency to do so, or the U.S. Marshal or other property manager sells the property and deposits the net proceeds into the forfeiture fund. Equitable sharing can follow deposit.

## FORFEITURE IN CONNECTION WITH A GUILTY PLEA

- **CRIMINAL FORFEITURE:** a defendant may plead guilty to an indictment or information which names the property to be forfeited. The Rules of Criminal Procedure do not require a court at a guilty plea proceeding to ascertain a factual basis for an agreed forfeiture or to advise the defendant of his right to have a jury determine forfeitability. The judgment and commitment order contains a confirmation of the forfeiture of the defendant's interest in the property. The government gives published and personal notice to potential claimants of interest in the property. An ancillary hearing is held for any petitioner who files within 30 days of receiving notice. An order of forfeiture confirms the forfeiture of any non-defendant interest in the property and recognizes the interest of any innocent petitioner.
- **CIVIL FORFEITURE:** a defendant may plead guilty pursuant to a plea agreement in which the defendant agrees not to contest the civil forfeiture of property. Administrative or judicial civil forfeiture of the property is pursued and non-defendant claims of interest are resolved.

**FORFEITURE OF PROPERTY CANNOT BE CONFIRMED BY MEANS OF A DEFENDANT'S GUILTY PLEA AND JUDGMENT ALONE. FORFEITURE OF NON-DEFENDANT INTERESTS MUST ALSO BE THE CONFIRMED BY ORDER, AFTER NOTICE AND OPPORTUNITY TO BE HEARD.**

## DRUG FORFEITURE

The statutes: 21 U.S.C. § 881 (civil) and § 853 (criminal)

### 21 U.S.C. § 881

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

- (a) (1) Controlled substances - "all controlled substances which have been manufactured, dispensed, or acquired in violation of this subchapter"
- (a) (2) Raw materials, products, and equipment - "all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter"
- (a) (3) Property used as a container - "all property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9)" (not conveyances or real property; see below)
- (a) (4) Conveyances - "including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9)"  
  
Note: innocent owner protection - "no conveyance shall be forfeited . . . to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed without the knowledge, consent, or willful blindness of the owner." Also - common carrier and stolen conveyance protections.
- (a) (5) Books, records "all books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter"
- (a) (6) Money - "all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter"

Note: innocent owner protection - "no property shall be forfeited under this paragraph to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner"

- (a) (7) Real property - "all real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment" VERY IMPORTANT - TO FORFEIT REAL PROPERTY THERE MUST BE PROBABLE CAUSE EVIDENCE THAT THE REAL PROPERTY WAS USED OR INTENDED TO BE USED TO FACILITATE CONDUCT THAT CONSTITUTES A FEDERAL DRUG FELONY.

Note: innocent owner protection - "no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner"

- (a) (8) Controlled substances which have been possessed in violation of this subchapter
- (a) (9) Chemicals, equipment - "all listed chemicals, all drug manufacturing equipment, all tableting machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this subchapter or subchapter II of this chapter"
- (a) (10) Drug paraphernalia - "any drug paraphernalia"
- (a) (11) Firearms - "any firearm (as defined in section 921 of Title 18) used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) and any proceeds traceable to such property"

"This subchapter" means Subchapter I, which includes the following violations:

§ 841(a)(1): to manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance (felony), and

§ 841(a)(2): to create, distribute, dispense, or to possess with intent to distribute or dispense, a

counterfeit substance (felony), and

§ 843(b): to use a communication facility in committing or causing or facilitating the commission of a felony violation of Subchapter I or II (felony), and

§ 844: to possess a controlled substance (misdemeanor and felony), and

§ 846: to attempt or to conspire to violate an offense in subchapter I (misdemeanor and felony), and

§ 848: to engage in a continuing criminal enterprise (felony).

Subchapter II includes import and export offenses (felony).

21 U.S.C. § 853

Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law:

- (a) (1) Proceeds - "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation"
- (a) (2) Facilitating property - "any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation"
- (a) (3) CCE Property - if a defendant is convicted of CCE, "any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise"

## MONEY LAUNDERING FORFEITURE

The statutes: 18 U.S.C. § 981 (civil) and § 982 (criminal)

- Federal law authorizes the forfeiture of real and personal property involved in or traceable to property involved in a violation of 18 U.S.C. §§ 1956, 1957 (money laundering); 31 U.S.C. §§ 5313(a), 5324 (structuring).

So, real or personal property purchased with the proceeds of conduct that constitutes a specified unlawful activity (SUA) may be forfeited if the other elements of the violation are present. Real or personal property improved with the proceeds of an SUA may be forfeited if the other elements of the violation are present. A business or an account in a financial institution that facilitates the financial/monetary transaction in proceeds from conduct that constitutes an SUA may be forfeited if the other elements of the violation are present.

Generally, the law permits forfeiture of real and personal property involved in a violation that occurred after November 18, 1988 (before that date, gross receipts only) so check the effective date of the SUA and the forfeiture provision.

- Specified unlawful activity (SUA): see 18 U.S.C. § 1956(c)(7)
- If the amount of proceeds in the financial transaction is \$10,000 or less, the transaction must be intended
  - to promote the carrying on of an SUA, or
  - to conceal or disguise the nature, source, location, or ownership of the proceeds, or
  - to avoid a reporting requirement (CTR for currency transactions with a financial institution, Form 8300 for currency transactions with a trade or business), or
  - to evade federal income tax or file a false return.

18 U.S.C. § 1956(a)(1)(A) and §981, 982

- If the amount of proceeds from an SUA in a monetary transaction exceeds \$10,000 and the monetary transaction is conducted with a traditional financial institution, no additional intent need be shown.

18 U.S.C. § 1957 and §§ 981, 982

- FIRREA, ETC.: if the proceeds involved in the financial transaction are derived from an SUA affecting a financial institution (or from certain other SUAs) described in § 981 or § 982, no additional intent need be shown for forfeiture.

18 U.S.C. §§ 981(a)(1) and 982(a)(2)

## THE TOOLS OF FEDERAL FORFEITURE

THE STATUTES. More than 200 federal statutes provide a forfeiture remedy. Among these statutes are drug (civil and criminal forfeiture), Racketeer Influenced and Corrupt Organizations or RICO (criminal forfeiture only), and money laundering (civil and criminal forfeiture)

THE CUSTOMS LAWS. Tariff Act of 1930, 19 U.S.C. §§ 1602-1621. Many federal forfeiture statutes incorporate what are called "The Customs Laws." These laws provide the practical framework for forfeitures: seizure, custody, release, remission and mitigation, disposition, and many other facets of federal forfeiture.

THE ADMIRALTY RULES. Supplemental Rules for Certain Admiralty and Maritime Claims, 28 U.S.C. App. The Admiralty Rules (also called "The Supplemental Rules") supplement the Federal Rules of Civil Procedure for in rem cases such as civil forfeiture actions. The Admiralty Rules tell you how to file and pursue a civil forfeiture action.

REGULATIONS. There are drug (21 C.F.R. Subparts E and F, § 1316) and non-drug (28 C.F.R. Parts 8 and 9) regulations relating to forfeiture actions. Each federal agency that has administrative forfeiture authority usually has regulations applicable to the forfeiture function.

DEPARTMENT OF JUSTICE POLICIES. The Department's written policies regarding forfeiture, generally promulgated through the Executive Office for Asset Forfeiture and through the Executive Office for U.S. Attorneys, govern the action of U.S. Attorneys. The major policy statement is THE ATTORNEY GENERAL'S GUIDELINES ON SEIZED AND FORFEITED PROPERTY, issued July 31, 1990. Other policies can be found in Volume III of the Asset Forfeiture Policy Manual issued July, 1996. Policies cover such areas as payment of state and local taxes on seized real property; requirements for review and/or approval by the Department before action is taken regarding ex parte restraining orders, attorney fees, substitute assets, significant settlements, substantial equitable sharing requests, pursuing appeals, and putting real property into official use; seized cash management; equitable sharing; utilizing contract employees; and use of property under seizure.

RESOURCES. Department of Justice publications on forfeiture.

1. Asset Forfeiture Manual (Published 1993). This is the basic resource for the Department's asset forfeiture program. Volume I "Law and Practice" contains the basics of federal forfeiture with supporting case law.
2. Criminal Forfeiture Overview: Select Forms, Policy, and Legal Analysis (Revised July 1993). This is an excellent resource for criminal forfeiture.
3. Quick Reference to Federal Forfeiture Procedures (Second Edition, Current as of March 1991). A deskbook of the most frequently used statutes, regulations, policies and other materials.
4. Glossary of Forfeiture Terms for the Non-Lawyer in the Federal Asset Forfeiture Program (February 1991). Until you become familiar with all of the terms associated with federal forfeiture, keep this dictionary handy.
5. A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (March 1994). Even if you are not directly responsible for equitable sharing decisions in your office, this is a convenient way to learn how equitable sharing works.
6. Quick Release (Published monthly by the Asset Forfeiture and Money Laundering Section, Criminal Division). The latest published and unpublished opinions from federal courts at all levels pertaining to forfeiture, indexed by topic yearly. An invaluable way to stay up-to-date on forfeiture law.
7. Asset Forfeiture and Money Laundering Resource Directory (Latest edition, February 1996). A list by district of personnel engaged in forfeiture work in U.S. Attorneys' offices, and of contacts in AFMLS, EOUSA, TEOAF, JMD, and other components in the asset forfeiture program. Published by the Asset Forfeiture and Money Laundering Section, Criminal Division.
8. Asset Forfeiture News (Published bi-monthly by the Asset Forfeiture and Money Laundering Section, Criminal Division). A newsletter that contains articles of interest to attorney and non-attorney personnel engaged in federal asset forfeiture work. This periodical provides very practical information for federal forfeiture attorneys.
9. Compilation of Selected Federal Asset Forfeiture Statutes (Latest edition, August 1995 plus supplement)
10. Asset Forfeiture Bulletin Board (Maintained by the Asset Forfeiture and Money Laundering Section, Criminal Division). An

automated database designed to receive calls from other computers and to exchange information about asset forfeiture, including pleadings, policies, and training materials. For information about using the AFBB, contact System Operator (202) 307-0265.

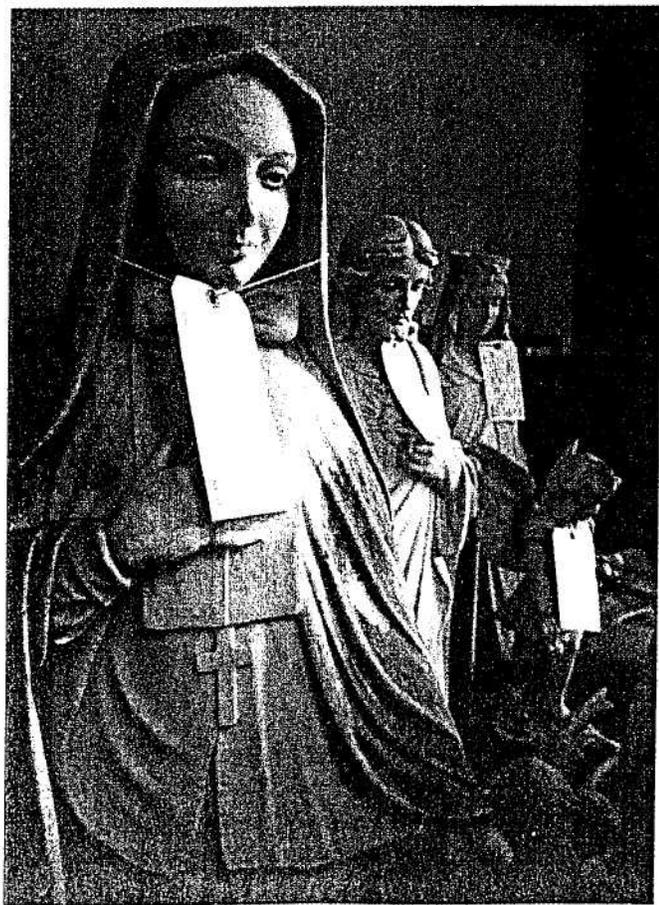
For other resources, refer to the back of Quick Reference to Federal Forfeiture Procedures.

# Stealing from the Dead

Arrests in New Orleans underscore the breadth of graveyard theft market.



Above, New Orleans detectives unload a statue believed stolen from a cemetery and allegedly sold by an antiques dealer; reclaimed and tagged statues.



BY ALITA BYRD

NEW ORLEANS POLICE investigating graveyard thefts say they have found three historic houses and an art and antiques shop filled with stolen funerary statuary, benches, urns, and chairs. The discovery in November led to the arrests of the prominent owners—antiques dealer Peter Patout, art gallery owner and former Tulane English professor Andrew Antippas, anesthesiologist Roy Boucvalt, and arts and antiques appraiser and dealer Aaron Jarabica—who allegedly placed orders for items from New Orleans' cities of the dead.

The case illustrates how widespread and brazen the lucrative graveyard theft market has grown in recent years. In Los Angeles, marble sculptures and urns from New Orleans' elaborate cemeteries have been openly advertised at swap meets and have turned up in trendy boutiques. Last December, six 150-pound bronze mausoleum doors were stolen from Laurel Hill Cemetery in Philadelphia. State police in Ray Brook, N.Y., arrested a couple in 1996 towing a U-Haul filled with bronze statues, marble birdbaths, and cast-iron urns, some stolen from cemeteries.

"You can't drive a pickup through the Museum of Fine Arts, but you can in a cemetery," says Bill Clendaniel, president of the Mount Auburn Cemetery in Cambridge, Mass., which recovered the last of its seven stolen iron gates in May.

Can the trade in funerary objects be squelched? Texas is considering a program that encourages citizens to adopt the state's estimated 50,000 cemeteries. Rhode Island maintains a database of cemeteries in the state and the grave markers in each one. The New England Cemetery Association, like many other organizations across the country, is encouraging owners of burial plots to report thefts to the police. New Orleans has toughened penalties for graveyard thefts or possession of the stolen property to include a \$500 fine, six months in jail, or 90 days of community service. Federal law is much more severe for cemeteries that qualify as museums: A conviction for theft from one of these graveyards could bring penalties of up to 10 years in prison and a \$250,000 fine, according to Robert Wittman, an FBI special agent.

Meanwhile, in New Orleans, trial dates haven't been set for those charged in the graveyard thefts. "Instead of winding down the investigation," says Linda Buczek, captain of the third district, "we are getting more leads every day. People care about this story, and we couldn't let this drop even if we wanted to. These [cemeteries] are a part of who we are."



## Legal Background of Archeological Resources Protection

*Carol Carnett, Legal Aid Bureau of Maryland Inc.*

*This Technical Brief describes the legal background and case histories for archeological protection. Its purpose is to provide a convenient summary of archeological protection and preservation as an issue in law and jurisprudence that will be of use to jurists who may need assistance in casework.*

*Portions of this technical brief depart from the standard for reference citations, i.e., American Antiquity style, in favor of endnotes and legal usages, standard legal citation format, which are more helpful to attorneys and judges. Also, the standardized Federal government spelling of "archeology" is used throughout, except in titles and direct references to the Archaeological Resources Protection Act where it is spelled "archaeology."*

### Introduction

Despite a variety of Federal, Tribal, State and even local laws passed over the last 85 years, the amount of looting and vandalism of irreplaceable archeological resources continues to increase. Archeological sites are located on both public and private lands. Many of the areas are remote and difficult to patrol,<sup>1</sup> although considerable numbers of archeological sites are also to be found in more densely populated areas such as New England, the Midwest, Southeast, and the West Coast.

This technical brief examines: (1) the current profile of civil and criminal actions brought since passage of the Archaeological Resources Protection Act (ARPA);<sup>2</sup> (2) potential areas of application for ARPA; (3) other laws and regulations that afford protection to archeological resources; and (4) case patterns through an overview of LOOT information currently available.

### History and Purpose

#### Statutes Prior to ARPA

Federal preservation law dates from the early 19th century, when its primary focus was to document information and collect items of importance in connection with national public figures and historic military events.<sup>3</sup> The extended efforts beginning in the mid-19th century to save George Washington's home, Mt. Vernon, and protect the archeological remains and monumental architecture of Southwest sites such as Casa Grande Ruins exemplify such early preservation measures, most of which resulted in cases involving the taking of public property for preservation or beautification purposes.<sup>4</sup> The first case in which the Supreme Court recognized that the Federal government had the power to condemn private<sup>5</sup> property in order to preserve an historic site was *United States v. Gettysburg Electric Railway Co.* (1896), which allowed the creation of Gettysburg Battlefield Memorial.<sup>6</sup> In its decision the Court refused

to adopt a narrow constitutional interpretation offered by the railroad, which would have placed the condemnation of its property outside the definition of a taking for a "public purpose" necessary for government condemnation of property. The Court did not discuss whether the government could utilize regulatory schemes to facilitate historic preservation, nor did it address the question of whether the government could extend its efforts to condemn and acquire sites with no apparent historical connections--issues which would be extremely important in the future development of preservation law.

Around the turn of the century, local governments began to adopt a European approach to land use and zoning regulation for the purpose of preserving the "local character" of their towns. The City of Baltimore, for example, adopted a 70-foot maximum height regulation to maintain the character of its residential and commercial areas. A similar regulation was adopted the same year by the city of Boston. The Baltimore regulation was challenged in *Cochran v. Preston* (1908)<sup>7</sup> and upheld by the Court of Appeals on the ground that it was designed to reduce fire hazards in addition to containing an aesthetic preservation goal. The Boston ordinance was also challenged, and ended up before the Supreme Court in 1909.<sup>8</sup> The Court upheld the ordinance as being reasonably related to public health and safety, primarily in the area of fire prevention. Still, the Court did not address the issue of whether government regulation could be justified under constitutional substantive due process standards for preservation reasons. It would be 1978 before that question would be answered in the affirmative.<sup>9</sup>

### **Antiquities Act**

Federal policy to preserve historic and prehistoric sites on Federal lands was first embodied in the Antiquities Act of 1906,<sup>10</sup> which authorizes a permit system for investigation of archeological sites on Federal and Indian lands, and gives the President the power to establish national monuments on Federal lands for the purpose of protecting historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest. The Antiquities Act specifies protection of antiquities on all lands owned or controlled by the Federal government and gives authority for their proper care and management to the Departments having jurisdiction. This means that Indian lands, forest preserves, and military reservations are included. The statute has no felony provisions, and penalties limited to criminal misdemeanor charges with fines up to \$500 and/or 90 days imprisonment, are imposed upon those "who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity situated on lands owned or controlled" by the Federal government unless they have a permit<sup>11</sup> issued through the Secretary of the Department having jurisdiction.<sup>12</sup> Previously, specific legislative authorization was required for each designation. Although the authority to regulate the excavation or collection of archeological remains from federally controlled lands now rests principally with ARPA, monuments still are created under the Antiquities Act, and that statute limits monuments to "the smallest area compatible with the proper care and management of the objects to be protected."<sup>13</sup>

### **Historic Sites Act**

The Historic Sites Act,<sup>14</sup> enacted in 1935, declared a Federal policy to preserve historic and prehistoric properties of national significance. It gives the Secretary of the Interior authority to make historic surveys, as well as other broad powers to protect historic properties and establishes the National Historic Landmarks Program. This legislation sets standards for identification and preservation of National Historic Landmarks. It does not contain any sections that address enforcement.<sup>15</sup>

### **National Historic Preservation Act (NHPA)**

NHPA was originally passed by Congress in 1966<sup>16</sup> and established a Federal policy of cooperation with other nations, Tribes, States, and local governments to protect historic sites and values. Together with its implementing regulations, NHPA authorizes the National Register of Historic Places,<sup>17</sup> creates the Advisory Council on Historic Preservation,<sup>18</sup> provides further considerations for National Historic Landmarks,<sup>19</sup> and creates procedures for approved State and Local Government Programs.<sup>20</sup> The

National Register of Historic Places criteria for evaluation of properties to be nominated are found at 36 CFR Part 60.4. Consideration is given to "districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association" and that are (a) related to events that have made a significant contribution to the broad patterns of our history; or that are (b) associated with the lives of persons significant in our past; or that (c) bear a pattern of distinctive characteristics of historic, architectural, archeological, engineering or cultural significance; or that (d) have yielded or may in the future yield important information as to our history or prehistory.

Regulatory provisions accompanying NHPA require the State Historic Preservation Officers (SHPOs) to prepare and implement State historic preservation plans.<sup>21</sup> Protection of identified historic sites is facilitated through implementation of NHPA Section 106 review, which is a five-step process designed to ensure that historic properties are considered during the planning and execution of Federal projects.<sup>22</sup>

The major amendments to NHPA, passed in 1980,<sup>23</sup> provide support for archeological resources protection because they codify those portions of Executive Order 11593<sup>24</sup> requiring Federal agencies to develop programs to inventory and evaluate historic resources. The amendments also authorize Federal agencies to charge reasonable costs for such activities to Federal permittees and licensees.<sup>25</sup>

#### **Archeological and Historic Preservation Act<sup>26</sup> (AHPA)**

Though it has been called the Archeological Recovery Act and the Reservoir Salvage Act, AHPA has no official short title. Most importantly, it requires Federal agencies to preserve historic and archeological data, including the objects and materials collected from archeological sites, which may otherwise be lost or destroyed as a result of "any Federal construction project or federally licensed activity or program." Up to 1 percent of project funds may be appropriated to conduct archeological data recovery activities, in addition to any costs for archeological work required for project planning.<sup>27</sup>

#### **Archaeological Resources Protection Act (ARPA)**

Of the laws currently in place for protecting archeological resources, one of the most far-reaching is the Archaeological Resources Protection Act of 1979 (ARPA)<sup>28</sup> with its subsequent amendments of 1988.<sup>29</sup> This is particularly true since adoption in 1984 of uniform regulations by which many aspects of ARPA are enforced.<sup>30</sup> Under Section 6 of ARPA the first significant criminal penalties can now be imposed for the vandalism, alteration, or destruction of historic and prehistoric sites<sup>31</sup> on Federal and Indian lands, as well as for the sale, purchase, exchange, transport, or receipt of any archeological resource if that resource was excavated or removed from public lands or Indian lands or in violation of state or local law. The penalties include up to \$250,000 in fines and up to five years imprisonment.<sup>32</sup> In addition, ARPA provides civil penalties for the acts prohibited under Section 6, as well as for violations of ARPA permits.<sup>33</sup> The penalties include the forfeiture of property used for illegal site disturbances or destruction and forfeiture of illegally obtained artifacts.<sup>34</sup>

The critical provisions of ARPA make it illegal to excavate or remove any archeological resources from Federal or Indian lands without a permit from the Federal land manager. Permits for archeological work on Indian lands may be granted only after obtaining consent of the Indian allottee or Indian Tribe owning or having jurisdiction over such lands. One of the conditions for issuance of a permit is that the applicant demonstrate that proposed activities will provide increased knowledge of archeological resources. A primary purpose of the statute is to increase the exchange of information and general communication among governmental entities, professional archeologists, and the public. Finally, ARPA requires uniform regulations to be promulgated by the Secretaries of the Interior, Defense, and Agriculture and the Chairman of the Tennessee Valley Authority. Federal land managers, as defined in ARPA, may promulgate additional regulations, consistent with the uniform regulations, which may be needed by their agencies.

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Currently there are a few State statutes that address protecting archeologically significant sites located on private lands but there are no comparable Federal statutes. Unlike the European nations, the United States has not embraced the concept of a national cultural heritage law that protects significant resources within the boundaries of private ownership of land.

Although the most recent amendments to ARPA will improve the effectiveness of the anti-looting portions of the statute via interagency cooperation, there are certain areas in which the only effective remedy will be increased involvement of the law enforcement community. This community includes local, State, and Federal law enforcement personnel, attorneys, and the judiciary involved at each level of prosecution. At present many of these individuals do not know that the statute exists, or if they are aware of it, they still prefer to utilize more familiar State and local laws that prohibit theft, vandalism, or trespass. Although such laws do take care of some of the problems, they do not deal effectively with the destruction of cultural resources and information because the focus is in punishing specific common law offenses.<sup>35</sup> Because these laws are also more familiar to the members of juries, as well as the judges, who may be deciding the cases, prosecutors often see a strategic advantage in presenting a cause of action that will not be misunderstood.

When Congress passed ARPA in 1979, legislators and preservationists hoped that it would result in a reduction of vandalism and looting of the nation's prehistoric and historic archeological sites. They looked to ARPA as a vehicle for education that would lead to a heightened public awareness of the problem as well as provide a major deterrent to looters and illegal commercial traffickers through its substantial penalty provisions.<sup>36</sup> This continues to be the case, as ARPA was strengthened by the 1988 amendments with requirements that Federal agencies develop plans for surveying lands not scheduled for projects, develop and implement systems for reporting and recording archeological violations, and develop public awareness programs. The amendments also provide for a lower felony threshold, reduced from \$5,000 to \$500 damage caused, and prohibit attempts to damage archeological resources.<sup>37</sup> Today, the successful enforcement of ARPA depends upon a variety of interrelated factors:

1. Education of the professional communities, including archeologists, agency managers, law enforcement personnel, and jurists, particularly in the areas of preservation law, policy and technology;
2. Education of the citizenry at large to foster awareness and appreciation of both historic and prehistoric cultural resources and the importance of protecting and preserving those resources;
3. A team approach to collection of data and evidence in investigative casework;
4. Communication and cooperation among the agencies that, under the statute, are responsible for the joint administration of the law, including,
  - a. Effective monitoring of the condition of archeological resources by land managing agencies, and
  - b. Effective cooperation between law enforcement and cultural resource personnel in managing these resources; and
  - c. Research and development of more effective protection measures.<sup>38</sup>

### **Related Federal Legislation**

In addition to the statutes that specifically address cultural resources preservation, other legislation also recognizes the importance of historic and prehistoric site protection. While the preservation statutes themselves may be limited by weaknesses in certain areas, their enforcement potential may be increased by their function in tandem with other laws:

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***Department of Transportation Act (DOTA)***<sup>39</sup>

No program undertaken by the Federal Highway Administration, Federal Aviation Administration, Urban Mass Transit Administration, or the U.S. Coast Guard will be approved when it requires use of land from a historic site, whether of national, State, or local significance, *unless there is no feasible and prudent alternative but to use such lands, and unless the program includes all possible planning to minimize harm to the historic properties* (emphasis added).<sup>40</sup>

***National Environmental Policy Act (NEPA)***<sup>41</sup>

Because NEPA's Environmental Impact Statement (EIS) requirement applies to all proposed major Federal actions that may significantly affect the quality of the human environment, it has become an effective procedural statute that is applicable to cultural resources preservation.<sup>42</sup> The EIS must be prepared prior to such proposed actions. Both NEPA and NHPA apply only to Federal actions, and although these statutes neither specifically prohibit activities that may ultimately result in damage to or destruction of archeological resources nor require actions to preserve cultural resources, the courts have usually considered NEPA applicable to such resources, in that the natural environment includes our "historic and cultural heritage".<sup>43</sup>

***American Indian Religious Freedom Act (AIRFA)***<sup>44</sup>

This Act seeks to protect and preserve traditional Native American, Eskimo, Aleut, and Hawaiian spiritual beliefs and practices by providing access to ancient sites for these Native peoples. AIRFA also provides for the use and possession of sacred objects by members of the Native American Tribes. Archeological site protection is a Federal activity related to AIRFA, since it directs the various agencies to consult with Native traditional religious leaders in a cooperative effort to develop and implement policies and procedures that will aid in determining how to protect and preserve Native American cultural and spiritual traditions. Section 10(a) of ARPA requires that uniform regulations be promulgated for ARPA after consideration of AIRFA.

***Federal Collections Act of 1966***<sup>45</sup>

This Act requires that Federal agencies attempt collection of all claims for money or property damage arising out of activities on Federal lands, including claims resulting from unauthorized or illegal activities that damage or destroy cultural resources. Historic and prehistoric sites have clearly been defined as "resources" under the Antiquities Act, NHPA, and ARPA, and collection requires careful analysis by a professional archeologist whose training includes methods of site appraisal, such as provided in the uniform regulations for ARPA, that will translate site damage into monetary terms and satisfy the evidentiary requirements of a court case.<sup>46</sup>

***18 U.S.C. 641, Embezzlement and Theft***<sup>47</sup>

This statute provides that, "Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys, or disposes of any record...or thing of value of the United States or of any department or agency thereof... or whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined, or converted shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both." "The word, 'value' means face, par, or market value, or cost price, either wholesale or retail, whichever is greater." This statute, together

with the malicious mischief statute, may be used in coordination with ARPA to establish liability of looters as well as their connected commercial agents or dealers in artifacts.<sup>48</sup>

***18 U.S.C. 1361, Destruction of Government Property (Malicious Mischief)***

This statute provides: "Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof...shall be punished as follows:

If the damage to such property exceeds the sum of \$100, by a fine of not more than \$10,000 or imprisonment for not more than ten years, or both; if the damage to such property does not exceed the sum of \$100, by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both.

The advantages to including this statute when litigating against looters and vandals is clear, since its penalties may be applied to partial site destruction or to destruction and/or removal of smaller non-replaceable resources such as portions of pots, chipping tools, and fabric remnants.<sup>49</sup>

***18 U.S.C 1163, Embezzlement and Theft from Indian Tribal Organizations***

This statute is similar to 18 U.S.C. 641, described above, but it applies specifically to embezzlement and theft from Indian Tribes.

Alternative fines are also applicable to both the malicious mischief and embezzlement/theft statutes. Pursuant to 18 U.S.C. 3571, maximum fines may be imposed for convictions under 18 U.S.C. 1163, 18 U.S.C. 641, and 18 U.S.C. 1361, as follows:

Misdemeanor conviction, value less than \$100,000, up to \$100,000 maximum fine. Felony conviction, value exceeds \$100,000, maximum fine up to \$250,000.

If the defendant is an organization, the maximum fine rates are doubled, although no term of imprisonment can be imposed.

***18 U.S.C. 371, Conspiracy to Commit Offense or Defraud the States***

For a discussion of the application of the Fifth Amendment double jeopardy clause to subsequent criminal prosecutions and the possibility of bar as to "same offense" charges, see *Grady v. Corbin*, 110 S. Ct. 2084 (decided May 29, 1990).

**Companion State Statutes**

Research into existing State statutes that are applicable to archeological resources protection was begun by examining a collection of State laws contained in National Park Service (NPS) files. The list obtained was expanded through a search of the LEXIS and the WESTLAW computer services. Additional information was provided through correspondence with participants in the NPS, Forest Service, and Federal Law Enforcement Training Center who provided LOOT Clearinghouse information (see discussion of LOOT Clearinghouse below). The chart of State statutes (Appendix 1) represents the several categories that were needed to identify statutes applicable to cultural resources protection. Use of these categories was particularly important in the computer searches because there are no generalized cultural resources headings under which these laws can be principally found. Finding these laws depends upon how an individual State categorizes the nature of the protection or the type of offense committed. The laws covering archeological resources protection rarely are codified under a single heading. Additionally, it is likely that new laws have been passed in State

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legislatures and existing laws may have been re-titled or consolidated since June 1990, the date of this research.

State statutes in force as of July 1990, fall into five categories that reinforce or complement ARPA (See Appendix 1):

1. Restrictions on sales of antiquities or forgeries (14 States);
2. Laws to discourage activities that damage archeological resources on private land (11 States);
3. Mirror ARPA statutes, including penalty provisions (37 States);
4. Penalties for disturbances of marked and unmarked burial sites (11 States). Eight states have reinterment statutes, but only two of these also have an anti-disturbance statute; and
5. Statutes providing for acquisition of real property or artifacts.<sup>50</sup>

An additional seven states had pending legislation for 1989-90 sessions in one or more of the five categories, with the emphasis of proposed legislation upon marked and unmarked burial sites. In addition, several States have statutes providing protection to specific areas, such as underwater salvage sites (10 States), caves (4 States), earthworks (2 States), forts (2 States), ghost-towns (Colorado only), petroglyphs or rock art (3 States), and State preserves (Iowa only).

Many States have statutes that establish State archeologists, State historical agencies, involvement in cultural resources issues by Native Americans through established advisory councils, and State registers of historic places. There are also statutes that provide for State cultural resources surveys, regulatory issuance of permits for field investigations, obligations to report discoveries that may have historic or prehistoric archeological significance, and protection of the confidentiality of site locations.

### **Survey of SHPO Resources Protection Activities**

During preliminary research for this Technical Brief it was determined that, while it was important to understand the regional context of archeological resources protection at other levels of government, little information actually was available about such programs at State Historic Preservation Offices (SHPO). Therefore, a survey was conducted between January and August 1990, to query 59 State Historic Preservation Officers and 14 of their deputies about a wide range of protection activities. There were 41 responses (56%).

The results of the survey show that SHPOs are active in the following areas (numbers of affirmative SHPO responses shown in parentheses).

#### **Casework**

Some SHPOs have provided assistance in archeological protection under the Antiquities Act (6) and ARPA (13). Many SHPOs listed activities within the Section 106 procedures of NHPA as their primary source of involvement under Federal law.

Some SHPOs reported assisting with archeological protection pursuant to a variety of State statutes, including theft (4), trespass (5), vandalism (11), site disturbances, including burials and confidentiality of site locations (17), permit violations (10), sales of forged artifacts (4) and archeological surveys or salvage excavations on State lands (1).

Responses from 14 SHPOs documented direct assistance in 17 archeological protection cases prosecuted between 1985 and 1990, with some of those cases still pending resolution. Seven of the cases were prosecuted under ARPA, either alone or in conjunction with other statutes.

SHPO assistance in case preparation has included gathering information or evidence on-site (13), consultation with attorneys (8) and law enforcement personnel (10), giving testimony at trials (9) or hearings (3), and participation in courtmartial proceedings (1).

### **Legislative and Administrative Assistance**

SHPOs reported infrequent participation in legislative activities. However, such activity by preservationists is extremely important because cases are often won or lost on the strength of a statute. One of the most powerful ways to increase protection of archeological resources is through implementation of effective State statutes. The courts are the interpreters of the law, and when there exists a preservation statute that the court may appropriately apply, case preparation may be approached from a much stronger position. For example, SHPO expertise and input were instrumental in the drafting and subsequent enactment of State legislation in Arizona to protect and preserve ancient burial sites on private land.<sup>51</sup>

SHPO legislative efforts necessarily include the building of a constituency that will be available for future legislative activities in related areas. The SHPO survey documented the following legislative and administrative activities: drafting bills (1); legislative task force membership (3); and Federal grant project reviews (1).

### **Training**

SHPOs also recognized their participation in training programs for archeological resources protection. SHPOs were both students (19) and teachers (13) in various programs including the 40-hour skills development course sponsored by the Federal Law Enforcement Training Center, the 12-hour overview of archeological protection programs sponsored by NPS, public awareness programs, and inhouse workshops. Eleven SHPOs indicated that there had been no participation in preservation law training.

Results of the survey confirm that SHPOs are a potentially valuable resource in expanding efforts to enforce preservation laws and educate the general public about archeological resources protection. While most enforcement activities continue to be conducted by Federal agencies, significant public awareness efforts are conducted by States, especially during "archeology weeks." When these are coupled with improved cooperation among law enforcement jurisdictions, there can be an important impact in reducing site vandalism.

### **Application of ARPA**

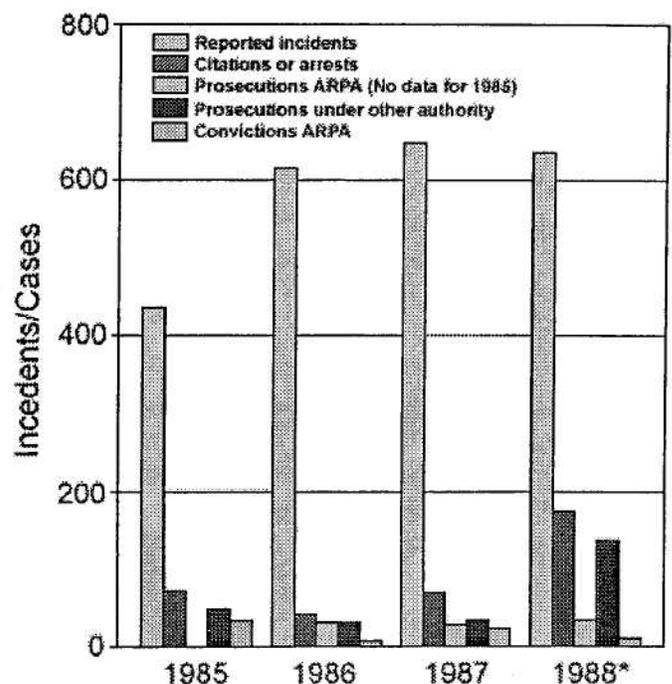
Federal and Indian lands are the clear province of ARPA, and the statute requires four agencies, the Departments of the Interior, Agriculture, and Defense, and the Tennessee Valley Authority, to provide uniform regulations for its implementation. Federal agencies also may adopt supplementary regulations, as long as these are consistent with the uniform regulations. In addition, the Secretary of the Interior is charged with reporting to Congress on the Federal archeology program and activities conducted pursuant to ARPA. This

function is completed by Interior's Departmental Consulting Archeologist (DCA), who receives staff support from the NPS Archeological Assistance Division. Annually, Federal agencies cooperate to provide information about their programs to the DCA, and this includes information related to enforcement of archeological protection laws.<sup>52</sup>

Collection of information about enforcement reflects only activity at **known** archeological sites. The majority of sites that probably exist on federally controlled lands have yet to be inventoried or evaluated. Congress recognized the need to conduct broader archeological surveys to complement project-specific archeological work by adding Section 14 to ARPA in 1988. The latest available information indicates that, overall, Federal agencies estimate that less than 8 percent of the lands they manage have been investigated for possible archeological sites. The magnitude of site looting and vandalism is more easily understood by looking at one area, the "Four Corners" of the Southwest,<sup>53</sup> wherein significant percentages of the known archeological sites have been damaged or destroyed by either casual or unintentional disturbance or by systematic commercial looting.<sup>54</sup>

Between 1985 and 1987, a total of 1,720 incidents of archeological looting were reported by Federal agencies. These incidents resulted in a total of 134 citations, 49 arrests, 57 criminal misdemeanor convictions under ARPA, 16 felony convictions under ARPA, and 17 civil penalties under ARPA.<sup>55</sup> The largest number of cases actually prosecuted were brought under other authorities, such as other Federal statutes, State statutes, or agency-specific regulations.<sup>56</sup>

Archeological site monitoring throughout the vast Federal lands areas is difficult, at best.<sup>57</sup> In addition to the inadequate number of personnel available for site patrol, many known sites are virtually undetectable to the untrained eye, and damage may be undiscovered or unnoticed for long periods of time. Consequently, timely discoveries of looting have been one problem for enforcement.<sup>58</sup> The 1988 Federal agency information indicates that only 15 percent of the reported incidents were found in time to issue Citations or perform an arrest. Also, convictions reported for a given year may be for prosecutions begun two to five years earlier.<sup>59</sup> (See Figure 2)



\*include 1988 data on file as of December 1990. Pending prosecutions and convictions at time information was submitted have not been included.

Figure 2. Vandalism and looting statistics, FY 1985 and FY 1986

Protection strategies on federally controlled lands have included increased patrols, site monitoring, including surveillance technology such as hidden alarm mechanisms, and remote sensing, and interagency cooperation. The result has been a significant increase in reported ARPA violations, but there has yet to be a correspondingly dramatic increase in citations,

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arrests, prosecutions, or convictions under the statute. It is also evident that actual looting and trafficking in artifacts far exceeds the number of reported incidents.

### **LOOT Clearinghouse Cases**

Another source of information about archeological protection is the Listing Of Outlaw Treachery (LOOT) Clearinghouse, created by the NPS Archeological Assistance Division. It contains voluntarily submitted reports for cases of archeological looting and vandalism. Its objectives are to improve the quality of information available about archeological protection, increase the effective use of that information for future enforcement efforts, and expedite the communication of case strategies and results among the many government agencies. Case-specific information for the LOOT Clearinghouse is collected on a form that is distributed to Federal agencies along with the questionnaire requesting data on Federal archeology programs for the annual report to Congress.<sup>60</sup> Respondents are asked to supply information on cases that have been completed, not about ongoing investigations. Others concerned with archeological protection, such as attorneys, law enforcement officials, or professional archeological consultants, also are asked to submit information on completed cases with which they are familiar.

Table I compares the programmatic data gathered as part of the annual report on the Federal archeology program with the case-specific data reported on individual LOOT forms. The discrepancy in numbers is a result of the way in which cases and incidents are grouped, how many LOOT forms document the resolution of cases, and whether or not cases brought under statutes other than ARPA are included in either the annual report data or the LOOT data.

Although the primary purpose of LOOT is to provide "a central place for those seeking information on prosecutions of looting and vandalism,"<sup>61</sup> it also reflects how often and with what success such prosecutions are brought under ARPA, either alone or in combination with other statutes. The LOOT Clearinghouse presently contains information on approximately 100 cases; 23 of these predate the passage of ARPA, while another 24 predate the adoption of ARPA's implementing regulations.<sup>62</sup> All but a few entries predate the 1988 amendments to ARPA, which make it easier for prosecutors to build strong cases.

A brief discussion of pre-regulations cases may be necessary to the understanding of ARPA's development, but the effectiveness of ARPA should be viewed in light of the past five years that these regulations have been in place. In addition, the 1988 amendments to ARPA provide three important changes in favor of enforcement. These include: (1) reduction of the damage amount that establishes the criminal offense from \$5,000 to \$500;<sup>63</sup> (2) insertion of language into Section 6(a), which makes it a criminal offense to "...**attempt** to excavate, remove, damage, or otherwise alter or deface any archaeological resources on federally controlled lands,"<sup>64</sup> and (3) development of a reporting system to document suspected violations under ARPA.<sup>65</sup>

Category	Report questionnaire	LOOT Clearinghouse
Incidents	2,350 (includes cases and incidents)	47 (includes cases only)
Arrests	91 (with or without further action)	19 (arrests followed by trial or hearing)
Citations	256 (with or without further action)	7 (citations resulting in trial)
Prosecutions	119 (no details)	50 (disposition documentation incomplete)
Convictions		
Felony	19	Unspecified
Misdemeanor	57	Unspecified
Civil Penalty	27	Unspecified
Other Statutes	190 (no indication whether case is pending, dropped, settled, or tried)	15

Table 1. Archeological Protection Case Data Comparison

Prosecutions under ARPA prior to regulations were limited because the statute did not designate civil penalties and also because of the more narrow definitions of "archaeological resource" provided in ARPA itself. ARPA *felony* criminal prosecutions now require four elements of proof:

1. that defendant did knowingly excavate, remove, damage, alter, or deface an archeological resource, or attempted to do so;
2. that said resource was located on public or Indian lands, or obtained illegally and transported across State lines;
3. that the defendant acted without a permit;<sup>66</sup> and
4. that the archeological value or commercial value and cost of restoration and repair exceeded \$500.<sup>67</sup>

Despite temporary limitations prior to 1984 due to the need for implementing regulations, seven prosecutions under ARPA were instituted during the first few months after it became law. The ARPA count was usually accompanied by a separate count under 18 U.S.C. 1361, Destruction of Government Property, and the cases were heard either in U.S. District Court or brought before the appropriate Federal Magistrate. Representative convictions from these cases include *United States v. Palmer* (D. Utah, April, 1980), for illegal excavation (\$200 fine, 2-year probation, plus \$300 fine assessed in lieu of confiscation of a vehicle); *United States v. Brady* (D. Arizona, November, 1979), for excavation and damage to a prehistoric site (6 months suspended sentence; 3-year probation); and *United States v. Shumway*, No. Cr-80-5 W (D. Utah, November, 1979) for illegal excavation and destruction of government property (\$750 fine; 3 years suspended sentence with 3 years probation).<sup>68</sup> In one early case, the defendants even petitioned for prosecution under ARPA, although their original offense was committed prior to ARPA's enactment. The plea was granted, and on May 19, 1980, the first sentences under ARPA's felony provisions were imposed.<sup>69</sup>

For the period between 1980 and the adoption of ARPA uniform regulations in 1984 the LOOT clearinghouse documents 19 additional ARPA prosecutions. The pattern emerging from the remainder of these pre-regulation cases shows guilty verdicts by either judge/magistrate or jury for all but one defendant. Prison sentences were usually completely suspended, though one defendant did serve 6 months imprisonment, with supervised probation of 2 to 3 years being imposed instead of jail time. Community service hours were imposed on one defendant. Fines were imposed in less than 50 percent of the cases. Some of the fines were later declared uncollectible by the justice Department, and most fines did not reflect the actual damage amounts presented by the government after damage assessments and analysis by expert archeologists.<sup>70</sup> Lack of ARPA regulations resulted in the only complete acquittal during this period. In that case,<sup>71</sup> defendants were found not guilty of causing \$9,000 in damages to a rock shelter because it was not clearly demonstrated that a rock shelter is an archeological resource.

ARPA uniform and supplementary regulations have clarified uncertainties as to the statute's application and have enhanced the prosecutor's ability to cover a wide range of activities that have resulted in damage to or destruction of archeological resources. ARPA focuses on those activities that have been categorized as "predatory or malicious," which include collecting for personal or commercial gain and wanton property destruction with or without commercial or personal motive. Such looting and vandalism occurs: through digging, also commonly called "pot-hunting", and use of heavy machinery; carving, chipping, scratching, or other general defacement; surface collection of artifacts from archeological sites; theft of artifacts from historic or prehistoric structures; removal of all or portions of a structure; arson; climbing or walking on resources; breaking artifacts, objects, or windows; knocking structures over; throwing rocks and other debris into excavated ruins; or simply handling or touching the structure or contents of sites.<sup>72</sup> It should be emphasized that although surface collection of arrowheads is not prohibited under ARPA, such activity does violate both the Antiquities Act (See Page 2), and the Theft of Government Property statute 18 U.S. C. 641.

The LOOT Clearinghouse contains reports on 60 cases dating from the time of adoption of ARPA regulations, but only 28 of those included ARPA counts for prosecution.<sup>73</sup> Only 16 defendants were prosecuted solely under ARPA. Those activities successfully prosecuted included theft of Civil War relics from public lands, site disturbance--digging or sifting for artifacts--on public lands, removal of material remains or artifacts from prehistoric Indian burial sites, looting of historic shipwrecks in national reserve waters, and trafficking in stolen artifacts illegally obtained from public lands.

Successful prosecutions do not necessarily mean automatic imposition of appropriate fines or other penalties. LOOT reflects only \$270 collected in civil fines,<sup>74</sup> although the number of substantial forfeitures has increased. Items forfeited usually include all tools and equipment used in search and removal efforts, digging tools, metal detectors, diving equipment, and even vehicles such as trucks and boats. Of course, all artifacts in the possession of the defendants are usually confiscated and, upon conviction, those items are forfeited. Defendants who actually serve prison time for ARPA violations continue to be the exception because these sentences often are suspended by the court or magistrate in favor of supervised probation and fines. The amounts of criminal fines imposed continue to be far less than the statutory allowances, with the exception of one \$10,000 fine<sup>75</sup> and one \$21,000 fine, which was assessed under another statute. Another notable exception was the assessment of \$132,000 in civil penalties against seven individuals who looted shipwrecks within a National

Park and a National Marine Sanctuary.<sup>76</sup> Typically, however, the average fine imposed is under \$500, but hours of community service also are required. Denial of access to public lands or monuments is imposed on many defendants during their probationary periods.<sup>77</sup>

If a general trend can be seen through analysis of the LOOT Clearinghouse cases thus far, it is clear that ARPA prosecutions are increasing, but it is less likely that a prosecution is brought under ARPA alone.<sup>78</sup> Federal statutes governing theft and embezzlement of government property or destruction of government property, (See Section 1) usually are included along with the ARPA counts. Attorneys may be more willing to prosecute exclusively under ARPA where the defendant has a prior ARPA conviction, whether felony or misdemeanor, since after one conviction there is no felony threshold with regard to damage to the archeological resource, and the maximum penalty is now up to five years imprisonment and/or as much as \$250,000 in fines.

There still appears to be a reluctance on the part of prosecuting attorneys to include the additional civil damages that are available under ARPA. In one case, although information as to civil liability was presented in detail to the Grand Jury, the attorneys on the case elected not to pursue civil prosecution. The defendants escaped fines of several thousand dollars, paying only the criminal fines and receiving suspended sentences in favor of 5 years probation with 100 hours of community service to be performed. In another case involving an underwater site, the attorney elected not to prosecute under ARPA at all, rationalizing that the court might not consider "diving" for artifacts to be covered under the statute, which speaks to "digging." The LOOT report correctly pointed out that such a rationale would not have prevented prosecution under the National Historic Preservation Act, (See Section 1), which makes it a violation to remove artifacts from Federal property in any manner. Pre-trial agreements or plea bargaining also account for the dropping of ARPA counts in exchange for guilty pleas to lesser offenses. There are two possible explanations for this. Perhaps United States Attorneys continue to have doubts about prosecuting under ARPA because of possible negative statutory interpretations or questions about whether the defendants' activities would really satisfy requirements for an ARPA violation. Alternatively, the potential for violators to receive significant criminal penalties under ARPA may have been shown to be a useful element in effective plea bargaining.

A note of caution is appropriate here. Several factors greatly influence the quality and accuracy of current ARPA enforcement documentation. A large number of Federal agencies are required to respond to the annual NPS questionnaire,<sup>79</sup> and the accuracy and completeness of those responses vary widely depending upon the interest and expertise of the person filling out the form. Cumulative figures are skewed because neither the Department of Transportation nor the Justice Department provides responses to the questionnaire that corroborate media reports and other independent information about their activities relative to ARPA violations<sup>80</sup> and prosecutions. The LOOT case forms usually are completed and submitted<sup>81</sup> by Forest Rangers, Park Rangers, and Regional or State Archeologists, who, in turn, are getting their information from agency patrol reports, United States Attorneys, newspaper or magazine articles, and, occasionally, court records.<sup>82</sup> The case reports are limited to known archeological sites.

Interpretation of what constitutes a "case" in the LOOT forms also depends upon the informant. LOOT reports include "incidents" that resulted in the assessment of fines--an occurrence that requires some sort of formal procedure--yet the report is silent as to dates of arrest, indictment, hearing, or trial. Conversely, there are LOOT reports that clearly reflect

that a hearing or trial has taken place, but there is no information as to the forum of that proceeding or as to whether the penalties assessed were civil or criminal in nature. Furthermore, even when distinction is made between criminal and civil penalties, the nature of the criminal punishments--felony or misdemeanor--are omitted. ARPA violations are often documented, but many of the LOOT reports do not indicate if the actual charges brought were under ARPA or another statute or both. When statutes are cited, there are often omissions as to which counts were dropped during plea bargaining or which counts are included in the resulting guilty verdicts. Amounts that are listed as "fines" are sometimes really the value of items forfeited, and there is confusion among the individual reporters as to what is meant by the terms "restitution," "fine," "forfeiture," and "court costs." On occasion, an agency will have so many violations that it literally stops counting and begins generalizing.<sup>83</sup>

### Conclusion

The legal background of archeological resources protection is long, reflecting more than 100 years of public concern to preserve the material evidence of the nation's past. That concern has changed over time, and since the late 1970s efforts to integrate research, public education, and law enforcement to further safeguard these irreplaceable parts of our heritage have increased. The enactment of ARPA was a major result. Along with ARPA, there now is a significant body of law available to those who are responsible for protecting archeological resources from looting and vandalism. Case histories demonstrate that effective enforcement has increased, especially when conducted as part of a larger program of archeological resources stewardship and public awareness. Often, these cases have inspired the public's interest in its heritage and fostered a wider understanding of its rich cultural past.

### Endnotes

1. Some of the areas in the Southwest, Pacific Northwest, and Alaska, in particular, cover many hundreds of square miles, over terrain with high levels of inaccessibility.
2. P.L. 96-95, *as amended* by P.L. 100-555 and 100-588; 16 U.S.C. 470aa-mm. (1988).
3. Duerksen, Christopher J., editor, *A Handbook on Historic Preservation Law*, The Conservation Foundation and The National Center for Preservation Law, Washington, DC, 1983, p. 193.
4. *Ibid.*, p. 3.
5. The Fifth Amendment to the Constitution specifies the procedural protection in its taking clause: "nor shall private property be taken for public use, without just compensation."
6. 160 U.S. 6M (1896).
7. 108 Md. 220, 70 A. II 3 (1908)
8. *Welch v. Swasey*, 214 U.S. 91 (1909).
9. *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). An earlier Supreme Court case, *Berman v. Parker*, 348 U.S. 26 (1954), gave strong support in *dicta* to

the concept of governmental condemnation action for aesthetic purposes when Justice Douglas wrote: "The values [public welfare] represented are spiritual as well as physical, aesthetic as well as monetary. It is within the, power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capitol should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way. Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear... the means by which it will be attained is also for Congress to determine" (348 U.S. 26, p. 33). However, Berman dealt with local historic District of Columbia ordinances and recognized that the ordinance in question considered aesthetic values as one of many criteria encompassed by the term "public welfare." The *Penn Central* decision made it clear that individual landmarks as well as historic districts could be protected. Justice Brennan, writing for the Majority, stated: "[H]istoric conservation is but one aspect of the much larger problem, basically an environmental one, of enhancing--or perhaps developing for the first time--the quality of life for people. New York City, responding to similar concerns and acting pursuant to a New York State Enabling Act, adopted its Landmarks Preservation Law in 1965... The New York City law is typical of many urban landmark laws in that its primary method of achieving its goals is not by acquisitions of historic properties, but rather by involving public entities in land-use decisions affecting these properties and providing services, standards, controls, and incentives that will encourage preservation by private owners and users" [438 U.S. 108-111 (1977)]. The court concluded that "the restrictions imposed are substantially related to the promotion of the general welfare and not only permit reasonable beneficial use of the landmark site but also afford appellants opportunities further to enhance not only the Terminal site proper, but also other properties" [438 U.S. 138 (1977)].

10. P.L. 59-209, 16 U.S.C. 431-433 (1906). The historical background of this law is the topic of *The Antiquities Act of 1906*, by Ronald F. Lee, National Park Service, Washington, DC, 1970 (NTIS order number PB284061). See also Hal Rothman, *Preserving Different Pasts: The American National Monuments*, University of Illinois Press, Chicago, IL, 1989.

11. Section 432 of the Antiquities Act provides that permits will be issued for examinations, excavations and gatherings of objects when such activities are undertaken "for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums." Currently, most Federal agency permits are issued under the authority of ARPA.

12. Maximum fine of \$500 or 90 days in prison, or both. *Ibid.*, Sec. 1.

13. 16 U.S.C. 431, section 2.

14. P.L. 74-292, 16 U.S.C. 461-467 (1935).

15. Regulations for the National Historic Landmarks Program are found at 36 CFR Part 65.

16. P.L. 89-665, 16 U.S.C. 470-470t (1966). Those responsible for Federal historic preservation programs and projects are to conduct them according to the Secretary of the

Interior's Standards and Guidelines for Archeology and Historic Preservation, September 29, 1983 (48 F.R. 44716-44742).

17. Ibid., page 336 C.F.R. Part 60.

18. 36 C.F.R. Part 800.

19. 36 C.F.R. Part 65.

20. 36 C.F.R. Part 61.

21. 36 C.F.R. Part 60, in conjunction with Exec. Order No. 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 F.R. 8921), implements the necessary cooperation between State and Federal agencies to inventory and ensure the preservation of non-federally owned "sites, structures, and objects of historical, architectural, or archeological significance."

22. 36 C.F.R. Part 800 includes the regulations published by the Advisory Council on Historic Preservation to implement Section 106 of NHPA. Federal "undertakings" range from construction, rehabilitation, and repair projects to transfers or demolition of Federal properties. Assessments result in one of three determinations: (a) no effect; (b) no adverse effect, i.e., one or more historic properties will be affected, but the historic qualities that make them significant will not be harmed; or (c) adverse effect, i.e., the undertaking will cause harm to one or more historic properties. See the Advisory Council on Historic Preservation publication: *Fact Sheet: Working with Section 106*, Washington, DC, revised September, 1988, pp. 3-4. The basic steps to arrive at a determination are: (1) identification and evaluation of historic properties, with the possibility of further studies to evaluate places that may have been considered eligible for inclusion in the National Register but were not so registered; (2) assessment of the effects that the Federal undertaking may have on the identified properties; (3) consultation on adverse effects with the SHPO, Indian Tribes, property owners, and others resulting in an agreement outlining measures to reduce, avoid, or mitigate any adverse effect; (4) a period of time for comment by the Advisory Council on Historic Preservation; and (5) implementation of the particular Federal project under the terms of the agreement. If there is a memorandum of agreement (MOA) developed during Step 3 of the Section 106 process, ACHP may review and accept it, request changes, or decide to issue written comments. If previously unknown archeological remains are discovered after the project has begun, the Federal agency may choose to re-start the Section 106 process or notify the Secretary of the Interior according to Section 4(a) of P.L. 93-291.

23. P.L. 95-515 These amendments codify the requirement that Federal agencies assume the responsibilities for preservation of the historic properties, including the inventory and evaluation of archeological sites that are owned or controlled by them. Appearing as Section 110, this requirement is to ensure that historic preservation is fully integrated into the ongoing programs and missions of federal agencies and to ensure that they exercise caution so that their activities do not destroy uninventoried sites. Section 110 guidelines are located at 53 F.R. 4727-4746 (February 17, 1988).

24. 36 F.R. 8921 (1971), reprinted in 16 U.S.C. 470h-2 (Supp. IV 1980).

25. This settles the question of whether private interests could be required to pay costs of

protecting archeological or historical resources that would otherwise be destroyed by their activities.

26. P.L. 86-523, *as amended* by P.L. 93-291; 16 U.S.C. 469-469c (1974).

27. The NHPA (Note 26) also authorizes project and project planning funds to be used in this manner. A Federal agency may exceed the 1 percent limitation with the concurrence of the Secretary of the Interior, which is based upon a review by Interior's Departmental Consulting Archeologist.

28. P.L. 96-95, 16 U.S.C. 470aa-ll (1979).

29. P.L. 100-555, approved October 28, 1988; P.L. 100-588, approved November 3, 1988; 16 U.S.C. 470aa-mm.

30. 43 C.F.R. Part 7, Department of the Interior; 36 C.F.R. Part 296, Department of Agriculture; 18 C.F.R. Part 1312, Tennessee Valley Authority; 32 C.F.R. Part 229, Department of Defense.

31. Neither ARPA itself nor its implementing regulations provide precise definitions of "historic" and "prehistoric." Rather, the emphasis is on the statutory definition of "archaeological resource," which means "any material remains of human life or activities which are of archaeological interest [and] at least 100 years of age." "Archaeological interest" is defined in the uniform regulations as "capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics"; and "material remains" is defined as "physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated." There follows an extensive list of classes of material remains, which will be considered archeological resources, but it should be understood that the list is not all-inclusive. 18 C.F.R. Part 1312.3 (1984).

32. 16 U.S.C. 470ee(d).

33. 18 C.F.R. Part 1312.4 and 1312.15 (1984).

34. 16 U.S.C. 470ff-gg.

35. For a state-by-state analysis of alternative statutes see Appendix 1.

36. Although there is considerable documentation in some Federal agency files, e.g., NPS and USDA Forest Service records, as to Antiquities Act violations, the citations for those violations appear to be the exception rather than the norm. In fact, it is not clear as to how the various agencies have coordinated their activities in order to enforce the Antiquities Act, and there is some confusion as to what has actually constituted a violation. See the NPS Antiquities Act files, W34, 1949 - 1981, with accompanying correspondence. Thus, a legislative objective for ARPA was to provide improved enforcement authority. For an anecdotal, yet thorough discussion of ARPA in legislative process, see Janet L. Friedman, "A Drama in Three Acts," and Laura L. Beaty, "ARPA Enacted: The Legislative Process," both in an edition of *American Archeology*, devoted to "A History of the Archeological Resources Protection Act: Law and Regulations," Vol 5, No.2, 1985, pp. 82 and 90. Final

Uniform Regulations were issued at 43 C.F.R. Part 7 (Department of the Interior), 36 C.F.R. Part 296 (Department of Agriculture), 18 C.F.R. Part 1312 (Tennessee Valley Authority), and 32 C.F.R. Part 229 (Department of Defense), first published at 49 F.R. 1017-1034 (1984); Supplemental Regulations at 52 F.R. 9165-9170 (Department of the Interior) (1987); and amendments to the uniform regulations at 52 F.R. 47720-47722 (1987).

37. P.L. 100-555 and P.L. 100-588 (1988).

38. See, generally: *CRM Bulletin*, Vol. 11, Special Issue: Archeology and the Federal Government, compiled by George S. Smith, Francis P. McManamon, Ronald D. Anzalone, James W. Hand, and James C. Maxon, National Park Service, Washington, DC, 1988; *Saving the Past for the Future, Actions for the 90s: Final Report, Taos Working Conference on Preventing Archaeological Looting and Vandalism*, Society for American Archaeology, Office of Government Relations, Washington, DC, 1990; and *Federal Archeology Report*, Vol. 3, No. 2, p. 1. National Strategy for Federal Archeology, Secretary of the Interior, 1990.

39. P.L. 89-670, 419 U.S.C. 1651-1659 (1976).

40. The DOTA Section on Preservation of Public Areas [49 U.S.C. 1653(f)] does not specifically define "historic site," but in *Stop H-3 Association v. Coleman* [(1976, CA9 Hawaii) 533 F.2d 434, denied 429 US 999, 97 S. Ct. 526, 50 L. Ed 2d 610], the Court held that the determination made by the Secretary of the Interior that a site "may be eligible for inclusion in the National Register of Historic Places" was sufficient to establish historic significance so as to have the site come under the mandates of 49 U.S.C. 1653(f) and 23 U.S.C. 138. Section 1653(f) requires that the Secretary of Transportation "shall cooperate and consult with the Secretaries of Interior, Housing and Urban Development and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed... with the stipulation that the Secretary of Transportation not approve programs which will require the use of any publicly owned land from ... an historic site of national, State or local significance."

41. P.L. 91-190, 42 U.S.C. 43321-43361 (1976).

42. 42 U.S.C. 4332(1) of NEPA specifically identifies such considerations for the EIS as "aesthetically and culturally pleasing surroundings...preserv(ation) of important historic, cultural and natural aspects of our national heritage...and an approach to the maximum attainable recycling of depletable resources."

43. *Ely v. Velde*, 451 F. 2d 1130 (4th Cir. 1971). See also *Stop H-3 v. Brinegar*, 389 F, Supp. 1102, 1110 (D. Hawaii 1974); *Save the Courthouse v. Lynn*, 408 F. Supp. 1323, 1340 (S.D.N.Y. 1975).

44. P.L. 95-341 (1978). Applicable regulations promulgated pursuant to Section 10(a) are located at 43 C.F.R. Part 7.7 and 7.35, regarding ARPA permits. Specific details regarding consultation, permits, and notifications to Indian Tribes are located at 25 C.F.R. Part 262, Protection of Archaeological Resources, Bureau of Indian Affairs. These regulations were proposed on January 25, 1990 (55 F.R. 2580-2583) and are expected to be published in final in 1991.

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45. P.L. 89-508, 80 Stat. 309, 4 C.F.R. Part 2.

46. For a detailed treatment of site damage assessment see: D. Lear, "Civil Responsibilities Under the Federal Collections Act of 1966," background paper in *Cultural Resources Law Enforcement*, compiled by P. Davis and D. Green, Second Edition, Forest Service, Southwestern Region, Albuquerque, NM. 1981; also, H. Christensen, K. Mabery, M. McAllister, and D. McCormick, "Cultural Resources Protection: A Predictive Framework for Identifying Site Vulnerability, Protection Priorities, and Effective Protection Strategies," *Symposium Proceedings, Tools to Manage the Past*, edited by J. Tainter and R. Hamre, May 2-6, 1988, Grand Canyon, AZ, pp. 68-80; also Linda F. Carnes, Roy S. Dickens, Jr., Linda France, and Ann Long, *Cost Analysis of Archeological Activities at Eight Southeastern Sites*, National Park Service, Washington, DC, 1986. Regulations for determinations of archeological or commercial value and cost of restoration and repair in penalties assessments for violations of ARPA are located at 43 C.F.R. Part 7.14.

47. Act, March 3, 1875, c. 144 Section 2, 18 Stat. 99; *amendments*: P.L. 93-203, Title VII Section 711(b), [formerly Title VI, Section 611(b)], Dec. 28, 1973; 87 Stat. 882, renumbered P.L. 93-567, Title I Section 101, Dec. 31, 1974, 88 Stat. 1845, added item 665.

48. See *United States v. Cowan* (D. Az. November, 1987).

49. The LOOT Clearinghouse provides case reports relevant to this statute. 18 U.S.C. 1632 also provides penalties for those who aid and abet activities covered under 18 U.S.C. 1631.

50. Statutes such as these do not contain language specifying that artifacts must be found on the property; the language simply authorizes the State "by gift or purchase" to acquire private land that is deemed to be of historic significance. See, for example: Alaska c. 35, s. 41.35.060; or N.M. 18-6-6D and 18-6-10C.

51. A.R.S. 41-865 and A.R.S. 41-866 (effective July 5, 1990). Amendments also were made to the existing public health statutes governing disinterments of dead bodies to harmonize existing law with the new laws (A.R.S. 36-861, effective July 5, 1990).

52. The annual report to Congress on the Federal archeology program is based upon Federal agency responses to a questionnaire distributed at the end of each fiscal year. The most recent publication, *Federal Archeology: The Current Program* (Department of the Interior, Washington, DC. 1989 GPO order number S/ N 024-005-010-572), covers activities in fiscal years 1985 and 1986. A draft report, *Federal Archeology: 1987 Activities and Results*, covering activities through fiscal year 1987 is nearing completion. See Ch. 5, p.2. Statistics for subsequent years have been compiled for use in this Technical Brief.

53. "Four Corners" refers to the place where the State lines of New Mexico, Utah, Colorado, and Arizona intersect. It is an area rich in prehistoric sites from the archeological periods known as Pueblo I, II, and III. Included in these kinds of sites are National Park Service units such as Mesa Verde and Chaco Canyon.

54. Carol A. Bassett, "The Culture Thieves", *Science* '86, July, August, 1986, p.22. See *Problems Protecting and Preserving Federal Archeological Resources*, General Accounting Office Report GAO/ RCED-88-3, Washington, DC, 1988; and the legislative history for the

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1988 amendments to ARPA, House Reports No. 100-791, Pt. 1 (Committee on Interior and Insular Affairs) and Senate Reports Nos. 100-566 and 100-569 (Committee on Energy and Natural Resources).

55. *Federal Archeology: The Current Program*, Ch. 5, p. 30 (1989), and the draft report for fiscal year 1987, Ch. 5, pp 2-3.

56. Examples of such authorities are State statutes for trespass or cultural properties protection Statutes, Federal criminal statutes such as 18 U.S.C. 1361, Damage to Government Property, or National Park Service and USDA Forest Service regulations such as 36 C.F.R Part 2.1(a)(1)(ii), taking of potsherds from public land, or 36 C.F.R. Part 2.10(B)(10), camping outside a designated area.

57. In total, the Forest Service, Bureau of Land Management, Fish and Wildlife Service, and National Park Service manage nearly 700 million acres of Federal land.

58. Note 54, page 33.

59. *United States v. Jacques*, CR 83-129-FR (D. Or., 1983), lasting three years. See also, the Channel Islands case listed in the LOOT clearinghouse that began in 1987 and involved more than 20 defendants (See Note 78).

60. Authority for the annual report is provided by the Reservoir Salvage Act of 1960 (P.L. 86-523; 74 Stat. 220, 221; 16 U.S.C. 469) as amended by the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 88 Stat. 174; 16 U.S.C. 469). Under this Act the Secretary of the Interior is to prepare and submit an annual report to the Congress each fiscal year on the projects, results and costs undertaken in the Federal archeology program. In addition, the National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470) as amended (P.L. 91-243; P.L. 93-54, P.L. 94-422, P.L. 94-458, P.L. 96-199, P.L. 96-244, P.L. 96-515) requires Federal agencies, to the extent permitted by law and within available funds, to provide information, suggestions, estimates, and statistics to further the purposes of the Act. The report also is mandated by the Federal Land Policy and Management Act of 1976 (P.L. 94-579; 90 Stat. 2743; 43 U.S.C. 1701), which is the primary basis for managing cultural resources on the public lands. Finally, ARPA directs the Secretary of the Interior to provide a separate component of the annual report that deals specifically with its provisions, including the permitted and unauthorized uses of archeological resources on public lands.

61. Briefing Statement, NPS Archeological Assistance Division, January 27, 1989, page 3.

62. The regulations were adopted in February 1984, (See Notes 29 and 30).

63. 16 U.S.C. 470ee amended at 102 Stat. 2983 (Nov. 3, 1988).

64. Ibid.

65. 16 U.S.C. 470mm, adding Section 14 to AP.PA.

66. Prior to the issuance of ARPA uniform regulations, this section to some extent created a due process problem since there were no mechanisms for the issuance of permits. Therefore,

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agencies published notices in the Federal Register clarifying that permits pending ARPA regulations would continue to be processed under the applicable sections of the Antiquities Act. Such publication also served as a reminder that ARPA neither amended nor replaced the Antiquities Act. See D. Green, "Prosecuting Under ARPA: What to Do Until the Regulations Arrive," in *Cultural Resources Law Enforcement*, p. 64, note 49.

67. This fourth proof defines the line between a felony and a misdemeanor, the later involving damages of \$500 or less. Felony convictions for ARPA violations through 1984 carry a fine of up to \$20,000 and two years in prison, or both, for the first offense. After 1984 the Comprehensive Crime Control Act (18 U.S.C. 3623) standardized maximum penalty amounts, allowing up to \$100,000 for the first misdemeanor offense, and up to \$250,000 for the first felony offense committed by individuals. The respective amounts are doubled when an organization, rather than an individual, has committed the violation. Although ARPA exempts arrowheads from surface collection, such collection is still in violation of the Antiquities Act, except in the Ninth Circuit under Diaz, as well as under the Theft of Government Property statute, 18 U.S.C. 641, (See Note 50).

68. In this case, Shumway was found not guilty as to the two felony ARPA counts, but guilty as to destruction of government property.

69. K. Jones and Guevara were sentenced each to 1 year in jail and a \$1,000 fine; while T. Jones received an 18-month jail sentence and \$1,000 fine.

70. Civil fines based upon site damage assessments were levied in *Brady* (See page 7), but the \$38,479.42 was declared uncollectible in 1982. Collection of another civil fine of \$18,216 for damage to 11 separate areas in a 1981 case (See LOOT Clearinghouse) was attempted under the Federal Collections Act and declared uncollectible in 1984.

71. See LOOT Clearinghouse case, November, 1981.

72. P. Nickens, S. Larralde, and G. Tucker, Jr. "A Survey of Vandalism to Archaeological Resources in Southwestern Colorado," Bureau of Land Management Cultural Resources Series, No. 11, Denver, Colorado, 1981, pp. 12, 24.

73. These figures are misleading to some extent, since in one case prosecuted under another statute there were a total of 20 defendants. See LOOT Clearinghouse report on the Channel Islands shipwreck case prosecuted under NOAA regulations and the California Penal Code (See Note 76).

74. In the Lower Suwanee digging case (November 5, 1987, LOOT Clearinghouse report) the judge reduced the \$200 civil fine on each defendant to \$60 "because they didn't find anything."

75. St. Francis National Forest case (January, 1987, LOOT Clearinghouse report).

76. "Shipwreck Looters Fined \$132,000 in History's Biggest Case," Channel Islands National Marine Sanctuary Press Release, October 25, 1990. Altogether in this case, 20 individuals were charged with 52 civil and criminal violations of Federal and State laws. The largest single civil fine was \$100,000 assessed against the dive boat operator for violating National Oceanic and Atmospheric Administration regulations regarding historic shipwrecks within a

## National Marine Sanctuary.

77. Lack of access aside, some known offenders will not be deterred. Convicted looters and vandals simply move their activities into other States.

78. It is important to note that the second jury trial felony conviction under ARPA occurred in 1990. The "Dry Hill" case involved 10 defendants who looted an unrecorded site in the Cherokee National Forest that contained burial remains of the Eastern Band of the Cherokee. The case resulted in 10 felony convictions, 4 misdemeanor criminal convictions, \$3,290.62 assessed in fines, \$11,500 ordered in restitution, and prison sentences varying from 6 months to 22 months for some of the defendants. Additional penalties included probationary periods of up to 5 years, with 3 defendants required to provide 300 hours each in community service. All defendants were banned from the National Forest for their respective probationary periods. [*United States v. Charlton* No. 290-73, E.D. Tennessee, October 1990].

79. Among the agencies required to respond are the Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, Mineral Management Service, National Park Service, Territorial and Insular Affairs, Department of Justice, Department of Labor, National Air and Space Administration, National Capitol Planning Commission, Pennsylvania Avenue Development Corporation, Tennessee Valley Authority, Federal Aviation Administration, Federal Railroad Administration, Urban Mass Transit Administration, Veterans Administration, Department of Education, Department of Energy, Federal Energy Regulatory Commission, Environmental Protection Agency, Federal Communications Commission, General Services Administration, Department of Health and Human Services, Department of Housing and Urban Development, Bureau of Indian Affairs, Forest Service, Rural Electrification Administration, Soil Conservation Service, Economic Development Administration, the Army, Navy, and Air Force, and the Army Corps of Engineers.

80. Although the Department of Justice audits the 192 United States Attorneys on a monthly basis, there is no section of the audit that references cultural resources crimes.

81. Sometimes a group of LOOT forms accompany the annual report questionnaire, but often these are sent separately to NPS throughout the year.

82. LOOT Clearinghouse, Preliminary Draft prepared for the Society for American Archaeology Anti-Looting Working Conference, Taos, New Mexico, May 7-12, 1989, by the NPS Departmental Consulting Archeologist, Archeological Assistance Division, Washington, DC.

83. The 1988 report on the annual questionnaire from TVA states the frustration: "We have hundreds of sites being looted. We are documenting the destruction, but we are seldom able to document the individuals doing the digging, or how many acts of digging have produced the appalling conditions we document."

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